



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

MONDAY, NOVEMBER 16, 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/82045200899>. 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: **820 4520 0899**. 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: November 2, 2020**
- 2. Review and Approve Draft Agenda:**
 - a. 12/1/20 – 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**

Referred Items for Review

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

Referred Items for Review

10. **Implement Protocols for managing the City Council Meetings on Zoom**

From: Councilmember Davila (Author)

Referred: October 26, 2020

Due: March 29, 2021

Recommendation: Adopt a Resolution with the following actions:

1. Implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures: A) Gallery view showing the list of all participants and attendees; B) Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking; C) Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded; D) The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order; E) Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off; F) Allow chat and reactions capabilities for attendees and participants; G) The chat should be saved and part of the public record.

2. Designate a third party community organization to host and manage the meeting with neutrality.

Financial Implications: See report

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

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.

11. **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

12. 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, November 30, 2020

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

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

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

*If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.*

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

*Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



**COMMUNICATION ACCESS INFORMATION:**

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

\* \* \*

I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on November 12, 2020.

A handwritten signature in black ink, appearing to read "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**

**MONDAY, NOVEMBER 2, 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** – 2 speakers.

## **Review of Agendas**

**1. Approval of Minutes: October 26, 2020**

**Action:** M/S/C (Wengraf/Hahn) to approve the minutes of 10/26/20.

**Vote:** All Ayes.

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

a. 11/17/20 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Arreguin/Hahn) to request amendments from the author on Item 18 to modify the recommendation to a budget referral.

**Vote:** All Ayes.

**Action:** M/S/C (Hahn/Wengraf) to approve the 11/17/20 agenda with the revisions noted below.

**Vote:** All Ayes.

- *Item Added: Age-Friendly Continuum (Arreguin) – Councilmember Wengraf added as a co-sponsor; Scheduled for Consent Calendar*
- *Item Added: Hate Crimes Reporting (Arreguin) - Scheduled for Consent Calendar*
- *Item Added: Eviction Ban Amendments (Davila) - Scheduled for Action Calendar*
- *Item 1 Appropriations Ordinance (City Manager) – Moved to Action Calendar*
- *Item 17 Off-Street Parking (City Manager) – Scheduled for 12/1/20*
- *Item 18 Youth Listen Campaign (Davila) – Scheduled for 11/17/20 Consent Calendar pending revisions from author*
- *Item 19 Navigable Cities (Hahn) – Scheduled for 11/17 Consent Calendar*

Order of Items on the Action Calendar

Item 13 Elmwood BID

Item 14 Solano BID

Item 15 Camelia Street

Item 16 General Plan Amendment

Item 1 FY 2021 Annual Appropriations Ordinance

Time Critical Item: Eviction Ban Amendments

**3. Selection of Item for the Berkeley Considers Online Engagement Portal**

- None selected

**4. Adjournments In Memory – None**

## **Scheduling**

**5. Council Worksessions Schedule**

- Undergrounding moved to the Unscheduled list

**6. Council Referrals to Agenda Committee for Scheduling - Received and filed**



7. **Land Use Calendar** - Received and filed
8. **Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**

**Action:** 2 speakers. The City Manager provided an update to note that she is assessing organizational capacity to support commissions. Further discussion is agendaized on November 10, 2020.

## 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

**Action:** Scheduled for the Action Calendar on November 16, 2020.

## Unscheduled Items

- 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 the next meeting under 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 the next meeting under Unscheduled Items.
- 12. Implement Protocols for managing the City Council Meetings on Zoom**  
**From: Councilmember Davila (Author)**  
**Referred: October 26, 2020**  
**Due: March 29, 2021**  
**Recommendation:** Adopt a Resolution with the following actions:  
1. Implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures: A) Gallery view showing the list of all participants and attendees; B) Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking; C) Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded; D) The designated meeting host shall keep track of a list and record attendees requesting to speak in the

## Unscheduled Items

order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order; E) Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off; F) Allow chat and reactions capabilities for attendees and participants; G) The chat should be saved and part of the public record.

2. Designate a third party community organization to host and manage the meeting with neutrality.

**Financial Implications:** See report

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

**Action:** Scheduled for the Action Calendar on November 16, 2020.

## Items for Future Agendas

- None

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 3:24 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on November 2, 2020.

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Mark Numainville  
City Clerk

## Communications

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



## DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, December 1, 2020  
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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*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.*

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

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

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

## Preliminary Matters

### Roll Call:

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

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

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

## Consent Calendar

*The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." 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. Mental Health Services Act (MHSA) Fiscal Years 2020/2021 – 2022/2023 Three Year Program and Expenditure Plan**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Mental Health Services Act (MHSA) Fiscal Years 2020/2021 – 2022/2023 Three Year Program and Expenditure Plan (MHSA Three Year Plan), which provides information on current and proposed uses of funds for mental health programming, and forwarding the MHSA Three Year Plan to appropriate state officials.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 2. Contract: Resource Development Associates for Specialized Care Unit**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with Resource Development Associates (RDA) to facilitate the design of a Specialized Care Unit (SCU) for a total contract limit of \$185,000 for the period beginning January 1, 2021 and ending June 30, 2022. The contract will serve the City of Berkeley by analyzing the current mental health crisis system, engaging community members in visioning an improved system, researching best practice models and gathering local data, and developing a program to re-assign non-criminal police service calls to a Specialized Care Unit (SCU) that will respond without law enforcement.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 3. Contract Amendment: Fred Finch Youth Center for Turning Point Transitional Housing for Transition Age Youth**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend an existing contract with Fred Finch Youth Center (“Fred Finch”) for their Turning Point Transitional Housing Program (“Turning Point”), adding \$200,000 total for fiscal years 2021 and 2022, at a rate of \$100,000 per year, to reduce Fred Finch’s Turning Point program deficit.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 4. Amending Berkeley Municipal Code Chapter 11.28 – Food Establishments**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 11.28, Section 11.28.010 Statutory Provisions, Section 11.28.020 Definitions and adding Section 11.28.370 Microenterprise Home Kitchen Operation (MHKO).  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

- 5. Grant Application: FEMA Hazard Mitigation Program for Seismic Retrofit of Martin Luther King (MLK) Jr. Youth Services Center/Young Adult Project (YAP)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to submit a grant application to FEMA for funds in the amount not to exceed of \$1,237,500 for the seismic retrofit of the Martin Luther King (MLK) Jr. Youth Services Center/Young Adult Project (YAP); authorizing the City Manager to accept the grant; to execute any resultant revenue agreement and amendments; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.  
**Financial Implications:** \$1,237,500 in revenue  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 6. Grant Application: the San Francisco Restoration Authority Measure AA Grant Program for Technical Feasibility Studies of Potential Improvement Projects at Aquatic Park**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to: submit a grant application in the amount of \$897,000 to the San Francisco Restoration Authority Measure AA Grant Program to conduct feasibility studies for improvements at Aquatic Park; accept any grants; execute any resulting grant agreements and any amendments; and that Council authorize the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 7. Grant Application: the California Proposition 68 Statewide Parks Program for new park development at selected Santa Fe Right-of-Way parcels**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to: submit a grant application in the amount of up to \$8,000,000 to the California Proposition 68 Statewide Parks Program for new park development at selected Santa Fe Right-of-Way parcels; accept any grants; execute any resulting grant agreements and any amendments; and that Council authorize the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700



## Consent Calendar

8. **Contract No. 31900040 Amendment: Freitas Landscaping and Maintenance for Hazardous Vegetation Reduction Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 31900040 with Freitas Landscaping and Maintenance for additional reduction of hazardous vegetation in high-risk areas of City-owned parks, pathways and landscaped areas during high-risk fire season, by increasing the contract by \$410,000 for a not-to-exceed amount of \$1,235,000.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
9. **Donation: Regan Nursery Rose Bushes**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a donation of 44 potted roses from Regan Nursery, valued at \$1099.78, for replacement of roses stolen from the Berkeley Rose Garden.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
10. **Measure T1 Phase 1 Modifications to Project List**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the following modifications to the Measure T1 Phase 1 project list with no additional funding:  
1. Removal of the following projects:  
Transfer Station Conceptual Master Plan and West Berkeley Service Center conceptual design;  
2. Change of phase from construction to planning for the following projects:  
Berkeley Health Clinic; Public Safety Building; Hopkins Street – San Pablo to the Alameda; and Bancroft Way – Milvia to Shattuck;  
3. Change of phase from design to planning for the following projects:  
Berkeley Municipal Pier; and Tom Bates (Gilman) Fields North Field House / Restroom;  
4. Addition of the following projects and funding to supplement existing T1 projects at the same site:  
San Pablo Park – Additional Play Structure Replacement (ages 2-5); Strawberry Creek Park – Play Structure Replacement and Codornices Creek at Kains Avenue.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

- 11. Proposed Amendments to the Building Energy Saving Ordinance (BESO)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of amendments to the Building Energy Saving Ordinance (BESO), Chapter 19.81 of the Berkeley Municipal Code, to align with building electrification goals, leverage upcoming rebates and incentives, improve transparency in real estate sales process, and develop mandatory energy requirements to be phased in.  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 12. Revenue Grant: Reach Code support from East Bay Community Energy**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager, or her designee, to submit a grant agreement and accept a \$10,000 grant award from East Bay Community Energy (EBCE) for reach code support.  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 13. Lease Agreement: Berkeley Housing Authority at 1947 Center Street, Fifth Floor, Southwest Corner**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Berkeley Housing Authority to use and occupy the City property at 1947 Center Street, 5th floor Southwest Corner for a ten-year lease term with an option to extend for two additional ten-year terms.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 14. Final Map of Tract 8533: 1500 San Pablo Avenue**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the final map of Tract Map 8533, a one hundred seventy-five (175) unit condominium project consisting of one hundred seventy (170) residential units and five (5) commercial units at 1500 San Pablo Avenue.  
**Financial Implications:** None  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

- 15. Contract: Andes Construction, Inc. for Sanitary Sewer Rehabilitation at Various Locations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Sanitary Sewer Project, located on Ashby Avenue, MLK Jr. Way, Benvenue Avenue, Hillegass Avenue, Parker Street, Telegraph Avenue, Bowditch Street, College Avenue, Spruce Street, and Keith Avenue; accepting the bid of the lowest responsive and responsible bidder, Andes Construction, Inc.; and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$4,968,764, which includes a 10% contingency of \$451,706.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 16. Contract: Glosage Engineering Inc. for Sanitary Sewer Rehabilitation at Walnut Street, Vine Street, Rose Street, Spruce Street, and Glen Avenue**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Sanitary Sewer Rehabilitation at Walnut Street, Vine Street, Rose Street, Spruce Street, and Glen Avenue; accepting the bid of the lowest responsive and responsible bidder, Glosage Engineering, Inc. (Glosage) and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$2,711,556, which includes a 10% contingency of \$246,505.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 17. Grant Applications: Highway Safety Improvement Program Cycle 10**  
**From: City Manager**  
**Recommendation:** Adopt Resolutions authorizing the City Manager to submit grant applications to the California Highway Safety Improvement Program Cycle 10 for the following projects: Protected Left-Turn Signals at multiple signalized intersections for up to \$6 million and Sacramento Street Pedestrian Crossings for up to \$250,000; accept the grants awarded; and execute any resultant agreements and amendments. This item updates resolutions previously approved by the Berkeley City Council on the July 28, 2020 Consent Calendar in order to increase the grant funds requested to improve more intersections and enhance the pedestrian safety treatments proposed.  
**Financial Implications:** See Report  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

### 18. Appointment of boona cheema and Margaret Fine to Mental Health Commission

**From: Mental Health Commission**

**Recommendation:** Adopt a Resolution appointing: boona cheema as a representative of the Special Public Interest Category (family), to complete her second 3- year term beginning December 2, 2020 and ending December 1, 2023; and Margaret Fine as a representative of the General Public Interest Category, to complete her second 3-year term beginning December 2, 2020 and ending December 1, 2023.

**Financial Implications:** None

Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

## Council Consent Calendar

### 19. California Recycling and Plastic Pollution Reduction Act: Endorsement of the 2022 Ballot Initiative

**From: Councilmember Wengraf (Author)**

**Recommendation:** Approve the Resolution endorsing the "California Recycling and Plastic Pollution Reduction Act of 2020", also referred to as "Plastics Free California" so the Ballot Measure campaign can include the City of Berkeley in its list of supporters in campaign literature from now until the 2022 election.

**Financial Implications:** None

Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

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

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

## Action Calendar – Public Hearings

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

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

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

**20. Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and Title 23 From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion select among proposed ordinance language options and take the following action:

Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Title 14 and Title 23 which would:

1. Modify Minimum Residential Off-street Parking Requirements
2. Impose Residential Parking Maximums in Transit-rich Areas
3. Amend the Residential Preferential Parking (RPP) Permit Program
4. Institute Transportation Demand Management (TDM) Requirements

**Financial Implications:** See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

**21. Correction to Fee Increases for Traffic Engineering Hourly Rates**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion adopt a Resolution amending Resolution No. 68,939-N.S. to include the rates discussed in the accompanying report in Chapter E of Attachment A that was inadvertently omitted during production of the agenda item.

**Financial Implications:** See report

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

## Action Calendar – Policy Committee Track Items

- 22. State Alignment on the Treaty on the Prohibition of Nuclear Weapons**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution calling on the California State Legislature to introduce a bill to align the State with the UN Treaty on the Prohibition of Nuclear Weapons by creating a non-partisan, advisory Prohibition of Nuclear Weapons Citizens Commission. Copies of this resolution will be sent to Governor Gavin Newsom, Senator Nancy Skinner and Assemblymember Buffy Wicks.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 23. Amending Berkeley Municipal Code 13.111.020(a) (Ordinance No. 7,727-N.S.) to Further Limit Third-Party Food Delivery Service Fees**  
**From: Councilmember Kesarwani (Author)**  
**Recommendation:** Amend Berkeley Municipal Code Section 13.111.020(a) (Ordinance No. 7,727-N.S.)—which establishes a temporary limit on the charges imposed by third-party delivery services on retail food establishments for the duration of the declared COVID-19 local state of emergency—by reducing the delivery fee cap from 15 percent to 10 percent, while maintaining the limit on other fees, commissions, or costs at 5 percent.  
**Financial Implications:** See report  
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110
- 24. Create and Support an Adopt an Unhoused community program**  
**From: Councilmember Davila (Author)**  
**Recommendation:**  
1. Adopt a resolution to create and support neighborhood volunteers and community groups adopting an encampment, street campers, RV / Vehicle community, located along University Avenue/ Shattuck Avenue / Adeline corridor/ San Pablo Avenue and other areas throughout the City.  
2. Short term referral to the City Manager and/or designee(s) to present to the City Council in 90 days: how to implement the program modeled after the City of Oakland Adopt a Spot Program, identify a community based organization to oversee the volunteers, know what is needed to adequately implement these efforts, including different organizational structure options.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

## Action Calendar – Policy Committee Track Items

### 25. Striking Racially Restrictive Covenants in Certain Property Deeds

**From: Councilmember Davila (Author)**

**Recommendation:** Adopt a Resolution and send a letter to the Alameda County Board of Supervisors and the Governor of California with the following actions:

1. The City calls upon the County of Alameda to determine which parcels of real property have deeds that have racially restrictive covenants associated with them and to proactively strike from those covenants the racially restrictive language, thereby relieving homeowners of the burden of removing such language.
2. The City urges the California legislature and governor to pass legislation requiring the same actions in every California county.

**Financial Implications:** See report

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

### 26. Personal Liability Protection for Small Businesses

**From: Councilmember Hahn (Author)**

**Recommendation:** 1. Direct the City Manager and City Attorney to draft and submit to the City Council for consideration an emergency ordinance to prohibit the enforcement of personal liability provisions in commercial leases and commercial rental agreements in the City of Berkeley for lessees/renters who have experienced financial impacts related to the Covid-19 pandemic.

2. Direct the City Manager to conduct outreach to all commercial tenants regarding any protections enacted by the City Council, with a particular focus on businesses that were required to stop serving food or beverages (e.g., restaurants, bars); close to the public (e.g., hair salons, barbershops, tattoo parlors); cease operations (e.g., gyms, fitness centers); or sharply limit operations (e.g., schools, retail shops, nurseries) due to the COVID-19 crisis.

**Financial Implications:** See report

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

### 27. Resolution calling on the BUSD Board and Superintendent to Consider Renaming Thousand Oaks Elementary to Kamala Harris Elementary School

**From: Councilmember Hahn (Author)**

**Recommendation:** Adopt a Resolution calling on the Berkeley Unified School District (BUSD) Board and Superintendent to initiate a process, pursuant to BUSD Board Policy and Administrative Regulation 7310, to rename Thousand Oaks Elementary School to Kamala Harris Elementary School in honor of Vice President-Elect Kamala Harris.

**Financial Implications:** None

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

## Action Calendar – Policy Committee Track Items

### 28. Referral: Commission Low-Income Stipend Reform

**From: Councilmember Robinson (Author)**

**Recommendation:** Refer to the City Manager to develop and return to Council with a plan to improve equity, accessibility, and representation in City of Berkeley commissions by modernizing the low-income stipend program, and in doing so consider:

1. Increasing the annual household income cap for stipend eligibility from \$20,000 to align with the 50% Area Median Income (AMI) guidelines for Alameda County and reflect household size, and updating it annually with the latest HUD data.
2. Increasing the low-income stipend from \$40 to \$78 per meeting, and updating it annually with the City of Berkeley minimum wage to correspond to compensation for 2.5 hours of work.

