

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

MONDAY, JANUARY 4, 2021

2:30 P.M.

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Lori Droste

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/84969006215>. 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: **849 6900 6215**. 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 30, 2020**
- 2. Review and Approve Draft Agenda:**
 - a. 1/19/21 – 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: March 1, 2021

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

Financial Implications: See report

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

10. **Support Affirming the Right to Boycott as a Tactic for Social and Political Change**

From: Councilmember Davila (Author)

Referred: November 30, 2020

Due: May 23, 2021

Recommendation: Adopt a Resolution with the following actions: 1. Support Affirming the Right to Boycott as a Tactic for Social and Political Change, and celebrate the People of Berkeley for their commitment to Peace, Justice and Equity; 2. The City of Berkeley affirms the right of all people to participate in boycotts of any entity when they have conscientious concerns with the entity's policies or actions; 3. The City of Berkeley condemns attempts by governments to infringe upon the right to peaceful boycotts by criminalizing that participation, denying participants state contracts, or otherwise impeding the freedom of advocacy for all; 4. The City Council encourages City Commissions to recommend boycott policies to the City Council when appropriate, so that the City Council may be well informed in its oversight of City resources 5. Send a copy of this resolution to Governor Gavin Newsom, Attorney General Xavier Becerra, State Assemblymember Buffy Wicks, State Senator Nancy Skinner, United States Senators Bernie Sanders, Kamala Harris, Dianne Feinstein, and United States Congressional Representatives Barbara Lee, Ro Khanna, Alexandria Ocasio-Cortez, Ilhan Omar, Ayanna Pressley, Rashida Harbi Tlaib, and Pramila Jayapal.

Financial Implications: None

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
- 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, January 11, 2021

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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 December 31, 2020.

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

Mark Numainville, City Clerk

**Communications**

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or [policycommittee@cityofberkeley.info](mailto:policycommittee@cityofberkeley.info).*



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

**MONDAY, NOVEMBER 30, 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** – 17 speakers.

## **Review of Agendas**

### **1. Approval of Minutes: November 16, 2020**

**Action:** M/S/C (Hahn/Wengraf) to approve the minutes of 11/16/20 with the corrected spelling of “Dr. Steven Rader” under ceremonial items.

**Vote:** All Ayes.

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

a. 12/15/20 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Hahn/Wengraf) to approve the agenda of 12/15/20 with the changes noted below.

- *Item Added: Reimagining Public Safety RFP (City Manager) - Consent Calendar*
- *Item Added: Sugar Sweetened Beverage Panel Recommendations (City Manager) - Consent Calendar*
- *Item Added: Berkeley Rep Fee Waiver (Arreguin) - Consent Calendar; Councilmember Wengraf added as a co-sponsor*
- *Item 11 Use of Force Policy (City Manager) – moved to Action Calendar*
- *Item 24 Martin Luther King Celebration (Arreguin) – Vice-Mayor Hahn and Councilmember-Elect Taplin added as co-sponsors*
- *Item 25 Sale of Vehicles (Davila) – scheduled for the January 19, 2021 meeting*
- *Item 26 Bonding and Funding for Paving (Harrison) – Councilmembers Kesarwani and Bartlett added as co-sponsors*
- *Item 27 Baby Book Project (Wengraf) – Vice-Mayor Hahn added as a co-sponsor*
- *Item 28 Support S.4571 (Robinson) – Mayor Arreguin and Vice-Mayor Hahn added as a co-sponsor*
- *Item 33 Pedestrian Plan (City Manager) – Moved to Unscheduled Presentations List*
- *Item 34 BHA Appointment (Arreguin) – scheduled for 12/15 Consent Calendar*
- *Item 35 Public Safety Task Force (Arreguin) – scheduled for 12/15 Consent Calendar*
- *Item 36 Traffic Enforcement (Arreguin) – scheduled for 12/15 Consent Calendar; Councilmember-Elect Taplin added as a co-sponsor*
- *Item 37 Plaque for Vice President-Elect Kamala Harris (Davila) – scheduled for 12/15 Consent Calendar; Vice-Mayor Hahn added as a co-sponsor*
- *Item 38 Value Human Life (Davila) – Referred to Health, Life Enrichment, Equity & Community Committee*
- *Item 39 Proposition 12 (Davila) – scheduled for 12/15 Consent Calendar; Councilmember Harrison added as a co-sponsor*
- *Item 40 Right to Boycott (Davila) – Referred to Agenda & Rules Committee*
- *Item 41 Loan Forgiveness (Davila) – scheduled for 12/15 Action Calendar*
- *Item 42 Housing Trust Fund (Hahn) – scheduled for 12/15 Consent Calendar; revised item submitted*