**Financial Implications:** See report

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

## Information Reports

### 29. City Council Short Term Referral Process – Quarterly Update

**From: City Manager**

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

### 30. Measure T1 Update

**From: City Manager**

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

### 31. LPO NOD: 2136-2154 San Pablo Avenue/#LMIN2020-0004

**From: City Manager**

Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Public Comment – Items Not Listed on the Agenda

## Adjournment

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

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



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

CONSENT CALENDAR

December 1, 2020

To: Honorable Mayor and Members of the City Council
From: Mental Health Commission
Submitted by: Andrea Prichett, Chairperson, Mental Health Commission
Subject: Appointment of boona cheema and Margaret Fine to Mental Health Commission

RECOMMENDATION

Adopt a Resolution appointing: boona cheema as a representative of the Special Public Interest Category (family), to complete her second 3- year term beginning December 2, 2020 and ending December 1, 2023; and Margaret Fine as a representative of the General Public Interest Category, to complete her second 3-year term beginning December 2, 2020 and ending December 1, 2023.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Mental Health Commission is authorized to be composed of thirteen members. However, there are presently seven vacancies on the Commission. These vacancies impair the Commission's ability to adequately review and evaluate the community's mental health needs, resources, and programs.

Approval of the recommended action will keep the two positions filled, and allow the Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

BACKGROUND

California State law requires that appointments to the Mental Health Commission meet specific categories, who may serve up to nine years consecutively. The general public interest category may include anyone who has an interest in and some knowledge of mental health services. The special public interest category includes direct consumers of public mental health services and family members of consumers, which together must constitute at least fifty percent or nine of the commission seats. Direct consumers and family members shall each constitute at least 20% of the commission membership.

Boona cheema has been an active member serving as Chair for 2 years. During the Covid-19 pandemic and suspension of the Mental Health Commission she was unable to be re-appointed and her 1st term ended on April 25, 2020. She has completed the necessary paperwork and would like to re-join the commission to complete her second term as a commissioner for the Mental Health Commission.

Margaret Fine has been an active member since 2017 and has served on numerous sub-committees throughout her first term and recently voted as Chair. During the Covid-19 pandemic and suspension of the Mental Health Commission she was unable to be re-appointed and her 1st term ended on June 27, 2020. She has re-applied and would like to re-join the Mental Health Commission and complete her second term as commissioner.

The Mental Health Commission passed the following motions at the September 24, 2020 meeting:

M/S/C/ (Prichett, Davila) Motion to send the nomination of boona cheema to the city council for approval and reinstatement to the mental health commission

PASSED

Ayes: Davila, Hawkins, Kealoha-Blake, Moore, Opton, Prichett Noes: None;
Abstentions: None; Absent: None

M/S/C/ (Davila, Prichett) Motion to have her (Margaret Fine) join back to the mental health commission

PASSED

Ayes: Davila, Hawkins, Kealoha-Blake, Moore, Opton, Prichett Noes: None;
Abstentions: None; Absent: None

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Approval of the recommended action will allow the Mental Health Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

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

CONTACT PERSON

Jamie Works-Wright, Commission Secretary, HHCS, 510-981-7721

Attachments:

1: Resolution

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

APPOINTMENT OF BOONA CHEEMA AND MARGARET FINE TO THE MENTAL HEALTH COMMISSION

WHEREAS, membership of the Mental Health Commission is composed of thirteen appointments by the City Council as a whole, including one appointment by the Mayor (*or designee*), six special public interest appointments, and four general public interest appointments; and

WHEREAS, with the ongoing implementation of the Mental Health Services Act, the City of Berkeley will need to have a full complement of diverse appointees to the Commission to review and evaluate the community's mental health needs, resources, and programs and to fulfill its mandate; and

WHEREAS, Ms. cheema has served as Chair of the Commission and

WHEREAS, Ms. Fine has been an active member and has served on numerous sub-committees throughout her first term and recently voted as Chair before she was termed out in June 2020

WHEREAS, the Mental Health Commission at its September 24, 2020 meeting recommended appointments of boona cheema and Margaret Fine.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council appoints boona cheema as a representative of the Special Public Interest Family category, to complete her second term ending December 1 2023; Margaret Fine as a representative of the General Public Interest category, to complete her second term ending December 1, 2023



02a.19

Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
December 1, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Susan Wengraf
Subject: California Recycling and Plastic Pollution Reduction Act: Endorsement of the 2022 Ballot Initiative

RECOMMENDATION

Approve the Resolution endorsing the "California Recycling and Plastic Pollution Reduction Act of 2020", also referred to as "Plastics Free California" so the Ballot Measure campaign can include the City of Berkeley in its list of supporters in campaign literature from now until the 2022 election.

FINANCIAL IMPLICATIONS

None

BACKGROUND

Global plastic production is approaching one million tons per day and is set to double by 2030. If this trend continues, experts project that by 2050 there will be more plastic in our oceans than fish. The Plastics Free California initiative aims to reduce the production of plastic and to increase recycling and restore and protect environments harmed by plastic pollution.

This initiative was originally on track to appear on the November 2020 ballot; however, safety precautions in response to COVID slowed down the process. The item is currently slated for the 2022 ballot. Upon endorsement approval, Councilmember Wengraf will complete the on-line endorsement form confirming the support of the City of Berkeley.

ENVIRONMENTAL SUSTAINABILITY

Most plastics are petrochemicals made from hydrocarbons derived from fossil fuels. Production of these materials contributes to climate change and furthers our reliance on nonrenewable resources. Litter of these plastics constitutes a form of oil pollution spilling into our oceans and contaminating our environment.

CONTACT PERSON

Councilmember Wengraf Council District 6 510-981-7160

Attachments: 1: Resolution 2: Draft Initiative submitted to CA Attorney General

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

ENDORSEMENT OF THE PLASTICS FREE CA 2022 BALLOT INITIATIVE

WHEREAS, The City of Berkeley has a history of passing legislation to reduce plastic use, from its ban on Styrofoam in 1988 to its ban on single use disposable foodware in 2019; and

WHEREAS, “Nearly eight million tons of plastic enter the ocean each year, mostly from single-use plastic items like bags, bottle caps, water bottles, and Styrofoam™ cups”¹; and

WHEREAS, “Consumer use of these products is measured in days or minutes, while the environmental, public health, and social costs are measured in generations or centuries”²; and

WHEREAS, “We produce about one million tons of plastic every day, and we’re on track to double that by 2030 and have more plastic than fish in our oceans by 2050”³; and

WHEREAS, The Plastics Free California initiative provides the state, and Berkeley, an opportunity to turn the tide on the seemingly intractable problem of plastic pollution.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley endorses the Plastics Free California 2022 Ballot Initiative.

BE IT FURTHER RESOLVED that this endorsement continues Berkeley’s commitment to environmental sustainability and the reduction of plastic use and production.

¹ Linda Escalante, California Coastal Commissioner

² ibid

³ Dr Caryl Hart, California Coastal Commissioner

CALIFORNIA RECYCLING AND PLASTIC POLLUTION REDUCTION ACT OF 2020

SEC.1. Title.

This measure shall be known and may be cited as the "California Recycling and Plastic Pollution Reduction Act of 2020."

SEC.2. Findings and Declarations

The People of the State of California find and declare all of the following:

(a) Annual global production of plastic has reached 335 million tons and continues to rise. In part due to increased availability of and reliance on fossil fuel resources, global plastic production is projected to more than triple by 2050, which would account for 20 percent of all fossil fuel consumption.

(b) Nearly 9 million tons of plastic enters the ocean each year globally. Without action, the amount of plastic entering the ocean each year will double by 2025. Researchers have found deadly levels of plastic pollution in the guts of seabirds, sea turtles, and marine mammals, including whales and dolphins.

(c) Most plastics are petrochemicals made from hydrocarbons derived from fossil fuels. Production of these materials contributes to climate change and furthers our reliance on nonrenewable resources. Litter of these plastics constitutes a form of oil pollution spilling into our oceans and contaminating our environment.

(d) Local taxpayers in California annually spend in excess of four hundred twenty million dollars (\$420,000,000) in ongoing efforts to clean up and prevent plastic and other litter from entering our rivers and streams and polluting our beaches and oceans.

(e) Large and small plastic particles are increasingly found in streams, rivers and coastal ecosystems degrading habitat conditions for wildlife and contaminating fish, plants and other organisms. Plastic particles have also been found in drinking water, bottled water, table salt, and fish and shellfish from local California fish markets.

(f) Disadvantaged and low-income communities are disproportionately impacted by the human health and environmental impacts of plastic pollution and fossil fuel extraction.

(g) California's commitment to recycling has created 125,000 jobs and provides the raw materials necessary to support manufacturing businesses.

(h) As the fifth largest economy in the world and a global center of innovation, California has a responsibility and ability to lead on solutions to the growing plastic pollution crisis and waste reduction generally.

(i) Further, businesses selling products in and into California have a responsibility to minimize waste and ensure their products and packaging are reusable, recyclable, or compostable and do not enter the environment.

SEC.3. Purpose and Intent.

It is the intent of the People of the State of California to do all of the following with this measure:

(a) Reduce the sources of plastic pollution and its impacts on the state's ocean, coastal and freshwater environments and communities.

(b) Reduce the amount of single-use plastic packaging and single-use plastic foodware waste generated in the state.

(c) Reduce our reliance on fossil fuels and move towards renewable materials, including biobased products.

(d) Develop long term Incentives to maintain and increase recycling, composting, reuse, and remanufacturing infrastructure.

(e) Reduce the cost to local governments, ratepayers, and the state to achieve the state's recycling and composting goals.

(f) Promote the design and deployment of reusable and refillable systems and other innovations for packaging and single-use plastic foodware.

(g) Increase the use of recycled and renewable materials in the production of single-use foodware and single-use plastic packaging.

(h) Mitigate and abate the impacts of plastic pollution, solid waste disposal, and litter on the state's natural environment and communities.

(i) Restore and protect streams, rivers, beaches, coastal and ocean environments impacted by plastic pollution and other toxins associated with plastic materials.

U) Increase the recycling of food scraps, yard trimmings and other organic waste, recover edible food for human consumption, increase the production and use of compost, and provide financial incentives and technical assistance to deploy a diversity of healthy soils and water-smart practices, including compost applications, which increase carbon sequestration, reduce greenhouse gas emissions and provide multiple air and water quality benefits.

(k) Producers shall be responsible for ensuring that, to the maximum extent possible, single-use plastic packaging and single-use foodware pollution and waste is reduced,

recycled, or composted, and by the year 2030, the amount of California-generated single-use plastic packaging and single-use foodware waste that is disposed shall be reduced by 80 percent compared to 2020 levels, as determined by the Department.

(l) Require the producers of single-use plastic packaging to pay for cleanup of plastic pollution and management of plastic waste by imposing a fee on single-use plastic packaging and single-use plastic foodware.

(m) Relieve local governments and taxpayers from the costs of single-use plastic packaging waste by establishing a California Plastic Pollution Reduction Fund, which would support local public works infrastructure and litter abatement activities, composting, recycling, reuse, and environmental restoration.

(n) Nothing in this initiative is intended to impose new increased costs to state or local governments.

SEC. 4. Chapter 6.1 (Commencing with Section 42380) is added to Part 3 of Division 30 of the Public Resources Code, to read:

42380 For purposes of this Act, the following definitions apply:

(a) "California Plastic Pollution Reduction Fee" means the fee imposed pursuant to Section 42382(a).

(b) "Department" shall mean the California Department of Resources Recycling and **Recovery**.

(c) "Disadvantaged community" means a community identified as disadvantaged pursuant to Health and Safety Code Section 39711.

(d) "Expanded polystyrene food service container" means a container made primarily of expanded polystyrene and used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages, including, but not limited to, plates, cups, bowls, trays, and hinged containers. "Expanded polystyrene food service

container" does not include packaging for unprepared foods.

(e) "Food vendor" means an establishment that provides prepared food for public consumption on or off its premises, and includes, but is not limited to, a store, shop, sales outlet, restaurant, grocery store, supermarket, delicatessen, catering truck or vehicle, any other person who prepares prepared food, and any organization, group, or individual that provides food as part of its services.

{f} "Low-income communities" are census tracts with median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold established pursuant to Health and Safety Section 50093.

(g) "Low-income households" are those with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold established pursuant to Health and Safety Code Section 50093.

(h) "Person" means a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity.

(i) "Plastic" means a synthetic material chemically formed by the polymerization of organic substances that can be molded or extruded at high heat into various solid forms that may be solid, porous, flexible, or rigid, including elastomers, fibers, adhesives, and surface coatings, as those terms are defined by the Department.

(j) "Priority population" means disadvantaged communities, low-income households, and low-income communities.

(k) (1) "Producer" means the person who manufactures the single-use plastic packaging or single-use plastic foodware items under that person's own name or brand or who sells or offers for sale the single-use plastic packaging or single-use plastic foodware item.

(2) If there is no person who is the producer of the single-use plastic packaging or single-use plastic foodware for purposes of paragraph (1) of this subdivision, the producer is the person who imports the single-use plastic packaging or single-use plastic foodware as the owner or licensee of a trademark or brand under which the single-use plastic packaging or single-use plastic foodware is sold or distributed in the state.

(3) If there is no person who is the producer for purposes of paragraphs (1) and (2) of this subdivision, the producer is the person that offers for sale, sells, or distributes the single-use plastic packaging or single-use plastic foodware in the state.

(1) "Single-use plastic foodware" means single-use food service ware, made partially or entirely of plastic, such as plates, hinged containers, bowls, cups, utensils, stirrers, straws and lids, and similar products as determined by the Department.

(m) "Single-use plastic packaging" means the packaging or components of packaging material, made partially or entirely of plastic, including plastic coated paper, plastic coated paperboard, and multi-layer flexible packaging containing plastic used for the containment, protection, handling, delivery, or presentation of goods by the producer for the user or consumer, ranging from raw materials to processed goods. Packaging includes, but is not limited to, all of the following:

(1) Sales packaging or primary packaging intended to constitute a sales unit to the consumer at the point of purchase and most closely contains the product, food, or beverage.

(2) Grouped packaging or secondary packaging intended to brand or display the product.

(3) Transport packaging or tertiary packaging intended to protect the product during transport.

(4) Single-use plastic packaging shall not include material used for the containment of medical devices and prescription drugs as specified in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 321(h) and (g), and Sec. 353(b)(1)), infant formula, as defined in 21. U.S.C. Section 321(z), on-farm tertiary single-use plastic packaging, or reusable plastic packaging, as defined by the Department.

42381(a) The Department, in consultation with the California Environmental Protection Agency, the California Natural Resources Agency, the Ocean Protection Council, and the California Department of Tax and Finance Administration shall adopt regulations to implement and enforce this Act. Such regulations shall do all of the following:

(1) Place requirements on producers to ensure single-use plastic packaging and single-use plastic foodware is reusable, refillable, recyclable, or compostable by 2030. The Department shall, by regulation, define the terms reusable, recyclable, or compostable for purposes of this Act. In determining recyclability, the Department shall, at a minimum, consider whether a material type and form is regularly collected for recycling, sorted, and aggregated into defined streams, prior to being verifiably used in the production of new products. Combustion, fuel production, and other forms of disposal shall not constitute recycling of single-use plastic packaging and single-use plastic foodware.

(2) Place requirements on producers to reduce or prohibit single-use plastic packaging and single-use plastic foodware that the Department determines to be unnecessary for the delivery of a product or food item.

(3) Place requirements on producers to source reduce, by both weight and number of items, single-use plastic packaging and single-use plastic foodware sold in or into California to the maximum extent possible, and by no less than twenty-five percent (25%) by 2030. Source reduction shall not result in replacing a recyclable or compostable material with a nonrecyclable or noncompostable material. The Department shall, by regulation, develop a baseline by 2023 and a timeline for reduction to achieve the 2030 goal.

(4) Authorize the Department to require producers to use recycled content and renewable materials, as defined by the Department, in the production of single-use plastic packaging

and single-use plastic foodware while ensuring recyclability or compostability.

(5) Establish mechanisms for convenient consumer access to recycling, including but not limited to take-back programs and deposits.

(6) Establish and enforce labeling standards to support the proper sorting of discarded single-use plastic packaging and single-use plastic foodware.

(7) Prohibit the distribution of an expanded polystyrene food service container by a food vendor.

(8) Consider the adoption of regulations to ensure the health and safety of all single-use plastic packaging and single-use plastic foodware, consistent with but not limited to the provisions of Chapter 6, commencing with 42370, of Part 3 of Division 30 of the Public Resources Code.

(b) Nothing in this subdivision shall be construed to impose any mandate upon a local government or local recycling provider.

(c) Producers shall register with the Department and submit data to the state that the Department deems appropriate to carrying out this chapter. Producers shall be responsible for proving compliance with these mandates.

(d) If the Department determines at any point that a single-use plastic packaging and single-use plastic foodware item cannot comply with a regulation established by the Department pursuant to section (a) due to health and safety reasons, because it is unsafe to recycle, or presents unique challenges and has no alternatives, the Department may exempt or provide an extension for that single-use plastic packaging or single-use plastic foodware from that regulatory requirement.

42382(a) The Department shall establish by January 1, 2022, and a producer shall pay, a California Plastic Pollution Reduction Fee, as determined by the Department, on all single-use plastic packaging and single-use plastic foodware destined for final sale in California, Such fee shall not exceed one cent (\$0.01) per item of single-use plastic foodware or single-use plastic packaging. Beginning January 1, 2030, the Department shall adjust annually thereafter the fee for inflation based on the California Consumer Price Index. The Department shall contract with the California Department of Tax and Fee Administration to administer, collect and enforce the fee established by the Department. Costs incurred by the California Department of Tax and Fee Administration for administering, collecting and enforcing the fee shall be paid by proceeds from the fee prior to distribution pursuant to subdivision (k).

(b) In determining the amount of the fee, the Department shall rely on the average net cost of recycling each material type and form, as determined by the Department, and the amount of each material type utilized by producers. For single-use plastic packaging and single-use plastic foodware that the Department determines is not currently recyclable or compostable, the amount of the fee shall be the equivalent of one cent (\$0.01) per item. The Department may update the amount of the fee no more than annually.

(c) Single-use plastic foodware and plastic packaging that are determined by the Department to be made wholly from plastic derived from renewable materials shall be subject to a fee that shall not exceed one-half cent (\$0.005) per item of single-use plastic packaging or single-use plastic foodware. Single-use plastic foodware and single-use plastic packaging that are made primarily from plastic derived from renewable materials shall be subject to a fee that shall not exceed three-quarters of one cent (\$0.0075) per item of single-use plastic packaging or single-use plastic foodware, as determined by the Department.

(d) A producer shall remit the fee assessed pursuant to this subdivision to the California Department of Tax and Fee Administration for deposit into the California Plastic Pollution Reduction Fund, which is hereby created in the State Treasury.

(e) The amount of the California Plastic Pollution Reduction Fee shall be paid by the producer of a single-use plastic foodware or single-use plastic packaging and shall not be passed on to consumers as a separate item on a receipt or invoice.

(f) The Department may adopt regulations for determining the amount of the fee for each material type, the schedule on which the fee is to be paid by a producer, and the methodology for adjusting the fee based on changes in the net cost of recycling, recyclability, or compostability. Regulations to adjust the fee shall be deemed to meet the description in subdivision (g) of Section 11340.9 of the Government Code and may be filed by the Department pursuant to Section 11343.8 of the Government Code.

(g) The Department of Finance may authorize one or more loans to the California Plastic Pollution Reduction Fund for cashflow purposes subject to the following conditions:

(1) The loans are to allow the departments identified in this section to begin program implementation activities, including, but not limited to, drafting program guidelines and regulations.

(2) The loans are short term, and shall be repaid within 30 days after the deposit of sufficient revenues into the California Plastic Pollution Reduction Fund.

(3) Interest charges may be waived pursuant to subdivision (e) of Section 16314 of the Government Code.

(h) The Department may impose an administrative civil penalty not to exceed fifty thousand dollars (\$50,000) per day on any producer not in compliance with this Act or any of the regulations the Department adopts to implement this Act. Funds collected pursuant to this provision shall be deposited into the California Plastic Pollution Reduction Penalty Account, which is hereby created in the State Treasury. Moneys in the California Plastic Pollution Reduction Penalty Account shall be expended upon appropriation by the Legislature in the annual Budget Act.

(i) The Department shall engage an independent firm of certified public accountants to conduct an annual audit of all accounts and transactions of the Department related to this Act. The audited financial statements shall be presented to the Department and the Controller not more than 120 days after the close of the fiscal year. The independent auditor's report shall be posted on the Department website. The Controller shall conduct quarterly and annual audits and postaudits of all accounts and transactions of the Department related to this Act and other special postaudits as the Controller deems necessary. The Controller or his or her agents conducting an audit in accordance with this Act shall have access and authority to examine any and all records of the Department, the Department's contractors or any other agency or entity receiving money from the California Plastic Pollution Reduction Fund. The Controller may issue a public report of any annual postaudit, which shall be posted on the Controller's website.

U) A state entity that receives an appropriation or allocation from the California Plastic Pollution Reduction Fund pursuant to this chapter shall use no more than five percent (5%) of that appropriation or allocation for costs related to program administration, including costs associated with the annual independent financial audit, the State Controller's review of the annual independent financial audit, any additional State Controller audits based on findings from the independent financial audit or that the Controller deems necessary, and the allocation and reporting of revenues deposited in the California Plastic Pollution Reduction Fund. The administrative costs shall not include the Department's costs associated with development and implementation of the regulations adopted pursuant to Section 42381(a) and the repayment of loans made from the California Plastic Pollution Reduction Fund.

(k) After deducting costs of collection, administration and enforcement of the fee pursuant to subdivision(a), the revenues deposited into the California Plastic Pollution Reduction Fund shall be distributed as follows:

(1) Twenty percent (20%) of moneys deposited into the California Plastic Pollution Reduction Fund shall be transferred quarterly by the Controller to the Local Government Fund in the California Plastic Pollution Reduction Fund, which is hereby created in the State Treasury to be provided to local governments, upon appropriation by the Legislature in the annual Budget Act.

(A) The Local Government Fund shall invest in priority populations as follows:

(i) A minimum of twenty-five percent (25%) of the available moneys in the Local

Government Fund shall be allocated to projects located within the boundaries of, and benefiting individuals living in, disadvantaged communities.

(ii) A minimum of five percent (5%) of the available moneys in the Local Government Fund shall be allocated to projects that benefit low-income households or to projects located within the boundaries of, and benefiting individuals living in, low-income communities located anywhere in the state.

(iii) A minimum of five percent (5%) of the available moneys in the Local Government Fund shall be allocated either to projects that benefit low-income households that are outside of, but within one-half mile of, disadvantaged communities or to projects located within ,the boundaries of, and benefiting individuals living in, low-income communities that are outside of, but within one-half mile of, disadvantaged communities.

(B) The Controller shall disburse these allocations as directed by the Legislature, for the following purposes:

(i) Protect groundwater and local clean drinking water supplies from the impacts of plastic pollution.

(ii) Prevent and clean up the impacts of litter and marine plastic pollution on communities and the natural environment.

(iii) Maintain local recycling and composting programs, and increase the amount of material recycled or composted.

(iv) Educate and provide outreach to residents and businesses on waste reduction, recycling, and composting

(v) Provide grants to organizations involved in litter abatement, public education, developing community recycling and composting infrastructure, or designing and deploying reusable system alternatives to single-use plastic foodware.

(2) Fifty percent (50%) of moneys deposited into the California Plastic Pollution Reduction Fund shall be transferred quarterly by the Controller to the Recycling, Composting and Reuse Fund in the California Plastic Pollution Reduction Fund, which is hereby created in the State Treasury for use by the Department to implement and enforce this Act and to specifically support statewide reduction, recycling, and composting efforts and create a supply of recycled materials to support manufacturing of products made from recycled materials. Moneys in the Recycling, Composting and Reuse Fund shall be continuously appropriated without regard to fiscal year. The Department shall develop, and regularly update, a Plastic Pollution Reduction Fee Investment Plan to allocate this funding. The plan shall do all of the following:

(A) Create, improve, and sustain markets for recyclable and compostable materials by developing:

(i) A Plastic Recycling Market Development Program to create new domestic markets for the recycling of plastics that had previously been disposed or exported, and enhance existing plastics recycling infrastructure.

(ii) A Glass Recycling Market Development Program to maintain and increase glass recycling. Not less than half of the revenue dedicated to this program shall be used to provide non-competitive market development payments for the use of recycled cullet in the manufacturing of glass container packaging.

(iii) A Fiber Recycling Market Development Program to maintain and increase the recycling of paper, cardboard and other fiber.

(iv) An Organic Waste Market Development Program to create incentives to maintain and increase the infrastructure for composting food scraps, yard trimmings and other organic waste.

(B) Establish a Circular Economy Grant Program to fund and provide technical assistance to programs that decrease reliance on single-use plastic packaging and that contribute to increased recycling and composting in the state. The Circular Economy Grant Program shall fund:

(i) Recycling and composting infrastructure.

(ii) The deployment of reusable or refillable system alternatives to packaging and single-use plastic foodware.

(iii) Practices by farmers and ranchers that establish healthy soils and water-smart practices, including the production and use of compost, that increase carbon sequestration, reduce greenhouse gas emissions, and improve the health and climate resilience of agricultural landscapes. The Department may contract with other agencies for the distribution of these funds to ensure this program complements and does not supplant existing programs.

(iv) Practices by landowners for the use of compost to support the restoration of degraded landscapes. The Department may contract with other agencies for the distribution of these funds to ensure this program complements and does not supplant existing programs.

(v) Organizations that prevent food waste, recover edible food for human consumption, or reduce food insecurity.

(vi) Organizations that undertake research, create educational and policy programs, or develop innovative solutions aimed at reducing disposal of single-use plastic packaging or mitigating the impacts of single-use plastic packaging waste on the state's natural

environment, including streams, rivers, beaches and coastal and ocean environments.

(vii) The Circular Economy Grant Program shall invest in priority populations as follows:

(a) A minimum of twenty-five percent (25 %) of the Circular Economy Grant Program funds shall be allocated to projects located within the boundaries of, and benefiting individuals living in, disadvantaged communities.

(b) A minimum of five percent (5%) of the Circular Economy Grant Program funds shall be allocated to projects that benefit low-income households or to projects located within the boundaries of, and benefiting individuals living in, low-income communities located anywhere in the state.

(c) A minimum of five percent (5%) of the Circular Economy Grant Program funds shall be allocated either to projects that benefit low-income households that are outside of, but within one-half mile of, disadvantaged communities or to projects located within the boundaries of, and benefiting individuals living in, low-income communities that are outside of, but within one-half mile of, disadvantaged communities.

(3) (A) Thirty percent (30%) of the moneys deposited into the Fund shall be transferred quarterly by the Controller to the Environmental Mitigation Account, which is hereby established in the State Treasury, and shall be available to the Natural Resources Agency for grants to state and local public agencies to mitigate the impacts of plastic pollution, and to protect and restore wildlife and the environment including coastal and ocean ecosystems, streams, rivers, and beaches. Moneys in the Environmental Mitigation Account shall be continuously appropriated without regard to fiscal year. Funds allocated pursuant to this paragraph shall be used to restore habitat and wildlife and protect and improve public access to the state's natural resources.

(B) Funds allocated pursuant to this paragraph shall be used to increase and enhance activities described in subparagraph (A) and not replace allocation of other funding for those purposes. Accordingly, General Fund appropriations to the Department of Fish and Wildlife, California Coastal Conservancy, Wildlife Conservation Board, Ocean Protection Council, the Department of Parks and Recreation and the California Natural Resources Agency shall not be reduced below the levels provided in the Budget Act of 2019 (Chapter 40 of Statutes of 2019).

SEC.5. Effective Date.

This Act shall take effect upon approval by the voters of the California Recycling and Plastic Pollution Reduction Act of 2020 as provided in Article 11, Sec. 10 of the California Constitution.

SEC. 6. Severability.

The provisions of this Act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word or application of this Act is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity

of the remaining portions of this Act. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivisions, paragraph, clause, sentence, phrase, word, and application not declared invalid.

SEC. 7. Amendment.

The Legislature may amend the Sections 42380, 42381, and 42382 of the Public Resources Code to further the purposes of the CALIFORNIA RECYCLING AND PLASTIC POLLUTION REDUCTION ACT OF 2020 by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring.



Office of the Mayor

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CONSENT CALENDAR

December 1, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín (Author)

Subject: State Alignment on the Treaty on the Prohibition of Nuclear Weapons

RECOMMENDATION

Adopt a Resolution calling on the California State Legislature to introduce a bill to align the State with the UN Treaty on the Prohibition of Nuclear Weapons by creating a non-partisan, advisory Prohibition of Nuclear Weapons Citizens Commission. Copies of this resolution will be sent to Governor Gavin Newsom, Senator Nancy Skinner and Assemblymember Buffy Wicks.

BACKGROUND

The Treaty on the Prohibition of Nuclear Weapons, commonly referred to as the Nuclear Weapons Ban Treaty, was adopted at the United Nations on July 7, 2017. Passed by 122 nations (69 nations, including nuclear nations and all of NATO except for the Netherlands – which was the sole country opposed to it – did not participate in the vote), the Treaty prohibits the development, testing, and stockpiling of nuclear weapons with the goal of eliminating nuclear weapons.

The City of Berkeley has a long history of opposition to nuclear weapons. In 1986, Berkeley voters approved Measure K, the Nuclear Free Berkeley Act, by a supermajority. Under the Nuclear Free Berkeley Act, any work on nuclear weapons, contracts with companies working on nuclear weapons, and investments with those companies are prohibited from taking place within the City of Berkeley. In May 2018, the Berkeley City Council passed a Resolution for the City of Berkeley to Declare Itself Strongly Supportive of the UN Treaty on the Prohibition of Nuclear Weapons. Most recently, in July 2020, the City Council adopted a Resolution in opposition to nuclear warfare to mark the 75th anniversary of the nuclear bombing of Hiroshima and Nagasaki.

In September 2018, the California State Legislature passed Assembly Joint Resolution 33, calling on the federal government and the nation to embrace the UN Treaty on the Prohibition of Nuclear Weapons. The Nuclear Weapons Abolition and Economic and Energy Conversion Act was introduced in April 2019 by Eleanor Holmes Norton, who represents the District of Columbia in the House of Representatives, which has been cosponsored by Congressman Barbara Lee. No action has been taken on that bill so far.

This Resolution calls on the California State Legislature to introduce a bill establishing a non-partisan, advisory Prohibition of Nuclear Weapons Citizens Commission to make recommendations on transitioning the state away from nuclear weapons-related state investments and public contracts.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

2: May 17, 2018 Resolution for the City of Berkeley to Declare itself Strongly Supportive of the UN Treaty on the Prohibition of Nuclear Weapons

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

CALLING THE CALIFORNIA LEGISLATURE TO INTRODUCE A BILL TO ALIGN THE STATE WITH THE UN TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

WHEREAS, on July 7, 2017, the United Nations Treaty on the Prohibition of Nuclear Weapons (Nuclear Weapons Ban Treaty) was adopted by 122 countries, calling for the abolition of all nuclear weapons from all countries, and establishing a legal framework for their eliminationⁱ; and

WHEREAS, on September 20, 2017, the Nuclear Weapons Ban Treaty opened for signatures, and as of August 9, 2020, 44 state parties have ratified that treatyⁱⁱ out of a total of 50 ratifications needed for the treaty to enter into force; and

WHEREAS, on May 15, 2018, the Berkeley City Council passed a Resolution for the City of Berkeley to Declare Itself Strongly Supportive of the UN Treaty on the Prohibition of Nuclear Weaponsⁱⁱⁱ; and

WHEREAS, on April 30, 2019, Eleanor Holmes Norton introduced the Nuclear Weapons Abolition and Economic and Energy Conversion Act in the United States Congress^{iv}, and as of July 29, 2020, that bill has 8 co-sponsors including Congresswoman Barbara Lee;^v and

WHEREAS, on September 5, 2018, the California State Legislature passed Assembly Joint Resolution 33, calling on the federal government and the nation to embrace the UN Treaty on the Prohibition of Nuclear Weapons^{vi}; and

WHEREAS, the State of California is as much a part of the nation as any other state.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley calls on the California State Legislature to introduce a bill to create a non-partisan and advisory Prohibition of Nuclear Weapons Citizens Commission for the purpose of making recommendations on transitioning the state away from nuclear weapons-related state investments and public contracts (Exhibit A); and

BE IT FURTHER AND FINALLY RESOLVED that the Council requests that the City Clerk send this resolution and the proposed bill to Governor Newsom, Senator Skinner and Assemblymember Wicks.

Exhibits:

A: Draft State Bill Language

ⁱ https://www.icanw.org/the_treaty

ⁱⁱ https://www.icanw.org/signature_and_ratification_status

ⁱⁱⁱ https://www.cityofberkeley.info/Clerk/City_Council/City_Council_Agenda_Archive_Information.aspx, 05-15 Annotated Agenda(3)pdf #25

^{iv} <https://norton.house.gov/media-center/press-releases/norton-introduces-nuclear-weapons-abolition-and-economic-and-energy>

^v <https://www.congress.gov/bill/116th-congress/house-bill/2419/cosponsors?searchResultViewType=expanded>

^{vi} https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AJR33

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.
as introduced, _____.
General Subject: Prohibition of Nuclear Weapons Citizens Commission.

Existing law authorizes contracting between state agencies and private contractors and sets forth requirements for the procurement of goods and services by state agencies. Existing law prohibits a person engaged in investment activities in Iran, as defined, from engaging in specified contracting activities with the state. Existing law establishes various commissions within state government for specified purposes.

This bill would create in state government a nonpartisan and advisory Prohibition of Nuclear Weapons Citizens Commission for the purpose of aligning California with the 2017 United Nations Treaty on the Prohibition of Nuclear Weapons. The bill would require the commission to consist of 11 appointed members. The bill would require the Governor to appoint 7 members and the Secretary of State, the Attorney General, the Speaker of the Assembly, and the Senate Rules Committee to each appoint one member. The bill would require the commission to, among other duties, file a final report with the Governor, the Senate and the Assembly, the Lieutenant Governor, and the Attorney General no later than July 31, 2021. The bill would require the report to include specified elements relating to transitioning the state away from nuclear weapons-related state investments and public contracts.