**Vote:** All Ayes.

### Order of Items on Action Calendar

Item 30 Referral Response

Item 31 Budget Update

Item 32 Annual Appropriations

Item 41 Loan Forgiveness

Item 11 Use of Force Policy

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

- Selected Item 29 related to outdoor dining

### **4. Adjournments In Memory – None**

## **Scheduling**

### **5. Council Worksessions Schedule**

- Removed undergrounding update
- Added Pedestrian Plan
- Tentatively scheduled Zero Waste for March 16, 2021

### **6. Council Referrals to Agenda Committee for Scheduling**

**Action:** M/S/C (Arreguin/Wengraf) to schedule Item 4 regarding commissions for the 1/19/21 Consent Calendar.

**Vote:** All Ayes.

**Action:** M/S/C (Wengraf/Arreguin) to schedule Item 5 regarding community refrigerators for the 1/26/21 Action Calendar.

**Vote:** All Ayes.

### **7. Land Use Calendar - Received and filed**

## **Referred Items for Review**

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

**Action:** 2 speakers. Discussion held. Mayor Arreguin requested that staff introduce an item to temporarily suspend City rules related to commission subcommittees as proposed in the staff memo.

## 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: March 1, 2021**

**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:** Item continued to January 4, 2021 meeting.

## Referred Items for Review

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

**From: Councilmember Davila (Author)** *(Item contains revised material)*

**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.
  - H. When the Mayor or a Councilmember speak, the timer shall be displayed. The timer countdown shall start when the Mayor or a Councilmember starts speaking, and shall be notified their time has exceeded the allotted time; but will stop when the Mayor or a Councilmember stops speaking. In the event of technical difficulties, the timer will stop and will resume when the Mayor or Councilmember resumes speaking.
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:** 0 speakers. M/S/C (Hahn/Arreguin) to move the item to City Council with a Negative Recommendation. The Mayor, under his authority and prerogative as the Presiding Officer, may implement certain recommendations in the item, as appropriate, to manage Council meetings

**Vote:** All Ayes.

## 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  
**Action:** Item continued to January 4, 2021 meeting.
- 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  
**Action:** Item continued to January 4, 2021 meeting.

## Items for Future Agendas

- None

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 4:45 p.m.

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

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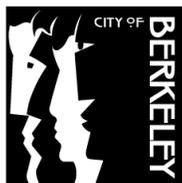
Mark Numainville  
City Clerk

## **Communications**

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# DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, January 19, 2021  
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

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

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

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

*To submit an e-mail comment during the meeting to be read aloud during public comment, email [clerk@cityofberkeley.info](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. Amendment: FY 2021 Annual Appropriations Ordinance** *(Item contains revised material.)*  
**From: City Manager**  
**Recommendation:** Adopt a new first reading of Ordinance No. 7,748-N.S. amending the FY 2021 Annual Appropriations Ordinance No. 7,724–N.S. for fiscal year 2021 based upon recommended re-appropriation of committed FY 2020 funding and other adjustments authorized since July 1, 2020, in the amount of \$197,890,469 (gross) and \$193,471,132 (net).  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, City Manager’s Office, 981-7000
- 2. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the council meetings of December 1, 2020 (closed and regular), December 3, 2020 (closed), December 8, 2020 (4pm-special and 6pm-special) and December 15, 2020 (closed, special and regular).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 3. Temporarily Suspending Certain Provisions of the Commissioners’ Manual that Apply to Meetings of Subcommittees**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution temporarily suspending the provisions of the Commissioners’ Manual and Resolution No. 69,063-N.S. that ad hoc subcommittees of City boards and commissions follow State open meeting procedures, thereby enabling ad hoc subcommittees to meet and conduct work while allowing City staff to continue emergency response efforts related to the COVID-19 pandemic.  
**Financial Implications:** No direct fiscal impact  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 4. Annual Commission Attendance and Meeting Frequency Report** *(Continued from November 10, 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) 981-6900