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



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An act to add Title 7.7 (commencing with Section 67410) to the Government Code, relating to state government.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Title 7.7 (commencing with Section 67410) is added to the Government Code, to read:

TITLE 7.7. PROHIBITION OF NUCLEAR WEAPONS CITIZENS COMMISSION

67410. (a) For purposes of this title, the following terms have the following meanings:

(1) "The treaty" means the 2017 United Nations Treaty on the Prohibition of Nuclear Weapons.

(2) "Person" means a natural person.

(b) (1) There shall be in state government a nonpartisan and advisory Prohibition of Nuclear Weapons Citizens Commission to advance the purpose of aligning California with the treaty.

(2) The commission shall be comprised of one person who shall be appointed by the Governor, one person who shall be appointed by the Secretary of State, one person who shall be appointed by the Attorney General, one person who shall be appointed by the Speaker of the Assembly, one person who shall be appointed by the Senate Rules Committee, and six persons who shall additionally be appointed by the Governor from a group of persons nominated by nonprofit organizations dedicated to the international prohibition of the use and possession of nuclear weapons. Appointees shall serve with no compensation.

(3) The Governor shall post an application for a position on the commission on the Governor's internet website.

(4) The Governor shall solicit applications for the commission on the Governor's internet website within 30 days of January 1, 2020.

(5) The Governor shall fill all initial commission appointments within 120 days following January 1, 2020, but shall not make those appointments sooner than within 90 days of that date.

(6) All officials charged with making appointments to the commission shall consider both of the following:

(A) The nonpartisan and advisory nature of the commission.

(B) The intent of the Legislature that the commission be diverse, inclusive, and representative of the people of California.

(c) A person shall not be appointed to the commission if any of the following is true:

(1) The person has not publicly applied for an appointment to the commission.

(2) The person is a current or former employee of a company or military installation involved in the production or maintenance of nuclear weapons.

(3) The person's application does not satisfy the requirements of subdivision

(d).

(4) The application was not submitted within 60 days of the posting of the appointment opportunity on the Governor's internet website.

(d) A person's application shall include all of the following:



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- (1) A statement of the person's intent to comply with and advance the policy established by the treaty and this title.
- (2) The person's qualifications to serve on the commission.
- (3) The city where the applicant resides.
- (4) The person's employment, if applicable.
- (e) Members of the commission shall elect a chairperson by a majority vote.
- (f) The commission shall have all of the following duties:
 - (1) To regularly meet to research, gather evidence, and obtain advice in the manner members determine most conducive to accomplishing the goals of this title.
 - (2) To inform the Legislature and the public about the implications of aligning the state with the treaty.
 - (3) To file a report with the Governor, the Senate and the Assembly, the Lieutenant Governor, and the Attorney General no later than July 31, 2021, pursuant to subdivision (g).
- (g) The final report of the commission shall include all of the following:
 - (1) An inventory of all companies, facilities, and institutions in the state involved in the nuclear weapons industry.
 - (2) An inventory of all state investments, including investments of state public pension funds, in companies involved in the nuclear weapons industry.
 - (3) An inventory of all public contracts, including the total value of those contracts, with companies involved in the nuclear weapons industry.
 - (4) Information on the economic impact of the nuclear weapons industry on the state, including, but not limited to:
 - (A) The total workforce employed by the nuclear weapons industry in the state.
 - (B) The total revenue generated in the state from the nuclear weapons industry.
 - (C) All facilities and infrastructure utilized or managed by the nuclear weapons industry within the state.
 - (D) The total number of jobs and public contracts directly related to activities prohibited by the treaty.
 - (E) An inventory of the transferable skills, technology, and infrastructure employed by the nuclear weapons industry and recommendations for how they may be repurposed to address climate change or other pressing social needs.
 - (F) An analysis of the impact that state conversion from the nuclear weapons industry to industries that address climate change and other relevant social needs will have on the state economy and the United States nuclear weapons industry, as well as a recommended timeline for that conversion.
 - (G) Recommendations for establishing procedures that screen all potential public contracts for involvement in the nuclear weapons industry.
 - (H) Recommendations for any and all additional steps the state can take to influence the federal government to sign and ratify the treaty.



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Peace and Justice
Commission

CONSENT CALENDAR
May 15, 2018

To: Honorable Mayor and Members of the City Council
 From: Peace and Justice Commission
 Submitted by: Ezekiel Gorrocino, Chairperson, Peace and Justice Commission
 Subject: Resolution for the City of Berkeley to Declare itself Strongly Supportive of the UN Treaty on the Prohibition of Nuclear Weapons

RECOMMENDATION

Adopt a Resolution for the City of Berkeley to declare itself strongly supportive of the UN Treaty on the Prohibition of Nuclear Weapons.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

At its regular meeting on April 2, 2018, the Peace and Justice Commission unanimously adopted the following recommendation: that the City Council declare itself strongly supportive of the UN Treaty on the Prohibition of Nuclear Weapons.

M/S/C: Bohn/Meola
 Ayes: Bohn, Gorrocino, Hariri, Lippman, Meola, Rodríguez, Watson
 Noes: None
 Abstain: Maran
 Absent: Pancoast, Agrawal

BACKGROUND

See below.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Resolution for the City of Berkeley to declare itself strongly supportive of the UN Treaty on the Prohibition of Nuclear Weapons.

The Peace and Justice Commission advises the City Council "...on all matters relating to the City of Berkeley's role in issues of peace and social justice, including, but not limited to the issues of ending the arms race, abolishing nuclear weapons, support for human rights and self-determination throughout the world, and the reallocation of our national resources so that money now spent on war and preparation of war is spent on fulfilling human needs and the promotion of peace."

The City of Berkeley declared itself in 1986 to be a Nuclear Free Zone and prohibited, under the Nuclear Free Berkeley Act, any work on nuclear weapons, contracts with companies working on nuclear weapons, and investments with those companies from taking place within the City of Berkeley. As of 7 July, 2017, all such activities relating to nuclear weapons are now considered illegal by the majority of the world's nations that adopted the Treaty on the Prohibition of Nuclear Weapons and opened it for signing and ratification on 20 September, 2017 to the treaty.

As the national Administration has refused to pursue nuclear disarmament or positive international relations in general, cities and states across the country have the opportunity to give moral leadership by committing to compliance with the Treaty on the Prohibition of Nuclear Weapons to the extent possible at their respective levels of authority.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Ezekiel Gorrocino, Chairperson, Peace and Justice Commission (415) 298-7120
Shallon Allen, Peace and Justice Commission Secretary (510) 981-7071

Attachments:

1: Resolution

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

RESOLUTION FOR THE CITY OF BERKELEY TO DECLARE ITSELF STRONGLY SUPPORTIVE OF THE UN TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

WHEREAS, the Peace and Justice Commission advises the City Council "...on all matters relating to the City of Berkeley's role in issues of peace and social justice, including, but not limited to the issues of ending the arms race, abolishing nuclear weapons, support for human rights and self-determination throughout the world, and the reallocation of our national resources so that money now spent on war and preparation of war is spent on fulfilling human needs and the promotion of peace;"ⁱ and

WHEREAS, the City of Berkeley declared itself in 1986 to be a Nuclear Free Zone and prohibited, under the Nuclear Free Berkeley Act, any work on nuclear weapons, contracts with companies working on nuclear weapons, and investments with those companies from taking place within the City of Berkeley; and

WHEREAS, as of 7 July, 2017, all such activities relating to nuclear weapons are now considered illegal by the majority of the world's nations who adopted Treaty on the Prohibition of Nuclear Weapons and opened it for signing and ratification on 20 September, 2017;ⁱⁱ and

WHEREAS, the International Campaign to Abolish Nuclear Weapons (ICAN) won the 2017 Nobel Peace Prize "for its ground-breaking efforts to achieve a treaty-based prohibition" of nuclear weapons;ⁱⁱⁱ and

WHEREAS, it has been noted by people of all nations that all of the world's nine nuclear-armed countries including the United States are so far refusing to sign the treaty;^{iv} and

WHEREAS, when President Trump declared early in 2017 his intention to pull the US out of the Paris Climate Accord of December 2016, states and cities across the U.S. that lack legal standing to adopt an international treaty announced they would commit to complying with the terms of the Paris Climate Accord to the extent possible at their respective levels of authority;^v and

WHEREAS, with reference to the action described in the previous paragraph as an example, cities, states, businesses, universities, faith communities and other organizations across the U.S. have the opportunity to similarly announce that they are committed to complying with the Treaty on the Prohibition of Nuclear Weapons to the extent possible at their respective levels of authority.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council congratulates the International Campaign to Abolish Nuclear Weapons (ICAN) for winning the Nobel Peace Prize for 2017, for its efforts leading to the creation of the Treaty on the Prohibition of Nuclear Weapons.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley proclaims itself in compliance with the Treaty on the Prohibition of Nuclear Weapons by virtue of its being a “Nuclear Free Zone”.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley calls on the U.S. government, together with the other eight nuclear-armed nations, to sign and ratify the Treaty on the Prohibition of Nuclear Weapons, and to create and implement a legally binding, time-bound plan for the verifiable and irreversible elimination of all nuclear weapons, as required by the Treaty.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley request the City Clerk to send this resolution to Senator Dianne Feinstein, Senator Kamala Harris, to Congresswoman Barbara Lee, and to the Secretary-General of the United Nations as depository of the Treaty, together with a request to have its declaration of compliance with the treaty accepted alongside the declarations of states parties to the treaty.

ⁱ <http://www.codepublishing.com/CA/Berkeley/?Berkeley03/Berkeley0368/Berkeley0368.html3.68.070> Function A (of Functions A through M)

ⁱⁱ <https://news.un.org/en/.../565582-treaty-banning-nuclear-weapons-signature-un>, <http://www.icanw.org/the-treaty/>

ⁱⁱⁱ [UN votes to outlaw nuclear weapons in 2017 | ICAN](http://www.icanw.org/campaign-news/un-votes-to-outlaw-nuclear-weapons-in-2017/)
www.icanw.org/campaign-news/un-votes-to-outlaw-nuclear-weapons-in-2017/

Oct 27, 2016 - The United Nations adopted a landmark resolution on 27 October to launch negotiations in 2017 on a treaty outlawing nuclear weapons. ...

^{iv} <https://www.un.org/disarmament/list-of-countries-which-signed-tpnw-on-opening-day-20-september-2017/>,
https://www.nobelprize.org/nobel_prizes/peace/laureates/2017/press.html

^v <https://www.nytimes.com/2017/06/01/climate/american-cities-climate-standards.html>

Bucking Trump, These Cities, States and Companies Commit to Paris Accord, By [HIROKO TABUCHI](#) and [HENRY FOUNTAIN](#), JUNE 1, 2017. ” The unnamed group — which, so far, includes 30 mayors, three governors, more than 80 university presidents and more than 100 businesses — is negotiating with the United Nations to have its submission accepted alongside contributions to the Paris climate deal by other nations.”



Rashi Kesarwani
Councilmember District 1

CONSENT CALENDAR
December 1, 2020

TO: Honorable Mayor and Members of City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Amending Berkeley Municipal Code 13.111.020(a) (Ordinance No. 7,727-N.S.) to Further Limit Third-Party Food Delivery Service Fees

RECOMMENDATION

Amend Berkeley Municipal Code Section 13.111.020(a) (Ordinance No. 7,727-N.S.)— which establishes a temporary limit on the charges imposed by third-party delivery services on retail food establishments for the duration of the declared COVID-19 local state of emergency—by reducing the delivery fee cap from 15 percent to 10 percent, while maintaining the limit on other fees, commissions, or costs at 5 percent.

FISCAL IMPACT

Limited staff time to educate restaurants and third-party food delivery services about the ordinance amendment.

CURRENT SITUATION AND ITS EFFECTS

Currently, Berkeley Municipal Code Section 13.111.020(a) caps third-party food delivery charges at 15 percent for delivery fees and 5 percent for all other fees, commissions, or costs.¹ Unlike many other jurisdictions, our ordinance intends to provide greater protection to restaurants by imposing two separate caps—one on delivery fees and another on other fees, commissions, or costs—in an effort to prevent third-party food delivery services from shifting costs and circumventing the cap on delivery fees. This approach is modeled after the ordinance in Los Angeles.² Neighboring jurisdictions

¹ City of Berkeley, Urgency Ordinance Limiting Third-Party Delivery Service Fees, July 7, 2020, https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/Urgent%20Item%20Cover%20Memo%20-%20Third-Party%20Food%20Delivery.pdf.

² Los Angeles press release, “Mayor Garcetti Signs Law Limiting Delivery App Fees for Local Restaurants,” June 2020, <https://www.lamayor.org/mayor-garcetti-signs-law-limiting-delivery-app-fees-local-restaurants>

Amending Berkeley Municipal Code 13.111.020(a) to Further Limit Third-Party Food Delivery Service Fees

including Oakland,³ Hayward,⁴ and San Leandro⁵ have taken a slightly different approach of only imposing a cap on delivery fees at 15 percent. It has also come to our attention that Portland imposed a delivery fee cap of 10 percent in early July 2020.⁶

Recently on October 30, 2020, Councilmember Kesarwani hosted a restaurant roundtable to gauge restaurants' experiences with Berkeley's cap on third-party food delivery charges. In some cases, third-party food delivery services may be applying our ordinance as a total cap of 20 percent on all charges when it is actually two separate caps—15 percent on delivery fees and 5 percent on any other fees, commissions, or costs. The input we received during the restaurant roundtable indicates that a lower cap on delivery fees would help our restaurants, and the experience of Portland leads us to believe that a 10 percent cap on delivery charges is viable.

BACKGROUND

On July 7, 2020, the Berkeley City Council unanimously passed ordinance No. 7,727-N.S. effectively limiting the fees third-party delivery services could charge food service establishments in Berkeley. Key elements of Berkeley's ordinance established that it was unlawful for third-party delivery services to:

- Charge a retail food establishment a delivery fee that totals more than 15 percent of the purchase price of each online order;
- Charge a retail food establishment any combination of fees, commissions, or costs for the use of the third-party food delivery service that is greater than 5 percent of the purchase price of each online order; and
- Reduce the compensation rates paid to the delivery service driver or retain any portion of amounts designated as a tip or gratuity.

Cities such as San Francisco, Seattle, New York and Los Angeles had all recently passed similar ordinances in an effort to support their struggling restaurant industries that were being harmed by unreasonably high fees that could run close to 30% of the total sales of an order.

³ Oakland City Council's Ordinance No. 13613, July 2020, <https://cao-94612.s3.amazonaws.com/documents/Food-Service-Delivery-Fee-Cap.pdf>

⁴ City of Hayward press release, "Emergency Ordinance: Temporary 15% Limit on Third-Party Delivery Service Fees," Sept. 2020, <https://www.hayward-ca.gov/your-government/departments/economic-development-division/Temporary-15-percent-limit-third-party-delivery-service-fees>

⁵ City of San Leandro press release, "City Council directs City Manager to Order 15% Limit on Third Party Food Delivery Company Fees," July 2020, <https://www.sanleandro.org/news/displaynews.asp?NewsID=1881&TargetID=1>

⁶ City of Portland, Oregon press release, "City Council Unanimously Adopts Ordinance Limiting Third-Party Food Delivery Fees," July 2020, <https://www.portland.gov/eudaly/news/2020/7/8/city-council-unanimously-adopts-ordinance-limiting-third-party-food-delivery>

Due to the pandemic and the subsequent Shelter in Place orders that began on March 16, 2020, Berkeley food establishments pivoted to takeout services exclusively in order to be in compliance with the initial Shelter In Place Order. At the same time, restaurants were forced to accept excessively high fees from third-party delivery services for a significant share of sales. As many people were reluctant to leave their homes for fear of infection, third-party delivery services became an essential option for restaurants to remain in business. In the best of times, however, restaurants operate on very slim margins of profit. The high fees charged by the third-party delivery services during the early stages of the pandemic when most restaurants had been forced to lay off staff and were fulfilling just a fraction of their previous sales resulted in restaurants at times operating at a loss. Ordinance No. 7,727-N.S. limiting the fees that third-party food delivery services can charge was a response to the economic challenges facing restaurants.

While currently some restaurants have been able to boost their sales with installations for outdoor dining and indoor dining at a limited capacity, many people remain reluctant to make use of these options particularly as recent numbers of infections have been climbing throughout the county. As of Sunday, Nov. 8, 2020, Berkeley's number of reported infections jumped over 50 cases⁷ from the end of October, while cases also climbed in Alameda and neighboring counties. As it is clear that the pandemic will be with us for some time, the City must continue its efforts to further support our restaurants.

ENVIRONMENTAL SUSTAINABILITY

There is no significant impact on environmental sustainability.

CONTACT

Councilmember Rashi Kesarwani District 1 (510) 981-7110

Attachments:

Ordinance No. 7,727-N.S. section 13.111.020 with proposed tracked changes

⁷ See City of Berkeley COVID-19 Dashboard, accessed Nov. 9, 2020: <https://datastudio.google.com/u/0/reporting/5f30863b-6ba3-4fbc-9e0f-d7b573d82a32/page/azYOB?s=o8VEd87a4ow>

Amending Berkeley Municipal Code 13.111.020(a) to Further Limit Third-Party Food Delivery Service Fees

Ordinance Limiting Third-Party Food Delivery Service Fees with Tracked Change

ORDINANCE NO. _____-N.S.
AMENDING THE BERKELEY MUNICIPAL CODE TO ESTABLISH A TEMPORARY
LIMIT ON THE CHARGES IMPOSED BY THIRD-PARTY DELIVERY SERVICES ON
RETAIL FOOD ESTABLISHMENTS DURING THE LOCAL DECLARED STATE OF
EMERGENCY RESULTING FROM THE COVID-19 PANDEMIC

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

Section 1. That Berkeley Municipal Code Chapter 13.111 is added to read as follows:

13.111.020. PROHIBITIONS

- A. It shall be unlawful for a Third-Party Food Delivery Service to charge a Retail Food Establishment a Delivery Fee that totals more than ~~15 percent~~ 10 percent of the Purchase Price of each Online Order.
- B. It shall be unlawful for a Third-Party Food Delivery Service to charge a Retail Food Establishment any amount designated as a Delivery Fee for an Online Order that does not involve the delivery of food or beverages.
- C. It shall be unlawful for a Third-Party Food Delivery Service to charge a Retail Food Establishment any combination of fees, commissions, or costs for the Retail Food Establishment's use of the Third-Party Food Delivery Service that is greater than 5 percent of the Purchase Price of each Online Order. Fees, commissions, or costs do not include Delivery Fee.
- D. It shall be unlawful for a Third-Party Food Delivery Service to charge a Retail Food Establishment any fee, commission, or cost other than as permitted in Subsections A through C, above.
- E. It shall be unlawful for a Third-Party Food Delivery Service to charge a customer any Purchase Price for a food or beverage item that is higher than the price set by the Retail Food Establishment on the Third-Party Food Delivery Service or, if no price is set by the Retail Food Establishment on the Third-Party Food Delivery Service, the price listed on the Retail Food Establishment's own menu.
- F. It shall be unlawful for a Third-Party Food Delivery service to reduce the compensation rates paid to the delivery service driver or retain any portion of amounts designated as a tip or gratuity. Any tip or gratuity shall be paid by the ThirdParty Delivery Service, in its entirety, to the person delivering the food or beverages.



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
December 1, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Cheryl Davila
Subject: Create and Support an Adopt an Unhoused community program.

RECOMMENDATION

1. Adopt a resolution to create and support neighborhood volunteers and community groups adopting an encampment, street campers, RV / Vehicle community, located along University Avenue/ Shattuck Avenue / Adeline corridor/ San Pablo Avenue and other areas throughout the City.
2. Short term referral to the City Manager and/or designee(s) to present to the City Council in 90 days: how to implement the program modeled after the City of Oakland Adopt a Spot Program, identify a community based organization to oversee the volunteers, know what is needed to adequately implement these efforts, including different organizational structure options.

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 the 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.

The City of Oakland currently has a Adopt a Spot program, where it allows volunteers and/or community groups to adopt a park, creek, shoreline, storm drain, street, trail, median or other public space you'd like to clean, green, or beautify on an ongoing basis. Participants adopt a public space and make a commitment to regularly clean and maintain the spot for no less than one year. The program allows volunteers to organize Community Cleanups and beautification events, joining with your neighbors and community. Volunteers have adopted hundreds of sites around Oakland. The City of Oakland support for this program is through Tool loans, Debris pick-up, and Technical assistance.

In addition, the City of Oakland has an Adopt a Drain program, where hundreds of volunteers across Oakland have adopted storm drains to help their neighborhoods prepare for rainstorms. It doesn't take much to keep a storm drain clear. A little volunteer effort goes a long way in helping Public Works maintain over 12,000 storm drains to reduce flooding and prevent pollution

of our waterways. When you sign up to Adopt a Drain, you become eligible to borrow City tools and supplies, and you will receive the City's rain alert notifications.

Thus, the City of Berkeley can learn from the City of Oakland and implement a similar program to help our unhoused community, i.e. adopting an encampment, street campers, RV / Vehicle community, and/or street intersections especially along University Avenue/ Shattuck Avenue / Adeline corridor/ San Pablo Avenue and others areas throughout the City.

Friends of Adeline, a diverse group of South Berkeley residents working in partnership with local businesses, nonprofits, and others to affect change has consistently supported the Here/There encampment when it was first formed. Friends of Adeline's member, Beloved, now deceased, Margy Wilkinson was able to get a port-a-potty and hand-washing station to be delivered at the encampment. Friends of Adeline supporting the Here/There encampment is a model of Adopting the Unhoused community, as well as the concepts of the City of Oakland's Adopt a Spot Program.

In order to get through the current crises we all face COVID-19, Shelter in Place (SIP), wildfires, smoke, etc), we need to allow, coordinate, enable and recognize volunteers from our neighborhoods and community groups to adopt our unhoused community. It truly does take a village.

FINANCIAL IMPLICATIONS

TBD, however, funds can possibly be identified with Measure O and P.

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

Sanjita Pamidimukkala
Eshal Sandhu
District 2 Interns

REFERENCES:

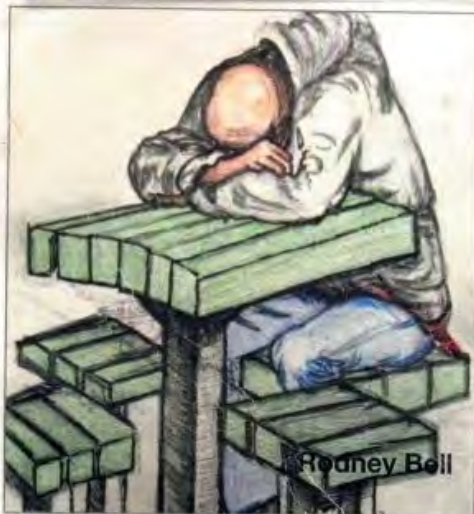
1. <http://www.oaklandadoptaspot.org>
2. <https://www.oaklandca.gov/services/sign-up-for-adopt-a-drain>
3. <https://thestreetspirit.org/2019/03/01/south-berkeley-here-there-encampment-celebrates-two-years/>

ATTACHMENTS:

1. Adopt a Homeless Senior Neighborhood Project Flyer
2. City of Oakland Adopt a Spot and Adopt a Drain Maps
3. Resolution

Attachment 1: Adopt a Homeless Senior Neighborhood Project

ADOPT A HOMELESS SENIOR NEIGHBORHOOD PROJECT



Adopt a Homeless Senior Project
was started in 2018 with the ideas of 12 Berkeley neighbors who wanted to make a difference in our homeless community. We learned that over 1/2 of our homeless population were seniors and that over 85% of those seniors were homeless in the areas they were once housed. We agreed to support St. Mary's Center (stmaryscenter.org), a stellar (and secular) non-profit organization that provides a wide array of services to help get homeless seniors into housing. We would love other local neighborhoods to join us in our fund-raising efforts.

Contact: barbara@barbarareiner.com

THE ALAMEDA COUNTY

2019 EVERYONE COUNTS HOMELESS POINT-IN-TIME COUNT & SURVEY

PRIMARY CAUSES OF HOMELESS:

13% Lost Job; 12% Mental Health; 10% Substance Use;
9% Eviction/Foreclosure; 9% Rent Increase; 8% Incarceration

WHERE MOST HOMELESS ARE LIVING:

34% Tent; 23% Car/Van; 22% RV; 20% Street/Outside;
1% Abandoned Building

PERCENTAGE OF HOMELESS POPULATION

WHO HAVE BEEN RESIDENTS OF

ALAMEDA COUNTY PRIOR TO

BECOMING HOMELESS:

78%

THE GERONTOLOGIST (FEBRUARY 2016)


BAY AREA AGE GROUP

WITH HIGHEST % OF

HOMELESSNESS:

50+

Attachment 2: Oakland Adopt a Spot and Adopt a Drain Maps



Adopt a Drain

Part of Oakland Adopt a Spot

Volunteer to keep a drain clear and report any problems!

Email address #

I haven't signed up yet
 I've already signed up

Name (visible to others)

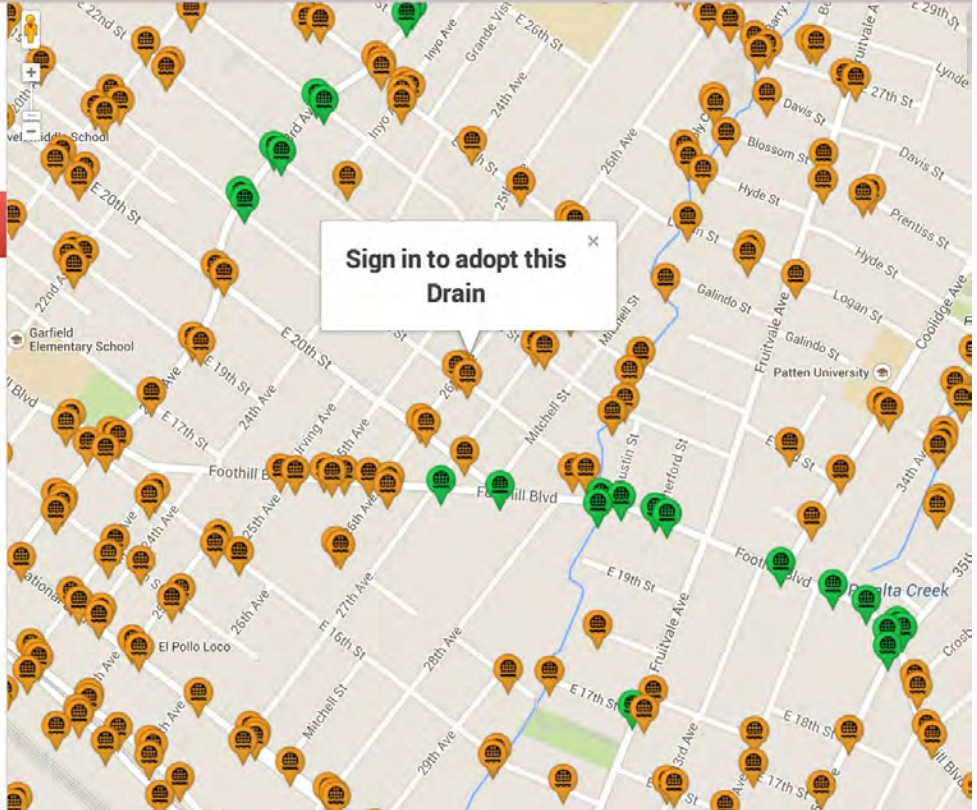
Organization (visible to others)

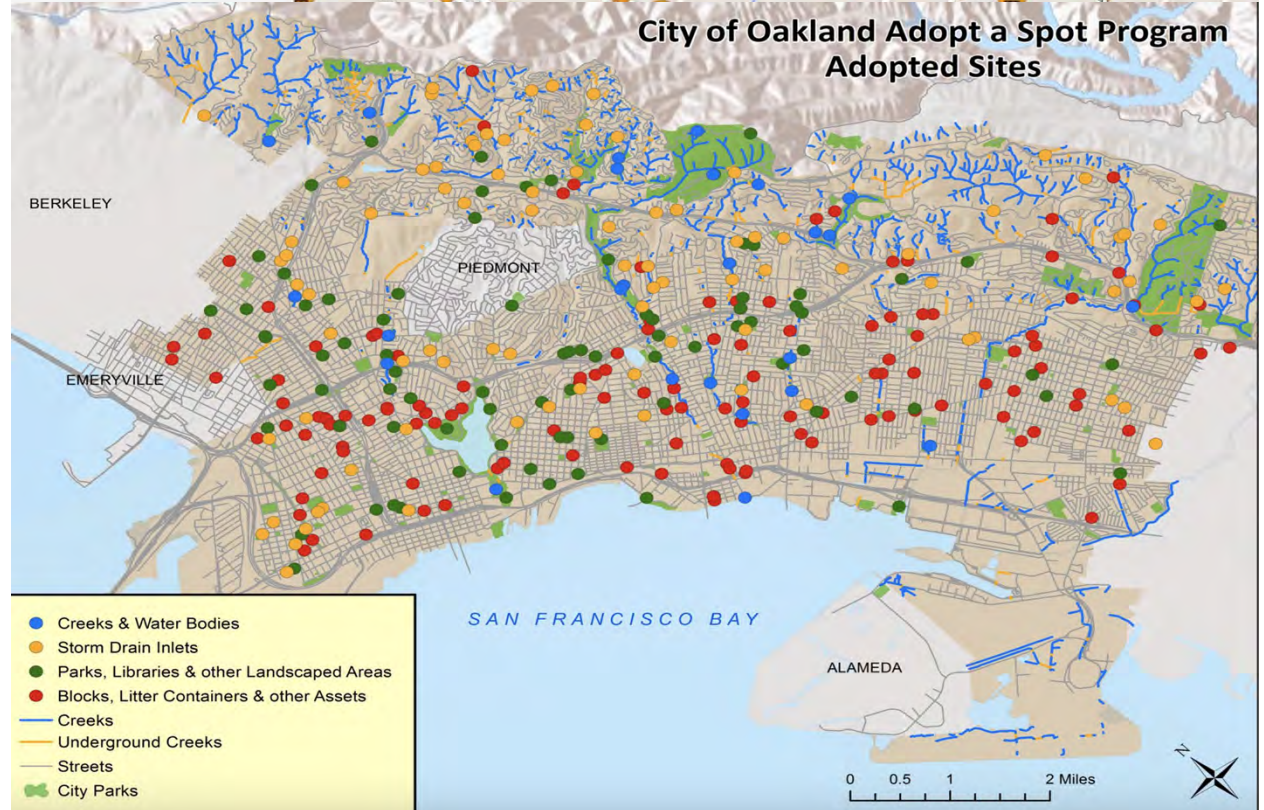
Home phone number #

Mobile phone number #

Choose a password #

By signing up you agree to the [Terms of Service & Volunteer Guidelines](#)





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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,
SUPPORTING THE CREATION AND SUPPORT AN ADOPT AN UNHOUSED COMMUNITY
PROGRAM

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 the 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; and

WHEREAS, The City of Oakland currently has a Adopt a Spot program, where it allows volunteers and/or community groups to adopt a park, creek, shoreline, storm drain, street, trail, median or other public space you'd like to clean, green, or beautify on an ongoing basis. Participants adopt a public space and make a commitment to regularly clean and maintain the spot for no less than one year. The program allows volunteers to organize Community Cleanups and beautification events, joining with your neighbors and community. Volunteers have adopted hundreds of sites around Oakland. The City of Oakland support for this program is through Tool loans, Debris pick-up, and Technical assistance; and

WHEREAS, In addition, the City of Oakland has an Adopt a Drain program, where hundreds of volunteers across Oakland have adopted storm drains to help their neighborhoods prepare for rainstorms. It doesn't take much to keep a storm drain clear. A little volunteer effort goes a long way in helping Public Works maintain over 12,000 storm drains to reduce flooding and prevent pollution of our waterways. When you sign up to Adopt a Drain, you become eligible to borrow City tools and supplies, and you will receive the City's rain alert notifications; and

WHEREAS, Thus, the City of Berkeley can learn from the City of Oakland and implement a similar program to help our unhoused community, i.e. adopting an encampment, street campers, RV / Vehicle community, and/or street intersections especially along University Avenue/ Shattuck Avenue / Adeline corridor/ San Pablo Avenue and others areas throughout the City; and

WHEREAS, Friends of Adeline, a diverse group of South Berkeley residents working in partnership with local businesses, nonprofits, and others to affect change has consistently supported the Here/There encampment when it was first formed. Friends of Adeline's member, Beloved, now deceased, Margy Wilkinson was able to get a port-a-potty and hand-washing station to be delivered at the encampment. Friends of Adeline supporting the Here/There encampment is a model of Adopting the Unhoused community, as well as the concepts of the City of Oakland's Adopt a Spot Program; and

WHEREAS, In order to get through the current crises we all face COVID-19, Shelter in Place (SIP), wildfires, smoke, etc), we need to allow, coordinate, enable and recognize volunteers from our neighborhoods and community groups to adopt our unhoused community. It truly does take a village; and

NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley, hereby support the creation and support an Adopt an Unhoused community program, as well as provide support to neighborhood volunteers and community groups adopting an encampment, street campers, RV / Vehicle community, located along University Avenue/ Shattuck Avenue / Adeline corridor/ San Pablo Avenue and other areas throughout the City.

BE IT FURTHER RESOLVED, Short term referral to the City Manager and/or designee(s) to present to the City Council in 90 days: how to implement the program modeled after the City of Oakland Adopt a Spot Program, identify a community based organization to oversee the volunteers, know what is needed to adequately implement these efforts, including different organizational structure options.

02a.25



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
December 1, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmembers Cheryl Davila
Subject: Striking Racially Restrictive Covenants in Certain Property Deeds

RECOMMENDATION

Adopt a Resolution and send a letter to the Alameda County Board of Supervisors and the Governor of California with the following actions:

1. The City calls upon the County of Alameda to determine which parcels of real property have deeds that have racially restrictive covenants associated with them and to proactively strike from those covenants the racially restrictive language, thereby relieving homeowners of the burden of removing such language.
2. The City urges the California legislature and governor to pass legislation requiring the same actions in every California county.