## Consent Calendar

- 5. Authorized Agent Update for FEMA Public Assistance for COVID-19**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the Deputy City Managers and AG Witt, LLC to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services regarding grants applied for by the City of Berkeley for the FEMA-4482-DR-CA California COVID-19 Pandemic.  
**Financial Implications:** See report  
Contact: Dave White, City Manager's Office, (510) 981-7000
- 6. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 19, 2021**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.  
**Financial Implications:** Various Funds - \$4,572,856  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 7. Rescinding Housing Trust Fund Guidelines and Adopting New Guidelines**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution rescinding the City's current Housing Trust Fund Guidelines (Resolution No. 64,394-N.S.) and adopting new Housing Trust Fund Guidelines that preserve essential components while updating the process to award funds and certain requirements.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 8. Authorization to Execute a Revised Programmatic Agreement with the California State Historic Preservation Officer**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a revised Programmatic Agreement (PA) with the California State Historic Preservation Officer (SHPO) to clarify which rehabilitation activities would not require SHPO's review.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

- 9. Predevelopment and Acquisition Loan for 2527 San Pablo Avenue**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1. Authorizing the execution of a \$5,500,000 loan to Satellite Affordable Housing Associates (SAHA) for costs related to acquisition and predevelopment of the proposed affordable housing development at 2527 San Pablo Avenue (2527 San Pablo), utilizing existing reserved funds previously allocated by Council. 2. Authorizing the City Manager to execute all original or amended documents or agreements to effectuate this action.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 10. Revenue Contract: Community Services Block Grant for Calendar Year 2021**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to accept the Community Services Block Grant (CSBG) Contract Number 21F-4001 for the amount of \$275,106 to provide services for low-income people for the period January 1, 2021 to December 31, 2021, with the option to extend the contract period through May 31, 2022.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 11. 2021 Health Plan Changes**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions:  
1. Approving rates for the Kaiser Health Maintenance Organization (HMO) health plans as follows: (a) 15.58% increase for Kaiser S1 Group #60 (Active Group); (b) 15% increase for the HSA-Qualified Deductible HMO Plan (Active Group) (c) 1.89% increase for Pre-Medicare Eligible Retirees (Retiree Group); and (d) -4.00% decrease for Post-65 Senior Advantage (Retiree Group)  
2. Approving rates for the Sutter Health Plus health plans as follows: (a) 1.87% increase for the Active HMO ML 26 group; and (b) 1.19% increase for the Pre-Medicare retiree group.  
The health plan premium rates will be effective for the period of January 1, 2021 through December 31, 2021.  
**Financial Implications:** See report.  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 12. Workers' Compensation 2021 Fee Assessment**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2021 for administering the Workers' Compensation Program, in an amount not to exceed \$235,979.91.  
**Financial Implications:** See report  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800

## Consent Calendar

### 13. **Contract Amendments: Plan Check Services**

**From: City Manager**

**Recommendation:** Adopt two Resolutions authorizing the City Manager to execute contract amendments for an additional amount of \$500,000 each, to new total amounts not to exceed \$1,500,000 for each contract, and extending the terms of the contracts for a one-year period to June 30, 2022 with:

1. West Coast Code Consulting, Contract No. 119641-2
2. Telesis Engineers, Contract No. 119639-1

**Financial Implications:** See report

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

### 14. **Filling Vacancies Among the Elected Representatives of the Poor**

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

**Recommendation:** Adopt a Resolution confirming the appointments of Ms. Denah Bookstein (District 1); and Mr. Carlos Hill (District 1) as elected representatives of the poor on the Human Welfare and Community Action Commission (HWCAC), having been voted onto the Commission at the HWCAC December 9, 2020 meeting, and that their terms expire December 9, 2022.

**Financial Implications:** None

Contact: Mary-Claire Katz, Commission Secretary, (510) 981-5400

### 15. **Renaming of Four City Paths for Founders of the Berkeley Path Wanderers Association**

**From: Public Works Commission**

**Recommendation:** Adopt a Resolution pursuant to Berkeley's Policy for Naming and Renaming Public Facilities, the Public Works Commission (PWC) recommends the naming and renaming of four Berkeley Paths, as identified on the map at Attachment 1 to the report, in honor of the four women founders of the Berkeley Path Wanderers:

1. Rename a path off of Keith Avenue near Shasta Road, currently named Eleanor Path, to "Eleanor Hall Gibson Path," after founder Eleanor Hall Gibson, who passed away in 2016;
2. Name the following paths, subject to a 2/3 vote of the City Council as provided at Section 2(B) of the Policy, as follows: - The extension connector of Walnut Street through the UC complex between Hearst and Berkeley Way to be named "Ruth Armstrong Path" in honor of Ruth Armstrong (Moskovitz); - The path parallel to the top of Solano Avenue running along Los Angeles Avenue up the tunnel slope towards the Marin Circle, to be named "Jacque Ensign Way" in honor of Jacque Ensign; and - Path 71 to be named "Patricia DeVito Path" in honor of Pat DeVito.