BACKGROUND:

There are neighborhoods in the City of Berkeley that historically have been designated on various maps relied on by financial institutions, realtors, and governmental agencies to determine various factors affecting the value of homes in these areas, including the alleged financial risk of mortgages, and to whom such homes would be sold. This map designation is also known as "red-lining."

As a result of federal home loan policies in existence until at least 1948 and afterwards, mortgages or loan guarantees were conditioned on racially restrictive covenants being attached to deeds to homes built in redlined neighborhoods and other neighborhoods considered appropriate for moderate income homebuyers. A typical language in these covenants states: "No lot nor plot nor building in tract shall be occupied nor resided upon by persons not wholly of the white Caucasian Race except servants or domestics employed by a white Caucasian owner or tenant." Racial prejudice by individual developers may have also resulted in the establishment of these covenants.

Racially restrictive covenants violate state and federal laws and cannot be enforced by any court.

California Government Code section 12956.2 provides a process whereby a homeowner may record with the county recorder a document titled "Restrictive Covenant Modification." This process may require that the homeowner pay a fee. It also requires the county recorder to submit the modification document to the county counsel for approval.

It is critical that the vestiges of housing discrimination be eliminated as much as possible. Because the government has been historically responsible for sanctioning and enforcing racially restrictive covenants, it remains the responsibility of government, rather than of private citizens, to purge the racially restrictive provisions of all deeds within its jurisdiction.

The County of Alameda, County Recorder's Office, has custody of property deeds in the County, and has the authority to strike the language of racially restrictive covenants.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Protecting our communities from racially restrictive covenants during this climate and health crisis is an act of environmental sustainability and justice.

CONTACT PERSONS

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution
2. Letter to Alameda County and Governor of California

RESOLUTION NO. #####

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,
STRIKING RACIALLY RESTRICTIVE COVENANTS IN CERTAIN PROPERTY DEEDS

WHEREAS, There are neighborhoods in the City of Berkeley that historically have been designated on various maps relied on by financial institutions, realtors, and governmental agencies to determine various factors affecting the value of homes in these areas, including the alleged financial risk of mortgages, and to whom such homes would be sold. This map designation is also known as "red-lining."; and

WHEREAS, As a result of federal home loan policies in existence until at least 1948 and afterwards, mortgages or loan guarantees were conditioned on racially restrictive covenants being attached to deeds to homes built in redlined neighborhoods and other neighborhoods considered appropriate for moderate income homebuyers. A typical language in these covenants states: "No lot nor plot nor building in tract shall be occupied nor resided upon by persons not wholly of the white Caucasian Race except servants or domestics employed by a white Caucasian owner or tenant." Racial prejudice by individual developers may have also resulted in the establishment of these covenants; and

WHEREAS, Racially restrictive covenants violate state and federal laws and cannot be enforced by any court; and

WHEREAS, California Government Code section 12956.2 provides a process whereby a homeowner may record with the county recorder a document titled "Restrictive Covenant Modification." This process may require that the homeowner pay a fee. It also requires the county recorder to submit the modification document to the county counsel for approval; and

WHEREAS, It is critical that the vestiges of housing discrimination be eliminated as much as possible. Because the government has been historically responsible for sanctioning and enforcing racially restrictive covenants, it remains the responsibility of government, rather than of private citizens, to purge the racially restrictive provisions of all deeds within its jurisdiction; and

WHEREAS, The County of Alameda, County Recorder's Office, has custody of property deeds in the County, and has the authority to strike the language of racially restrictive covenants.

NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley, hereby support Striking Racially Restrictive Covenants in Certain Property Deeds, and send a letter to the Alameda County Board of Supervisors and the Governor of California with the following actions:

1. The City calls upon the County of Alameda to determine which parcels of real property have deeds that have racially restrictive covenants associated with them and to proactively strike from those covenants the racially restrictive language, thereby relieving homeowners of the burden of removing such language.

2. The City urges the California legislature and governor to pass legislation requiring the same actions in every California county.

November 9, 2020

Richard Valle, Board President
Alameda County Board of Supervisors
1220 Oak Street, Rm. #536
Oakland CA 94612

RE: Elimination of Racially Restrictive Covenants from Alameda County Property Deeds

Dear President Valle and all Members of the Board of Supervisors:

Pursuant to a resolution passed by its City Council, the City of Berkeley urges the Alameda County Board of Supervisors to take appropriate legislative or administrative action to determine which residential properties in its jurisdiction have deeds that have covenants containing racially restrictive clauses, and direct the County Recorder's office to proactively remove such language from those covenants.

Racially restrictive covenants associated with real property have been made illegal in this country and in California by U.S. Supreme Court decisions and federal and state legislation. California Government Code sec. 12956.2 establishes a procedure whereby a homeowner may request the county recorder to modify a racially restrictive covenant. Yet this process potentially requires the homeowner to pay fees, and is subject to approval by the County Counsel.

The City of Berkeley passed the attached resolution because it believes that the responsibility for eliminating this illegal language lies with governmental institutions, not on the individual homeowner.

Sincerely,

The Berkeley City Council

Cc: Melissa Wilk, Alameda County Recorder

November 9, 2020

Honorable Gavin Newsom,
Governor, State of California
1303 –10th St., Suite 1173
Sacramento, CA 95814

RE: Curing Racially Restrictive Covenants

Dear Governor Newsom:

Since 1948 and through the years, racially restrictive covenants associated with real property have been made illegal in this country and in California by U.S. Supreme Court decisions and federal and state legislation. Yet the language of these covenants, prohibiting homeowners in certain neighborhoods to sell or rent to anyone not “of the Caucasian race” persist in covenants attached to real property deeds throughout California, including the City of Berkeley.

California Government Code sec. 12956.2 establishes a procedure whereby a homeowner may request the county recorder to modify a racially restrictive covenant. Yet this process potentially requires the homeowner to pay fees, and is subject to approval by the county counsel.

Pursuant to the attached resolution, the City of Berkeley urges the State of California to take appropriate legislative action directing all counties in the State to determine which residential properties in their jurisdictions have deeds with covenants that contain racially restrictive clauses, and require counties to proactively remove such language from those covenants.

The City of Berkeley passed the attached resolution because it believes that the responsibility for eliminating this illegal language lies with governmental institutions, not on the individual homeowner.

Sincerely,

The Berkeley City Council

Cc: State Senator Nancy Skinner
State Assemblymember Buffy Wicks



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

CONSENT CALENDAR
December 1, 2020

To: Honorable Members of the City Council
From: Vice Mayor Sophie Hahn (Author)
Subject: Personal Liability Protection for Small Businesses

RECOMMENDATION

1. Direct the City Manager and City Attorney to draft and submit to the City Council for consideration an emergency ordinance to prohibit the enforcement of personal liability provisions in commercial leases and commercial rental agreements in the City of Berkeley for lessees/renters who have experienced financial impacts related to the Covid-19 pandemic.
2. Direct the City Manager to conduct outreach to all commercial tenants regarding any protections enacted by the City Council, with a particular focus on businesses that were required to stop serving food or beverages (e.g., restaurants, bars); close to the public (e.g., hair salons, barbershops, tattoo parlors); cease operations (e.g., gyms, fitness centers); or sharply limit operations (e.g., schools, retail shops, nurseries) due to the COVID-19 crisis.

BACKGROUND

The outbreak of the COVID-19 pandemic and subsequent orders to stay at home and practice social distancing have had a profound impact on Berkeley. Although Berkelyans have exercised extraordinary patience and cooperation as the City has worked to contain the coronavirus and reopen our challenged economy, the pandemic has been crushing for vulnerable families and individuals, and for small businesses, the arts sector, schools, not-for-profits, and other local organizations.

This spring, many Berkeley businesses and organizations saw a 25-75% drop in gross receipts due to the shutdown.¹ Unable to absorb such a steep loss of revenue, many were forced to reduce services, lay off workers, or even shutter their establishments. Some owners and organizations face the possibility that the enterprises into which they have poured their lives may never return.

¹ March 13, 2020, Letter from the Berkeley Chamber, Downtown Berkeley Association, Telegraph Business Improvement District and Visit Berkeley

Small, local businesses, as well as nonprofit and arts organizations, are key to Berkeley's economic health -- not only through economic activity, but also because they give life to our community, impacting our perception of economic well being.

This spring, the Berkeley City Council acted quickly to meet the crisis, creating a tax-exempt relief fund to provide gap resources to small businesses, arts organizations, and renters significantly impacted by the COVID-19 emergency. Through this program, grants of up to \$10,000 were made available. The City's Economic Development staff worked quickly to support businesses and organizations in many other ways, including to ensure access to resources made available by the state and federal governments.

On April 14, 2020, the City Council approved the creation of a special structured financial recovery loan fund -- the Save Our Small (SOS) Business Loan Fund -- to provide a supplemental source of capital for small businesses impacted by the COVID-19 emergency. Under the SOS Business Loan Fund, the City would act as a sponsor of the fund, working with one or more financial institutions to pool capital from private investors and the City to lower the risk of the loans and support low interest rates.

The State of California has announced a statewide loan fund based on the SOS model Berkeley passed, making these kinds of loans available to small businesses across the state.

Despite these and other bold actions by the City of Berkeley, our small businesses and organizations including arts, not-for-profits and schools, continue to face extraordinary hardship. In addition to risks to their businesses and organizations, many owners and operators in Berkeley face significant personal financial risk as well. A small business owner in Downtown Berkeley, and local resident of 20 years, recently wrote to my office and lays out the situation in very stark terms:

"I own a [business] in Downtown Berkeley which has been shut since March 16th due to Covid 19 lockdown orders. While I am still hopeful that we might reopen at some point, we are very behind on rent, and the possibility of closing permanently is very real. My business partner and I, like most small tenants, were required to personally guaranty our commercial lease in order to do business with our landlord. This means that, in the event of a default, after evicting us the landlord can come after our personal assets to recover unpaid rent; we could lose what little we have left even after losing our entire business: our homes, our kids' savings, everything is at risk. And all due to no fault of our own."

Unfortunately, personal liability guarantees are all too common in small businesses leases. Such provisions mean, with respect to a commercial lease or other rental agreement, that a small business owner becomes wholly or partially personally liable for an obligation arising under the lease or agreement in the case of a default or other event.

In cases where the Covid shutdown has deprived a small business owner of sufficient revenue to keep up with rent payments, the owner might be able to access personal assets including the business owner's home and savings.

This measure will help ensure that small business owners, and arts, not-for-profit, schools and other organizations in Berkeley that are impacted by the Covid-19 health emergency do not face the potential for personal financial ruin, including loss of their homes, as a result of this pandemic.

These enterprises -- restaurants, salons, arts organizations, schools, and others -- have been damaged through no fault of their own. Protecting the owners and operators of Berkeley businesses and organizations -- and their families -- is not only fair, it is also essential to ensuring that Berkeley is able to recover from the COVID-19 emergency and economic downturn.

FISCAL IMPACTS

Staff time and expenses for outreach and communications to impacted businesses.

CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (cell)

ATTACHMENTS

1. [NYC Council Int. No. 1932-A](#)

02a.27



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

CONSENT CALENDAR
December 1, 2020

To: Honorable Members of the City Council
From: Vice Mayor Sophie Hahn (Author)
Subject: Resolution calling on the BUSD Board and Superintendent to Consider
Renaming Thousand Oaks Elementary to Kamala Harris Elementary School

RECOMMENDATION

Adopt a Resolution calling on the Berkeley Unified School District (BUSD) Board and Superintendent to initiate a process, pursuant to [BUSD Board Policy and Administrative Regulation 7310](#), to rename Thousand Oaks Elementary School to Kamala Harris Elementary School in honor of Vice President-Elect Kamala Harris.

BACKGROUND

On Tuesday, November 3, 2020, Joe Biden and Kamala Harris were elected as the next President and Vice President of the United States, having received the largest number of votes in U.S. history. Vice President-Elect Harris is the first African American and Indian American woman to be elected to the Office of Vice President or President.

Kamala Harris was born in 1964 to two graduate students at the University of California, Berkeley -- her mother, Shyamala Gopalan Harris, from India and father, Donald Harris, from Jamaica. As Senator Harris said in the speech accepting the Democratic Party's nomination for Vice President, she "got a stroller's-eye view" of the civil rights movement of the 1960s as her parents marched for justice in the streets of Berkeley.

Kamala Harris grew up in West Berkeley and [attended](#) Thousand Oaks Elementary School in District 5. She was in the second class to be part of the [Berkeley school integration program](#) -- an innovative two-way busing plan designed to fully integrate Berkeley's public schools. As Vice President-Elect Harris wrote in her 2019 memoir *The Truths We Hold*, "I only learned later that we were part of a national experiment in desegregation, with working-class black children from the flatlands being bused in one direction and wealthier white children from the Berkeley hills bused in the other."

In a statement to [Berkeleyside](#), Vice President-Elect Harris credited her first grade teacher at Thousand Oaks, Mrs. Frances Wilson, with having a profound effect on her and being deeply committed to the diverse group of students in her class. She has written about her fond childhood memories of visiting the Rainbow Sign in Berkeley, where she met artists and activists, and spending afternoons cleaning test tubes at Berkeley Labs.

After moving away from Berkeley at the age of 12, Kamala Harris went to High School in Montreal, Canada and then graduated from Howard University in Washington DC and earned a

law degree from the University of California, Hastings in San Francisco. She has dedicated her career to public service, serving as a prosecutor in Alameda County, as the first African American and Indian American woman to be elected as San Francisco District Attorney, and as the first African American and Indian American woman to be elected California Attorney General.

In 2016, Kamala Harris was the first African American and Indian American woman to be elected to the U.S. Senate. Since taking office as one of California's two women Senators, Vice President-Elect Harris has served with distinction and has been a powerful voice for justice and accountability.

On November 7, 2020, Joe Biden and Kamala Harris were declared the winners of the 2020 Presidential election, winning more than the 270 electoral votes necessary to be elected as the 46th President and Vice President of the United States.

This resolution celebrates Kamala Harris, an African American and Indian American woman, daughter of immigrants, student of Berkeley Unified School District public schools, and accomplished public servant, and offers congratulations on her election as Vice President of the United States.

It further calls on the Berkeley Unified School District (BUSD) Board and Superintendent to initiate a process, pursuant to [BUSD Board Policy and Administrative Regulation 7310](#), to rename Thousand Oaks Elementary School to Kamala Harris Elementary School in honor of Vice President-Elect Kamala Harris.

FINANCIAL IMPLICATIONS

None.

CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (Cell)

ATTACHMENTS

1. Resolution

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

CONGRATULATING KAMALA HARRIS ON HER ELECTION

AS VICE PRESIDENT OF THE UNITED STATES AND CALLING ON THE BERKELEY UNIFIED SCHOOL DISTRICT BOARD AND SUPERINTENDENT TO CONSIDER RENAMING THOUSAND OAKS ELEMENTARY SCHOOL TO KAMALA HARRIS ELEMENTARY SCHOOL

WHEREAS, on Tuesday, November 3, 2020, Joe Biden and Kamala Harris were elected President and Vice President of the United States, having received the largest number of votes in U.S. History, over 75 Million, and winning more than the 270 electoral votes necessary to be elected;

WHEREAS, Kamala Harris is the Vice President-Elect of the United States, becoming the first Woman, the first African American, and the first South Asian-American to be elected to the office of Vice President, and the first Woman ever to be elected to the Presidential ticket;

WHEREAS, the election of Kamala Harris as Vice President is a momentous event with unprecedented historic significance, providing hope and inspiration to millions of people, and in particular to girls and young people of color, across the United States and around the world;

WHEREAS, Kamala Harris grew up in Berkeley and attended Thousand Oaks Elementary School as part of the second class to go K-12 under Berkeley Unified School District's voluntary integration program;

WHEREAS, Kamala Harris credits her first grade teacher, Mrs. Frances Wilson at Thousand Oaks Elementary School, with having a profound effect on her and being deeply committed to her diverse group of students;

WHEREAS, Kamala Harris lived in Berkeley until age 12, spending her childhood learning about activism, and spending time at The Rainbow Sign, a Black cultural center that served as a bridge across all borders—ethnic, national and political, on what is now Martin Luther King Jr Way;

WHEREAS, Thousand Oaks School has already honored Kamala Harris and other outstanding women and girls with a mural and a dedication ceremony including speeches, plays, and other commemorations for "Women and Girls Who Make an Impact";

WHEREAS, Berkeley Unified School District, in Administrative Regulation 7310, has an established process for naming schools in honor of "[i]ndividuals, living or deceased, who have made contributions of state, national or worldwide significance" and lays out a process for naming schools, "under extraordinary circumstances, after thorough review," that can be initiated by the School Board or Superintendent, among others;

WHEREAS, the BUSD process for reviewing existing names of schools includes examination of "whether the individual, on the whole, has made outstanding contributions to the community or

made contributions of state, national or worldwide significance in light of the Berkeley community's values and contemporary view on history”;

WHEREAS, Kamala Harris referenced the historic nature of her election as Vice President in her victory speech on November 7, 2020, in Wilmington Delaware, when she honored the “generations of women — Black women. Asian, White, Latina, and Native American women throughout our nation’s history who have paved the way for this moment”;

WHEREAS, Kamala Harris also spoke powerfully and directly to the children of the United States, stating that “regardless of your gender, our country has sent you a clear message: Dream with ambition, lead with conviction, and see yourself in a way that others might not see you, simply because they’ve never seen it before”;

WHEREAS, Kamala Harris referenced the need to acknowledge the contributions of all women “who fought and sacrificed so much for equality, liberty, and justice for all, including the Black women, who are too often overlooked, but so often prove that they are the backbone of our democracy”;

NOW, THEREFORE, BE IT RESOLVED THAT: The Berkeley City Council honors and celebrates the election of Kamala Harris to the Office of Vice President of the United States of America, and congratulates both President-Elect Biden and Vice President-Elect Harris for winning the 2020 Presidential Election with more votes than any ticket in the history of the United States; and

BE IT FURTHER RESOLVED THAT: The Berkeley City Council calls upon the BUSD Board and Superintendent, pursuant to BUSD Board Policy and Administrative Regulation 7310, to initiate a review of the name of Thousand Oaks Elementary School and consider renaming the school to Kamala Harris Elementary School, in honor of former student and Vice President-Elect Kamala Harris.

BE IT FURTHER RESOLVED THAT: The City Clerk is hereby directed to send a copy of this resolution to the Office of Vice President-Elect Kamala Harris, President-elect Joe Biden, Senator Dianne Feinstein, and Representative Barbara Lee.



CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

02a.28

CONSENT CALENDAR
December 1, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Robinson
Subject: Referral: Commission Low-Income Stipend Reform

RECOMMENDATION

Refer to the City Manager to develop and return to Council with a plan to improve equity, accessibility, and representation in City of Berkeley commissions by modernizing the low-income stipend program, and in doing so consider:

1. Increasing the annual household income cap for stipend eligibility from \$20,000 to align with the 50% Area Median Income (AMI) guidelines for Alameda County and reflect household size, and updating it annually with the latest HUD data.
2. Increasing the low-income stipend from \$40 to \$78 per meeting, and updating it annually with the City of Berkeley minimum wage to correspond to compensation for 2.5 hours of work.

CURRENT SITUATION

Under current policy, a City of Berkeley commissioner qualifies for the low-income stipend if their combined household income is under \$20,000. The income cap does not take household size into account. The Council last updated the stipend policy in April 2010, via Resolution No. 64,831–N.S.

An eligible commissioner is authorized to receive:

- \$40 for each official meeting attended, not to exceed four meetings each month.
- Reimbursement for actual childcare expenses incurred while they attend meetings.
- Reimbursement for actual expenses paid to an attendant to provide care for a dependent elderly person while the commissioner attends meetings.
- Reimbursement for actual expenses incurred for disabled support services necessary to participate fully in board, commission, or committee meetings.

If a commissioner is paid \$600 or more in stipend payments in one calendar year, an IRS Form 1099 will be generated by the Finance Department.

To establish eligibility, commissioners must file the Annual Declaration form, found in Appendix H of the Commissioner's Manual, with the secretary of their board, commission, or committee. Commissioners must file a new declaration form annually

prior to May 31 in order to maintain eligibility. Commissioners who are minors (under 18 years old) must have eligibility declaration forms cosigned by a parent or legal guardian attesting that the combined household income is under \$20,000.

Pursuant to Berkeley Municipal Code Section 3.32.060, Police Review Commissioners receive \$3 per hour for their time and work investigating complaints, reviewing policies and practices, and attending meetings, for a maximum compensation of \$200 per month.

BACKGROUND

The City of Berkeley has over 35 boards and commissions, which reflects the high level of political participation from its residents. The work that these commissioners carry out is invaluable to the City Council and Berkeley at large, providing expertise and in-depth policy recommendations on a wide range of subjects that the Council would otherwise only be capable of giving cursory attention to.

Outside of the regularly scheduled meetings that low-income commissioners are compensated for, extended work hours are almost always necessary. A commissioner's financial situation should not act as a barrier to civic engagement in any capacity. This referral seeks to make commission roles more accessible by expanding stipend eligibility and implementing a cost of living adjustment.

Expanding Stipend Eligibility

The \$20,000 income cap for stipend eligibility has not been adjusted in recent memory, despite inflation and cost of living skyrocketing in Berkeley and the greater Bay Area.

According to 2019 data from the U.S. Department of Housing and Urban Development (HUD), the median income in Alameda County for a household of four is \$111,700. This means that a family of four making \$61,950 is classified as "very low-income" and is eligible for Section 8 housing. Even a commissioner in a one-person household making \$26,050, which HUD considers "extremely low-income" at 30% AMI, would not qualify for the low-income stipend with the current criteria.

In order to ensure that everyone who wants to serve on a City of Berkeley commission can afford to do so, the criteria for stipend eligibility must be expanded to show an accurate picture of costs of living. If a household qualifies for low-income housing at 50% AMI, they should also qualify for low-income commissioner stipends. Furthermore, household size should be taken into account when determining eligibility, as shown in the chart below.

2019 HUD Alameda County Income Guidelines

Effective April 24, 2019

Persons in Household	Annual Income Extremely Low (30%)	Annual Very Low Income (50%)	(60%)	Annual Low Income (80%)	Annual Income Median (100%)	Annual Income Moderate (120%)
1	\$26,050	\$43,400	\$52,080	\$69,000		\$104,100
2	\$29,750	\$49,600	\$59,520	\$78,850		\$118,950
3	\$33,450	\$55,800	\$66,960	\$88,700		\$133,800
4	\$37,150	\$61,950	\$74,340	\$98,550	\$111,700	\$148,700
5	\$40,150	\$66,950	\$80,340	\$106,450		\$160,550
6	\$43,100	\$71,900	\$86,280	\$114,350		\$172,450
7	\$46,100	\$76,850	\$92,220	\$122,250		\$184,350
8	\$49,050	\$81,800	\$98,160	\$130,100		\$196,250

Implementing Cost of Living Adjustment

In 2010, when the Council approved the most recent version of the commissioner stipend resolution to amend the number of stipend-eligible meetings, the minimum wage in Berkeley was \$8 an hour. Today, in 2020, it is \$15.59 an hour plus CPI.

Commission meetings usually last around 3 to 5 hours, depending on the commission and the topics at hand. Additional work is needed on the part of the commissioner to prepare for the meeting by reading the agenda packet, attending subcommittee meetings, submitting items for discussion, and reaching out to stakeholders for input. In 2010, the \$40 stipend was equivalent to minimum wage pay for 5 hours of work. Today, it is only equivalent to approximately 2.5 hours of work. The equivalent stipend in today's dollars would be \$15.59 x 5, or \$77.95. For the purposes of this proposal, that number is rounded up to \$78.

FINANCIAL IMPLICATIONS

The financial implications depend on the number of commissioners who currently receive the low-income stipend, as well as the number of commissioners who would be newly eligible under the amended income caps. Costs can potentially be offset by reorganizing and consolidating commissions, as outlined in a separate Council proposal currently at the Agenda & Rules Committee.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
Jan. 12	<ol style="list-style-type: none"> 1. Ballot Measure Implementation Planning 2.
Feb. 16	<ol style="list-style-type: none"> 1. BMASP/Berkeley Pier-WETA Ferry 2. Systems Realignment
March 16	<ol style="list-style-type: none"> 1. Capital Improvement Plan (Parks & Public Works) 2. Digital Strategic Plan/FUND\$ Replacement/Website Update

Unscheduled Workshops
<ol style="list-style-type: none"> 1. Cannabis Health Considerations 2. Berkeley Police Department Hiring Practices (referred by the Public Safety Committee)

Unscheduled Presentations (City Manager)
<ol style="list-style-type: none"> 1. Undergrounding Task Force Update 2. Update: Zero Waste Priorities

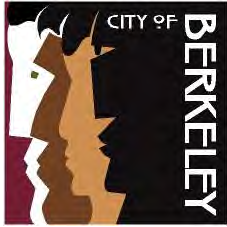
	City Council Referrals to the Agenda & Rules Committee and Unfinished Business for Scheduling
1.	<p>47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow <i>(Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee) (Referred from the January 21, 2020 agenda)</i> From: Councilmember Harrison Recommendation: 1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow. 2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods. Financial Implications: See report Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140 <i>Note: Referred to Agenda & Rules for future scheduling.</i></p>
2.	<p>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i> From: City Manager Recommendation: 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. Financial Implications: None Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000 <i>Note: Referred to Agenda & Rules for future scheduling.</i></p>
3.	<p>12. Authorize Installation of Security Cameras at Major Berkeley Arterial Streets Serving as Entry and Exit Points for the City and Request an Environmental Safety Assessment in High Crime Areas of the City <i>(Item contains supplemental material)</i> From: Councilmember Kesarwani (Author), Mayor Arreguin (Co-Sponsor) Recommendation: In order to deter would-be perpetrators of gun violence and apprehend those engaging in gun violence, adopt the following recommendations: 1. Request that the City Manager install security cameras and increased lighting at appropriate arterial streets serving as entry into and exit out of the City of Berkeley in conjunction with prominently displayed signage; 2. Refer to the City Manager to perform an environmental safety assessment of the high crime areas specifically in South and West Berkeley; 3. Refer costs for security cameras and lighting to the mid-year budget process for FY 2020-21. Financial Implications: See report Contact: Rashmi Kesarwani, Councilmember, District 1 (510) 981-7110 <i>Note: Item referred to the Agenda & Rules Committee as unfinished business from the 11/10/20 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 2/11/21.</i></p>

4.	<p>13. Budget Referral to Reinstate Partial Funding for the Gun Buyback Program Previously Authorized by City Council From: Councilmember Kesarwani (Author), Mayor Arreguin (Co-Sponsor), Councilmember Davila (Co-Sponsor) Recommendation: Refer to the FY 2020-21 November Amendment to the Annual Appropriations Ordinance (AAO #1) \$40,000 to reinstate partial funding for the Gun Buyback Program—originally proposed by Councilmember Cheryl Davila and authorized by the City Council on Nov. 27, 2018. Financial Implications: \$40,000 Contact: Rashi Kesarwani, Councilmember, District 1 (510) 981-7110 <i>Note: Item referred to the Agenda & Rules Committee as unfinished business from the 11/10/20 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 2/11/21.</i></p>
5.	<p>18. Presentation: Report on Homeless Outreach during COVID 19 Pandemic From: City Manager Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400 <i>Note: Item referred to the Agenda & Rules Committee as unfinished business from the 11/10/20 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 2/11/21.</i></p>
6.	<p>19. Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code From: City Manager Recommendation: Adopt a Resolution accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code Financial Implications: None Contact: Andrew Greenwood, Police, (510) 981-5900, Savita Chaudhary, Director of Information Technology (510) 981-6541, Dave White, City Manager's Office, (510) 981-7000 <i>Note: Item referred to the Agenda & Rules Committee as unfinished business from the 11/10/20 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 2/11/21.</i></p>
7.	<p>20. Annual Commission Attendance and Meeting Frequency Report (Continued from October 27, 2020. Item contains supplemental material) From: City Manager Recommendation: Review and accept the annual Commission Attendance and Meeting Frequency Report. Financial Implications: None Contact: Mark Numainville, City Clerk, (510) 981-6908 <i>Note: Item referred to the Agenda & Rules Committee as unfinished business from the 11/10/20 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 2/11/21.</i></p>

8.	<p>21. Support Community Refrigerators <i>(Continued from September 22, 2020)</i> From: Councilmember Davila (Author) Recommendation: 1. Adopt a Resolution to create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure. 2. Allocate \$8,000 of the budget for the purchasing of the refrigerators. Financial Implications: See report Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120 <i>Note: Item referred to the Agenda & Rules Committee as unfinished business from the 11/10/20 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 2/11/21.</i></p>
9.	<p>22. Vote of No Confidence in the Police Chief <i>(Continued from September 15, 2020)</i> From: Councilmember Davila (Author) Recommendation: Adopt a resolution taking a Vote of No Confidence in the Police Chief. Financial Implications: See report Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120 <i>Note: Item referred to the Agenda & Rules Committee as unfinished business from the 11/10/20 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 2/11/21.</i></p>

CITY CLERK DEPARTMENT				
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL				
Address	Board/ Commission	Appeal Period Ends	Determination on Appeal Submitted	Public Hearing
NOD – Notices of Decision				
1510 Walnut St, Units A-F (establish pet store use)	ZAB	10/30/2020		
1920 Vine St (modify dwelling unit and replace accessory building)	ZAB	10/30/2020		
2221 Carleton St (single-family dwelling)	ZAB	10/30/2020		
2795 San Pablo Ave (construct mixed-use development)	ZAB	11/3/2020		
2724 Mabel St (single-family dwelling)	ZAB	11/3/2020		
Public Hearings Scheduled				
0 (2435) San Pablo Ave (construct mixed-use building)	ZAB			1/21/2021
1915 Berryman St (Payson House)	LPC			1/21/2021
1850 Arch St (add bedrooms to multi-family residential building)	ZAB			1/26/2021
1862 Arch St (add bedrooms to multi-family residential building)	ZAB			1/26/2021
Remanded to ZAB or LPC				
Notes				

10/23/2020



Office of the City Manager

08

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: November 10, 2020

Item Number: 20

Item Description: Annual Commission Attendance and Meeting Frequency Report

Submitted by: Mark Numainville, City Clerk

The attached memo responds to issues and questions raised at the October 26 Agenda & Rules Committee Meeting and the October 27 City Council Meeting regarding the ability of city boards and commissions to resume regular meeting schedules.



Office of the City Manager

November 9, 2020

To: Mayor and Council
From: Dee Williams-Ridley, City Manager
Subject: Commission Meetings Under COVID-19 Emergency (Item 20)

This memo provides supplemental information for the discussion on Item 20 on the November 10, 2020 Council agenda. Below is a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration and the data collected by the City Manager on the ability of commissions to resume meetings in 2021.

On March 10, 2020 the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020 the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020 Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to

complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

In response to questions from the Agenda & Rules Committee and the Council, the City Manager polled all departments that support commissions to obtain information on their capacity to support the resumption of regular commission meetings. The information in Attachment 1 shows the information received from the departments and notes each commission's ability to resume a regular, or semi-regular, meeting schedule in 2021.

In summary, there are 24 commissions that have staff resources available to support a regular meeting schedule in 2021. Seven of these 24 commissions have been meeting regularly during the pandemic. There are five commissions that have staff resources available to support a limited meeting schedule in 2021. There are seven commissions that currently do not have staff resources available to start meeting regularly at the beginning of 2021. Some of these seven commissions will have staff resources available later in 2021 to support regular meetings. Please see Attachment 1 for the full list of commissions and their status.

With regards to commission subcommittees, there has been significant discussion regarding the ability of staff to support these meetings in a virtual environment. Under normal circumstances, the secretary's responsibilities regarding subcommittees is limited to posting the agenda and reserving the meeting space (if in a city building). With the necessity to hold the meetings in a virtual environment and be open to the public, it is likely that subcommittee meetings will require significantly more staff resources to schedule, train, manage, and support the work of subcommittees on Zoom or a similar platform. This additional demand on staff resources to support commission subcommittees is not feasible for any commission at this time.

One possible option for subcommittees is to temporarily suspend the requirement for ad hoc subcommittees of city commissions to notice their meetings and require public participation. Ad hoc subcommittees are not legislative bodies under the Brown Act and are not required to post agendas or allow for public participation. These requirements are specific to Berkeley and are adopted by resolution in the Commissioners' Manual. If it is the will of the Council, staff could introduce an item to temporarily suspend these

requirements which will allow subcommittees of all commissions to meet as needed to develop recommendations that will be presented to the full commission.

The limitations on the meetings of certain commissions are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Some of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new duties specifically related to the impacts of the pandemic.

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager and the Health Officer in consultation with Department Heads and the City Council.