In addition to the renaming of these four paths, the Public Works commission supports the inclusion of interpretive signage describing the contributions of each of the honored individuals.

**Financial Implications:** See report

Contact: Joe Enke, Commission Secretary, (510) 981-6300

## Council Consent Items

- 16. Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*  
**From: Councilmember Davila (Author)**

**Recommendation:**

1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.

2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.

*(On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item as amended by the committee with the following recommendation: Adopt a resolution with the following actions: 1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles. 2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to*

## Council Consent Items

*promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.)*

**Financial Implications:** See report

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

## 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 – Old Business

17. **Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities** *(Continued from December 15, 2020. Item contains revised material.)*  
**From: Councilmember Davila (Author), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution calling upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

## Action Calendar – New Business

### 18. Amendments to the Berkeley Lobbyist Registration Act

**From:** Open Government Commission

**Recommendation:** Adopt an ordinance amending the Berkeley Lobbyist Registration Act (BMC Chapter 2.09) to incorporate the recommendations of the Open Government Commission (OGC).

**Financial Implications:** None

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

## Council Action Items

### 19. Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley *(Reviewed by the Health, Life Enrichment, Equity and Community Committee)*

**From:** Councilmember Davila (Author), Councilmember Bartlett (Co-Sponsor)

**Recommendation:** Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley, and commit to eliminate all socioeconomic barriers to health equity. In addition:

1. Declare the resolution an emergency measure for the immediate preservation of public peace, property, health, or safety, especially during the COVID-19 pandemic and it shall take effect and be in force immediately upon its adoption.
2. Budget Referral to convene a series of town hall sessions for all community members, City workers, and small business owners to discuss the concerns of people of color and marginalized community members, and develop strategies and programs (especially Mental Health Programs for the unhoused stay housed) for greater inclusivity, understanding, empathy, compassion, and unity. The purpose of these meetings should be to strengthen anti-racist capacity building and commitments within the city. This can be done by discussing the current quantitative and qualitative reality of racial justice and injustice, racism and non-racism in all areas of city life toward developing measures to ensure the achievement racial equity in Berkeley. These town halls, strategies and programs could include: the definition and lived experience of racism in systemic and institutional forms the effects and trauma caused by them, and provide resources to combat implicit bias on all levels. Community partners to consider to facilitate such workshops include Beyond Diversity: Courageous Conversations About Race and Showing Up for Racial Justice (SURJ).
3. City Council will establish a working group to promote racial equity as well as the development of programs to address racial equity in this City.
4. Direct the City Manager or his/her designee to record COVID-19 data by race/ethnicity and to explore greater health disparities that have emerged as a result of this crisis.
5. Direct the City Manager or his/her designee to hold several fundraisers at town hall sessions for black-owned small businesses, research of state and federal RFPs for the purpose of grants acquisitions for program development in the City of Berkeley that have been affected by Covid-19 and/or recent protests.
6. Direct the City Manager or his/her designee to prepare a Health in All Policies Ordinance (see attached City of Richmond Ordinance) for Council review and

## Council Action Items

adoption, critically evaluating the public health impact of all legislative and budgetary proposals, especially upon people of color and marginalized community members.

7. Direct the City Manager or his/her designee to adopt a mandatory requirement of 16 hours of ongoing annual online and in-person training on implicit bias, cultural sensitivity, and cultural humility for City Employees, commissioners, and community members; and

8. Direct the City Manager or his/her designee in partnership with the Berkeley Public Health Division and the Mental Health Division to develop a Strategic Plan for Health Equity, with the inclusion of a diverse group of staff with expertise in this subject matter and begin immediate implementation of recommendations.

9. Direct the City Manager or his/her designee to have an antiracism dashboard that delineates and tracks progress towards specific antiracist goals. This would involve:

1) tracking and measuring specific data that shows the extent to which racism has become a public health crisis; which would in turn enable 2) the City and the Community to dramatically reduce instances of racism, if not totally eliminate some of them; and 3) demonstrate to constituents that the other recommendations have made, and must continue to make, a tangible difference. The dashboard shall include: analyzing hospital infant mortality by race; tracking food insecurity among Berkeley residents, and correlation to racial demographics; analyzing the effects of biological weathering and resultant mental health challenges on immune strength for black individuals, and studying mental health resource availability and outreach targeting at-risk black communities; analyzing the administration of medications and health therapies by race, in an attempt to understand Berkeley health providers position vis a vis the systemic under-prescription and under-treatment of Black patients pain; tracking violent incidents targeting queer Black residents, and studying the availability of mental health resources and culturally competent healthcare for queer Black patients; identifying the largest sources of corporate environmental or carcinogenic pollution in Berkeley, and the racial demographics of people with prolonged exposure to those regions (i.e. workers and residents within range of toxic substances); identifying the locations of city waste storage/processing and the racial demographics of those most closely exposed; examining property taxes by neighborhood, and correlation to school resources and student racial demographics; examining the availability of stable and affordable Internet access, as necessary for all possible student activities offered and required by Berkeley public schools;

10. Collaborate with the Berkeley Unified School District and the Vision 2020 to see how this is correlated to household racial demographics; analyzing students' realistic access to extracurricular activities such as arts and athletics; race-based differential access means that some students have less access to educational opportunities that help with physical and mental health; identifying the levels of lead and other toxins in public school buildings, and correlation to resource allocation and racial demographics among schools.

11. Submit copies of this resolution to State Assemblymember Buffy Wicks, State Senator Nancy Skinner, Congresswoman Barbara Lee, Alameda County Supervisor Keith Carson, as well as various organizations such as the Berkeley NAACP, the African American Holistic Resource Center Steering Committee, and Healthy Black Families.

## Council Action Items

*(On November 23, 2020, the Health, Life Enrichment, Equity & Community Committee made a qualified positive recommendation for the City Council to take the following action:*

*1. Make the following statement:*

*Declare Racism as a public health crisis and a threat and safety issue for the City of Berkeley, and commit the City of Berkeley to eliminating all racial and socioeconomic barriers to health equity.*

*2. Recommend that City Councilmembers consider working together or independently to convene a public session or sessions in their districts on racism as a public health crisis and threat and safety issue, to further public knowledge and input on these important matters and help create a movement to address racial disparities in Berkeley.*

*3. Refer to the Mayor and City Manager to discuss how to incorporate programs and policies to address racial equity in the work of the City of Berkeley.*

*4. Refer to the City Manager and Office of Economic Development to consider how the City of Berkeley can support women and minority owned businesses through the COVID crisis and recovery period.*

*5. Refer to the City Manager to adapt the Richmond Health in All Policies Ordinance and return to Council a version for the City Council to consider adopting, or any other recommendation related to the proposed Ordinance.*

*6. Refer to the City Manager to consider requiring and providing antiracism, implicit bias, cultural sensitivity and cultural humility training for all City of Berkeley employees, and the City Council, and to consider ways to make such training accessible to the public via online or other training opportunities.*

*7. Refer to the City Manager to include an Anti-Racism dashboard on the City of Berkeley's new website, to consolidate information about racial disparities across all City of Berkeley services and initiatives.*

*8. Recommit to continuing the City of Berkeley's work with Berkeley Unified School District through the 2020 Vision process, and recommend adding a focus on extracurricular activities and access to enrichment and support outside of the classroom.)*

**Financial Implications:** \$50,000

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

## Action Calendar – Policy Committee Track Items

### 20. **Revisions to Enabling Legislation for Reimagining Public Safety Task Force From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution:

1. Rescinding Resolution No. 69,673-N.S.; and

2. Establishing a Reimagining Public Safety Task Force, comprised of: (a) one representative appointed by each member of the City Council and Mayor pursuant to the Fair Representation Ordinance, B.M.C. Sections 2.04.030-2.04.130, (b) one representative appointed by the Mental Health Commission, Youth Commission, and Police Review Commission (to be replaced by a representative of the Police Accountability Board once it is established), and (c) one representative appointed by

## Action Calendar – Policy Committee Track Items

the Associated Students of the University of California (ASUC) External Affairs Vice President, one representative appointed by the Berkeley Community Safety Coalition (BCSC) Steering Committee, and three additional members to be appointed “At-Large” by the Task Force, with appointments subject to confirmation by the City Council.