Attachments:

1. List of Commissions with Meeting Status
2. Resolution 69,331-N.S.

**November 10, 2020 - Item 20
Supplemental Information**

<u>Boards and Commissions</u>	<u>Meetings Held Under COVID March - Oct</u>	<u>Regular Mtg. Date</u>	<u>Secretary</u>	<u>Dept.</u>	<u>Resume Regular Schedule in January 2021?</u>	<u>Note</u>
Fair Campaign Practices Commission	9	3rd Thur.	Sam Harvey	CA	YES	Have been meeting regularly under COVID Emergency
Open Government Commission	6	3rd Thur.	Sam Harvey	CA	YES	Have been meeting regularly under COVID Emergency
Animal Care Commission	0	3rd Wed.	Amelia Funghi	CM	YES	
Police Review Commission	10	2nd & 4th Wed.	Katherine Lee	CM	YES	Have been meeting regularly under COVID Emergency
Disaster and Fire Safety Commission	4	4th Wed.	Keith May	FES	YES	
Community Health Commission	0	4th Thur.	Roberto Terrones	HHCS	YES	
Homeless Commission	0	2nd Wed.	Josh Jacobs	HHCS	YES	
Homeless Services Panel of Experts	5	1st Wed	Josh Jacobs	HHCS	YES	
Human Welfare & Community Action Commission	0	3rd Wed.	Mary-Claire Katz	HHCS	YES	
Mental Health Commission	1	4th Thur.	Jamie Works-Wright	HHCS	YES	
Sugar-Sweetened Beverage Product Panel of Experts	0	3rd Thur.	Dechen Tsering	HHCS	YES	
Civic Arts Commission	2	4th Wed.	Jennifer Lovvorn	OED	YES	
Elmwood BID Advisory Board	1	Contact Secretary	Kieron Slaughter	OED	YES	
Loan Administration Board	0	Contact Secretary	Kieron Slaughter	OED	YES	
Solano Avenue BID Advisory Board	2	Contact Secretary	Eleanor Hollander	OED	YES	
Design Review Committee	6	3rd Thur.	Anne Burns	PLD	YES	Have been meeting regularly under COVID Emergency
Energy Commission	0	4th Wed.	Billi Romain	PLD	YES	
Landmarks Preservation Commission	6	1st Thur.	Fatema Crane	PLD	YES	Have been meeting regularly under COVID Emergency
Planning Commission	3	1st Wed.	Alene Pearson	PLD	YES	Have been meeting regularly under COVID Emergency
Zoning Adjustments Board	11	2nd & 4th Thur.	Shannon Allen	PLD	YES	Have been meeting regularly under COVID Emergency
Parks and Waterfront Commission	4	2nd Wed.	Roger Miller	PRW	YES	
Commission on Disability	0	1st Wed.	Dominika Bednarska	PW	YES	
Public Works Commission	4	1st Thur.	Joe Enke	PW	YES	
Zero Waste Commission	0	4th Mon.	Heidi Obermeit	PW	YES	
Commission on the Status of Women	0	4th Wed.	Shallon Allen	CM	YES - LIMITED	Secretary has intermittent COVID assignments

**November 10, 2020 - Item 20
Supplemental Information**

<u>Boards and Commissions</u>	<u>Meetings Held Under COVID March - Oct</u>	<u>Regular Mtg. Date</u>	<u>Secretary</u>	<u>Dept.</u>	<u>Resume Regular Schedule in January 2021?</u>	<u>Note</u>
Commission on Aging	0	3rd Wed.	Richard Castrillon	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Housing Advisory Commission	0	1st Thur.	Mike Uberti	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Measure O Bond Oversight Committee	0	3rd Monday	Amy Davidson	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Transportation Commission	2	3rd Thur.	Farid Javandel	PW	REDUCED FREQUENCY	Staff assigned to COVID response
Children, Youth, and Recreation Commission	0	4th Monday	Stephanie Chu	PRW	NO - SEPT 2021	Staff assigned to COVID response
Youth Commission	0	2nd Mon.	Ginsi Bryant	PRW	NO - SEPT 2021	Staff assigned to COVID response
Community Environmental Advisory Commission	0	2nd Thur.	Viviana Garcia	PLD	NO - JUNE 2021	Staff assigned to COVID response
Cannabis Commission	0	1st Thur.	VACANT	PLD	NO - JAN. 2022	Staff vacancy
Peace and Justice Commission	0	1st Mon.	VACANT	CM	NO	Staff vacancy
Commission on Labor	0	3rd Wed., alternate mon	Kristen Lee	HHCS	NO	Staff assigned to COVID response
Personnel Board	1	1st Mon.	La Tanya Bellow	HR	NO	Staff assigned to COVID response

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 Numalville, City Clerk



Office of the City Manager

October 22, 2020

To: Berkeley Boards and Commissions

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

Subject: Commission Meetings During COVID-19 Emergency

This memo serves to provide a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration.

On March 10, 2020, the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020, the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020, Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

To assist commissions with the development of their work plan and to provide the City Council with a consistent framework to review the work plans, the City Manager has developed the following items to consider in developing the work plan that is submitted to the City Council agenda.

Prompts for Commissions to use in work plan:

- What commission items for 2021 have a direct nexus with the COVID-19 response or are the result of a City Council referral pertaining to COVID-19?
- What commission items for 2021 are required for statutory reasons?
- What commission items for 2021 are required for budgetary or fund allocation reasons?
- What commission items for 2021 support council-adopted or voter-adopted mission critical projects or programs?
- What are the anticipated staff demands (above and beyond baseline) for analysis, data, etc., to support commission work in 2021 (baseline duties = posting agendas, creating packets, attend meetings, minutes, etc.)?

The limitations on commission meetings are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Many of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new specific duties related to the impacts of the pandemic.

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager in consultation with Department Heads and the City Council. More frequent meetings by commissions will be permitted as the conditions under COVID-19 dictate.

Thank you for your service on our boards and commissions. The City values the work of our commissions and we appreciate your partnership and understanding as we address this pandemic as a resilient and vibrant community.

Attachments:

1. Resolution 69,331-N.S.
2. List of Commissions with Meeting Data

cc: Mayor and City Councilmembers
Senior Leadership Team

RESOLUTION NO. 69,331-N.S.

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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

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Police Review Commission
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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

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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 Numalville, 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	https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3 - Commissions/External%20Roster.pdf
Antioch	112,000	6	https://www.antiochca.gov/government/boards-commissions/
Concord	130,000	14	https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm
Daly City	107,000	7	http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm
Fairfield	117,000	7	https://www.fairfield.ca.gov/gov/comms/default.asp
Fremont	238,000	15	https://www.fremont.gov/76/Boards-Commissions-Committees
Hayward	160,000	12	https://www.hayward-ca.gov/your-government/boards-commissions
Richmond	110,000	29	https://www.ci.richmond.ca.us/256/Boards-and-Commissions
San Mateo	105,000	7	https://www.cityofsanmateo.org/60/Commissions-Boards

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

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 (Total Commissions in 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 Community Services (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)

	Current Situation	Collaborative Approach	Policy Committee Alignment	Extreme Consolidation
Benefit/ Effectiveness	medium	high	medium	low
Cost	high	medium	low	low
Administrative Burden	high	low	low	medium
Relative Environmental Benefit	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 Direct Cost of Commission per Month
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.



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
November 10, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Implement Protocols for managing the City Council Meetings on Zoom

RECOMMENDATION

Adopt a Resolution with the following actions:

1. Implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures:

- A. Gallery view showing the list of all participants and attendees;
- B. Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking.
- C. Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded;
- D. The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order.
- E. Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off;
- F. Allow chat and reactions capabilities for attendees and participants;
- G. The chat should be saved and part of the public record.

2. Designate a third party community organization to host and manage the meeting with neutrality.

BACKGROUND

Since March 2020, the Berkeley City Council has held its Council Meetings on Zoom due to the COVID-19 pandemic. For the last several Council meetings, many community members and public commenters have expressed concerns how the meetings are handled, currently.

Community members do not feel there's full transparency of the meetings:

- There is no attendee list present nor gallery view of attendees;

- The meeting setup doesn't allow members of the audience to yield their time to a current member of the public while in line, as was the case prior to COVID;
- Timer inequities where the on-screen timer handled by the City for Public Comment would start early or late as community members speak;
- Some speakers receive more time and/or less time, or are cut off;
- There is no transparent way to know when the public raise their hand to speak on Zoom, how they were chosen and in what order?

Prior to the COVID-19 pandemic, when the City Council was holding its meeting in public, any member of the public who would like to give public comment to the City Council on any agenda item had to line up in order. Also, the public was able to see who was in the City Council meeting room. Finally, audience members were able to yield their time to the speaker on public comment.

Other protocols to consider for all zoom meetings throughout the COB:

- Implement the recorded message at the beginning of all meetings including commission meetings and eliminate it being read by individuals;
- All meeting utilize timers for all items, on consent and action calendars throughout the City in all zoom meetings;

Currently, Berkeley Community Media has a contract with the City of Berkeley to conduct the broadcast of the City Council meetings, whether they were held in person or on Zoom. Berkeley Community Media could be considered to manage the neutrality of the City Council Meetings on Zoom and implement the protocols.

It is imperative that we must conduct our City Council meetings as accessible, equitable, fair, and transparent.

FINANCIAL IMPLICATIONS

To be determined.

ENVIRONMENTAL SUSTAINABILITY

City Council must honor and respect the voices of our community, especially the most marginalized, in order to make sound policy decisions to protect our communities during this health and climate crisis.

CONTACT PERSONS

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

Eshal Sandhu
Jovi Tseng
Sanjita Pamidimukkala
District 2 Interns

ATTACHMENTS:

1. Resolution

REFERENCE:

1. [Berkeley City Council Rules of Procedure and order effective June 16, 2020](#)

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,
IMPLEMENTING PROTOCOLS MANAGING CITY COUNCIL MEETINGS ON ZOOM

WHEREAS, Since March 2020, the Berkeley City Council has held its Council Meetings on Zoom due to the COVID-19 pandemic. For the last several Council meetings, many community members and public commenters have expressed concerns how the meetings are handled, currently; and

WHEREAS, Community members do not feel there's full transparency of the meetings:

- There is no attendee list present nor gallery view of attendees;
- The meeting setup doesn't allow members of the audience to yield their time to a current member of the public while in line, as was the case prior to COVID;
- Timer inequities where the on-screen timer handled by the City for Public Comment would start early or late as community members speak;
- Some speakers receive more time and/or less time, or are cut off;
- There is no transparent way to know when the public raise their hand to speak on Zoom, how they were chosen and in what order?

WHEREAS, Prior to the COVID-19 pandemic, when the City Council was holding its meeting in public, any member of the public who would like to give public comment to the City Council on any agenda item had to line up in order. Also, the public was able to see who was in the City Council meeting room. Finally, audience members were able to yield their time to the speaker on public comment; and

WHEREAS, Other protocols to consider for all zoom meetings throughout the COB:

- Implement the recorded message at the beginning of all meetings including commission meetings and eliminate it being read by individuals;
- All meeting utilize timers for all items, on consent and action calendars throughout the City in all zoom meetings;

WHEREAS, Currently, Berkeley Community Media has a contract with the City of Berkeley to conduct the broadcast of the City Council meetings, whether they were held in person or on Zoom. Berkeley Community Media could be considered to manage the neutrality of the City Council Meetings on Zoom and implement the protocols.

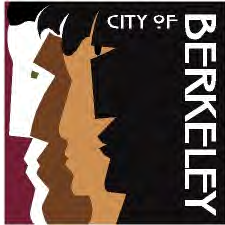
WHEREAS, It is imperative that we must conduct our City Council meetings as accessible, equitable, fair, and transparent.

NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley hereby implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures:

- A. Gallery view showing the list of all participants and attendees;
- B. Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking.

- C. Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded;
- D. The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order.
- E. Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off;
- F. Allow chat and reactions capabilities for attendees and participants;
- G. The chat should be saved and part of the public record.

BE IT FURTHER RESOLVED, that the City Council designate a third party community organization to host and manage the meeting with neutrality.



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

SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 4, 2020

Item Number: 2

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

Submitted by: Councilmember Hahn

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

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



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

ACTION CALENDAR

February 4, 2020

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

RECOMMENDATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

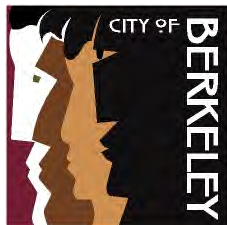
Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system,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

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

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

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

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



Fair Campaign Practices Commission

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 4, 2020

Item Number: 2

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

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

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



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

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

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

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

CONCLUSION:

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

ANALYSIS:

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

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

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

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

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

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

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

CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff CounselSUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSESBACKGROUND 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.)

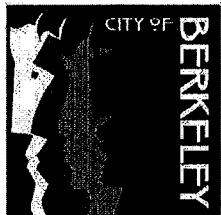
Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election 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.^{1/} (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

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

Attachment

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



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

MEMORANDUM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

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

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

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

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

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

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

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

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

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

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

II. Reimbursement of Actual and Necessary Expense of Office

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

A. Authorized Activities.

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

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

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

B. Unauthorized Expenses

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

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

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

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

C. Particular Types of Authorized Expenditures Defined

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

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

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

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

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

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

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

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

E. Expense Report Content and Submission Deadline

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

F. Audits of Expense Reports

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

G. Reports

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

H. Compliance with Laws

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

I. Violation of This Policy

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

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

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


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

Noes: None.

Absent: None.



Tom Bates, Mayor

Attest: 

Mark Numainville, CMC, City Clerk

Councilmember Office Budget Relinquishment and Grant Policy

Introduction – Limitations on the Expenditure of Public Funds

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

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

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

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

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

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

Criteria for Grants of City Funds from Councilmember Office Budgets

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

Table 1.

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

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

CITY OF BERKELEY

ADMINISTRATIVE REGULATIONS

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

SUBJECT: Purchasing Policy & Purchasing Manual

PURPOSE

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

POLICY

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

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

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

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

PROCEDURE

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

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

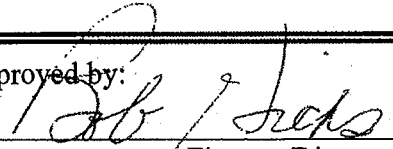
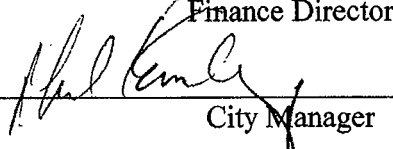
DEFINITIONS

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

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

Attachments:

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

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

ORDINANCE NO. 6,875-N.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT 2

ORDINANCE NO: 7,035-N.S.

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

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

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

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

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

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

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

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

Noes: Spring and Worthington.

Absent: None.

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

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

Noes: Spring and Worthington.

Absent: None.

ATTEST: [Signature] Deanna Despain, Deputy City Clerk

[Signature] Tom Bates, Mayor

Date signed: [Signature]

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**

PURPOSE

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

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

POLICY

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

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I. APPROVALS

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

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

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

II. EXPENDITURES BASICS

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

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

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

In addition:

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

See item V. Advance Payments and Reconciliation.

III. ALLOWABLE EXPENSES

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

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

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

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

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

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

IV. PAYMENTS BY CHECK USING A PURCHASE ORDER

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

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

V. ADVANCE PAYMENTS & RECONCILIATION

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

In addition:

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

A. Requesting an Advance

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

B. Reconciling an Advance

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

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

VI. EXPENSE REIMBURSEMENT

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

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

VII. OTHER EXCEPTIONS

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

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

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

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

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

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

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

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

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

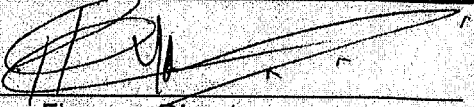
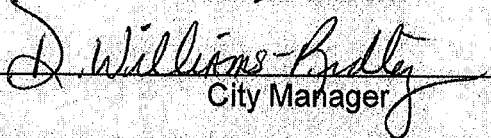
Payment Documentation: Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original receipts,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

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

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

IX. ATTACHMENTS/LINKS

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

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

Attachment A

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

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

RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

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

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

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

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

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

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

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

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

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

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

II. Reimbursement of Actual and Necessary Expense of Office

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

A. Authorized Activities.

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

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

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

B. Unauthorized Expenses

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

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

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

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

C. Particular Types of Authorized Expenditures Defined

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

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

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

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

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

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

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

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

E. Expense Report Content and Submission Deadline

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

F. Audits of Expense Reports

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

G. Reports

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

H. Compliance with Laws

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

I. Violation of This Policy

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

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

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

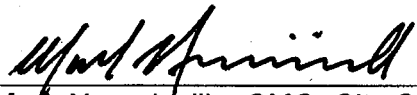
Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.



Tom Bates, Mayor

Attest: 

Mark Numainville, CMC, City Clerk

Councilmember Office Budget Relinquishment and Grant Policy

Introduction – Limitations on the Expenditure of Public Funds

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

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

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

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

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

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

Criteria for Grants of City Funds from Councilmember Office Budgets

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

Table 1.

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

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

RESOLUTION NO. 63,413-N.S.

ESTABLISHING TRAVEL AND TRAINING REIMBURSEMENT POLICY FOR
BOARD AND COMMISSION MEMBERS

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

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

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

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

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

TRAVEL AND TRAINING REIMBURSEMENT FOR BOARDS/COMMISSIONS**A. Authorized Activities.**

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

B. Unauthorized Expenses

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

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

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

C. Particular Types of Authorized Expenditures Defined

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

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


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

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

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

Noes: None.

Absent: None.

Attest: 
Sherry M. Kelly, City Clerk



Tom Bates, Mayor

CITY OF BERKELEY
ADMINISTRATIVE REGULATIONS

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

SUBJECT: FN-024 Voucher Processing

PURPOSE

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

POLICY

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

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

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

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

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

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

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

PROCEDURE

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

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

FN-024 Payments

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

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

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

A. Vendor Information

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

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

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

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

Payments for Refunds

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

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

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

C. Invoice Information

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

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

A. Vendor Information

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

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

B. Description & Purpose (FUND\$ 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 (FUND\$ has a limit of approximately 15 characters).
2. INVOICE Date: enter the invoice or statement date.

Additional Instructions for all FN-024 Payment Vouchers

A. Account Codes & Project Code

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

B. Authorized Signatures

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

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



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

Check Printing & Disbursement

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

EXCEPTIONS

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

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

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

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



Fair Campaign Practices Commission

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.¹ Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

Recommendation

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

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

Part 8 - OFFICEHOLDER ACCOUNTS

12.06.810 - Officeholder account prohibited.

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

The following additions to BERA are proposed:

2.12.157 Officeholder Account

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

2.12.441 Officeholder account prohibited

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

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

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC 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.¹ For similar reasons, the BERA does not

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

Barbara Gilbert
Re: Application of Berkeley Election Reform Act To Officeholder Accounts
December 28, 1999
Page 2

apply to true officeholder accounts.

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

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

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE.1. and IILG.

CCM

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

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

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

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

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

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

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

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

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

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

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



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.