The Task Force will be facilitated by a professional consultant, the National Institute for Criminal Justice Reform (NICJR), with administrative support by the City Manager’s office, and will serve as the hub of community engagement for the Reimagining Public Safety effort initiated and guided by the NICJR team. The Task Force will also include the participation of City Staff from the City Manager’s Office, Human Resources, Health, Housing and Community Services, Berkeley Fire Department, Berkeley Police Department, and Public Works Department. For visual, see Attachment 3.

With the exception of “At-Large” appointments, appointments to the Task Force should be made by January 31, 2021, and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council’s July 14, 2020, commitment to centering the voices of those most impacted in our process of reimagining community safety appointments should be made with the goal of achieving a balance of the following criteria:

- a. Active Members of Berkeley Community (Required of All)\*
- b. Representation from Impacted Communities
  - Formerly incarcerated individuals
  - Victims/family members of violent crime
  - Immigrant community
  - Communities impacted by high crime, over-policing and police violence
  - Individuals experiencing homelessness
  - Historically marginalized populations
- c. Faith-Based Community Leaders
- d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
- e. Health/ Public Health Expertise
- f. City of Berkeley labor/union representation
- g. Law Enforcement Operation Knowledge
- h. City Budget Operations/Knowledge
- i. Committed to the Goals and Success of The Taskforce (Required of All)

As outlined in the July 14, 2020, City Council Omnibus Action, City Council provided direction for the development of a new paradigm of public safety that should include, but is not limited to:

- 1) Building on the work of the City Council, the City Manager, Berkeley Police Department (BPD), the Police Review Commission and other City commissions and other working groups addressing community health and safety.
- 2) Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
- 3) Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of Reduce, Improve and

## Action Calendar – Policy Committee Track Items

Reinvest as proposed by the National Institute for Criminal Justice Reform considering, among other things:

- A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety.
- B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
- C. Limiting militarized weaponry and equipment.
- D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
- E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
- F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit.

Direct the City Manager to ensure that the working group of City Staff as outlined in the October 28th Off-Agenda Memo is coordinating with the Task Force.

The Task Force will provide input to and make recommendations to NICJR and City Staff on a set of recommended programs, structures and initiatives incorporated into a final report and implementation plan developed by NICJR to guide future decision making in upcoming budget processes for FY 2022-23 and, as a second phase produced, in the FY 2024-2025 budget processes.

**Financial Implications:** See report

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

### 21. **Urging the National Parks Service to Establish a National Parks Unit in the San Francisco Bay Area to Honor the Black Panther Party for Self Defense**

**From: Councilmember Taplin (Author)**

**Recommendation:** Adopt a resolution calling on the National Parks Service to conduct a Reconnaissance Survey to assess the suitability of lands in the San Francisco Bay Area to honor the Black Panther Party in Berkeley, Oakland, Richmond, and the surrounding Bay Area; send letter to the National Parks Service, and President[-elect] Joseph R. Biden, Jr with resolution.

**Financial Implications:** None

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

### 22. **Guaranteeing COVID-19 Hazard Pay for Grocery Store Workers**

**From: Councilmember Taplin (Author)**

**Recommendation:** Refer the City Manager and City Attorney to draft an emergency ordinance to guarantee hazard pay of an additional five dollars an hour for grocery store workers, effective upon adoption and until the City returns to the Yellow-Tier 4 rate of positivity for COVID-19.

**Financial Implications:** See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

## Action Calendar – Policy Committee Track Items

23. **Relief for Child Care Providers**  
**From: Councilmember Hahn (Author)**  
**Recommendation:** Adopt a resolution making child care providers, including all forms of early childhood education, eligible for grants and other assistance under the Berkeley Relief Fund.  
**Financial Implications:** See report  
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
24. **Extending Time for Temporary Parklets and Sidewalk Seating Post-COVID-19**  
**From: Councilmember Hahn (Author)**  
**Recommendation:** Adopt an ordinance revising BMC Chapter 16.18 Right-of-Way Encroachments and Encroachment Permits and BMC Section 14.48.150 Sidewalk Seating, Benches, and Planters to extend the period of time that Parklets and Sidewalk Seating established under the COVID-19 declared City emergency can remain in place to 365 days after the termination of the declared City emergency rather than the current 90 days.  
**Financial Implications:** See report  
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
25. **Resolution Reaffirming the City of Berkeley’s Commitment to Roe v. Wade**  
**From: Councilmember Wengraf (Author), Councilmember Droste (Co-Sponsor), Councilmember Hahn (Co-Sponsor), Councilmember Taplin (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution reaffirming the City of Berkeley’s commitment to Roe v. Wade and honoring the 48th anniversary of its passage.  
**Financial Implications:** None  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

## Information Reports

26. **Condominium Conversion Program – Annual Report**  
**From: City Manager**  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
27. **Referral Response: Housing and Homeless Uses for City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street**  
**From: City Manager**  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Public Comment – Items Not Listed on the Agenda

### Adjournment

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be*

barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

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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>

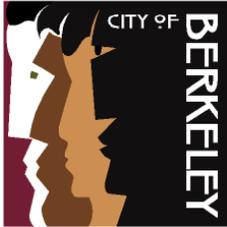
COMMUNICATION ACCESS INFORMATION:

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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Human Welfare and Community Action Commission

CONSENT CALENDAR

January 19, 2021

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

RECOMMENDATION

Adopt a Resolution confirming the appointments of Ms. Denah Bookstein (District 1); and Mr. Carlos Hill (District 1) as elected representatives of the poor on the Human Welfare and Community Action Commission (HWCAC), having been voted onto the Commission at the HWCAC December 9, 2020 meeting, and that their terms expire December 9, 2022.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

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

BACKGROUND

The HWCAC is made up of fifteen members, nine of whom are appointed by Berkeley City Council members and six of whom are elected representatives of the poor. Berkeley Municipal Code Section 3.78.080 stipulates that elections of representatives of the poor are held biennially in the month of November in even numbered years. The next election will take place in November 2022. Subsection C of the code states, “...the remaining representatives of the poor...shall select a person to fill the vacancy until the next election...” and that the, “...name of the selected representatives shall be submitted to the City Council for confirmation.” BMC 3.78.030 (b) also states in part, that the remaining elected commission members shall recommend to the Council that the newly elected person fill out the term of the appointment.

There was only one elected representative of the poor at the meeting; therefore, the elected representative of the poor and the remaining commissioners voted (Roll Call

Vote: Ayes – Dunner, Sood, Behm-Steinberg, Kohn, Omodele, Sim, Romo; Noes – None; Abstain – None; Absent: Smith) to select Ms. Bookstein to fill one of the current vacancies;

and voted (Roll Call Vote: Ayes – Dunner, Sood, Behm-Steinberg, Kohn, Omodele, Sim, Romo; Noes – None; Abstain – None; Absent: Smith) to select Mr. Hill to fill one of the current vacancies.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager takes no position on the recommendation but supports maintaining full commission membership.

CONTACT PERSON

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

Attachments:

1: Resolution

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

CONFIRMING THAT MS. DENAH BOOKSTEIN AND MR. CARLOS HILL, MAY FILL TWO VACANCIES AMONG THE ELECTED REPRESENTATIVES OF THE POOR ON THE HUMAN WELFARE AND COMMUNITY ACTION COMMISSION (HWCAC), HAVING BEEN SELECTED AT THE HWCAC DECEMBER 9, 2020 MEETING

WHEREAS, Berkeley Municipal Code Section 3.78.080 stipulates that election of representatives of the poor are held biennially in the month of November in even numbered years, and the next election will take place in November 2022; and

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

WHEREAS, at the December 9, 2020 HWCAC regular meeting, the Commission elected Ms. Denah Bookstein (District 1) by unanimous roll-call vote to fill one vacancy with her term ending December 9, 2022; and

WHEREAS, at the December 9, 2020 HWCAC regular meeting, the Commission elected Mr. Carlos Hill (District 1) by unanimous roll-call vote to fill one vacancy with his term ending December 9, 2022; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that Ms. Denah Bookstein (District 1); and Mr. Carlos Hill (District 1); are confirmed as elected representatives of the poor serving on the Human Welfare and Community Action Commission until December 9, 2022.



Public Works Commission

CONSENT CALENDAR
January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Public Works Commission

Submitted by: Matthew Freiberg, Chairperson, Public Works Commission

Subject: Renaming of Four City Paths for Founders of the Berkeley Path Wanderers Association

RECOMMENDATION

Adopt a resolution pursuant to Berkeley's Policy for Naming and Renaming Public Facilities, the Public Works Commission (PWC) recommends the naming and renaming of four Berkeley Paths, as identified on the map at Attachment 1, in honor of the four women founders of the Berkeley Path Wanderers:

- Rename a path off of Keith Avenue near Shasta Road, currently named Eleanor Path, to "Eleanor Hall Gibson Path," after founder Eleanor Hall Gibson, who passed away in 2016;
- Name the following paths, subject to a 2/3 vote of the City Council as provided at Section 2(B) of the Policy, as follows:
 - The extension connector of Walnut Street through the UC complex between Hearst and Berkeley Way to be named "Ruth Armstrong Path" in honor of Ruth Armstrong (Moskovitz);
 - The path parallel to the top of Solano Avenue running along Los Angeles Avenue up the tunnel slope towards the Marin Circle, to be named "Jacque Ensign Way" in honor of Jacque Ensign; and
 - Path 71 to be named "Patricia DeVito Path" in honor of Pat DeVito.

In addition to the renaming of these four paths, the Public Works commission supports the inclusion of interpretive signage describing the contributions of each of the honored individuals.

FISCAL IMPACTS OF RECOMMENDATION

The Public Works Department estimated a cost of approximately \$2,500 for fabrication and installation of eight (8) signs, and has stated that funds are available under existing programs. Impacts, if any, on private owners are minimal given the location of each named path.

CURRENT SITUATION AND ITS EFFECTS

Motion to approve and submit to Council Path Renaming on October 1, 2020. Motion made by [Schueler](#) and seconded by [Erbe](#). Ayes:Freiberg, Erbe, Nesbitt, Hitchen, Humbert, Schueler, Krpata, Bernnan, Constantine ; Noes: none; Abstain: none.

Throughout Berkeley's history, important community work has been initiated, championed, and performed by women of Berkeley. One of the many great examples of women's' leadership in our City has been the Berkeley Path Wanderers, founded by Jacque Ensign, Eleanor Hall Gibson, Ruth Armstrong (nee Moskovitz), and Pat DeVito. Since 1997, Berkeley Path Wanderers has played an essential role in preserving and restoring pathways throughout Berkeley.

Though women have long served Berkeley with distinction, most streets and other named facilities in our City have been named after men. Because some of the paths in Berkeley are unnamed or have generic names taken from adjoining streets, they present a meaningful opportunity to name and rename public facilities. Naming four paths in honor of the women founders of the Berkeley Path Wanderers Association serves the dual purposes of honoring individuals who have done important work for our community and helping to rectify the gender imbalance in Berkeley's place names.

This action supports the City's Strategic Plan goal of creating a resilient, safe, connected, and prepared City.

BACKGROUND

On September 24, 2019, City Council issued a referral to the Public Works Commission to consider a recommendation regarding the naming and renaming of the four paths under consideration.

On January 9, 2020 and February 6, 2020, Aliana Constantinescu, the President of Berkeley Path Wanderers Association, presented to the PWC the history of the BPWA and its founding, the contributions that each of these founding members made to the community, and the value of the work that the BPWA continues to provide to the City of Berkeley. Aliana described how the four women met and formed BPWA, working collaboratively with each other, spending countless hours raising funds, working to resolve concerns of immediate neighbors, and working collaboratively and productively with the City. Aliana also highlighted the importance of these paths for public safety, access to public transit, and for the provision of healthy outdoor recreational activities.

Council Member Hahn further presented differences in how women and men tend to contribute to society, which may contribute to an inequity in recognition for those efforts.

ENVIRONMENTAL SUSTAINABILITY

Walking is a key strategy for reducing GHG emissions, as is taking public transit. Paths invite and support both of these activities. By supporting and highlighting the work of the

Berkeley Path Wanderers and drawing attention to our paths, we reinforce the importance of Berkeley's paths for sustainability, safety and health.

RATIONALE FOR RECOMMENDATION

Berkeley Path Wanderers is an organization that provides important services to the City of Berkeley on a 100% volunteer basis. Paths are created, upgraded and maintained, providing both an important public safety improvement in the case of fire or earthquake, and a delightful amenity for those who walk Berkeley for pleasure, or to access transit or shops. Honoring the four women founders of Berkeley Path Wanderers by naming paths after each of them is a fitting tribute to their important and lasting contributions to the City and community of Berkeley.

It is the opinion of the Public Works Commission, pending approval by a 2/3 majority of City Council, that this recommendation is not only appropriate, but also meets all of the relevant criteria for the renaming of a path as identified in the City Policy for Naming and Renaming public facilities, specifically Sections 4 and 5. These honorees have a record of outstanding service to their community and have made significant contributions towards the development of the City Path System. This process has also achieved all of the procedural requirements of the naming and renaming process as outlined in Section 5 of the policy.

ALTERNATIVE ACTIONS CONSIDERED

Leave the path names as they are today.

CITY MANAGER

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

CONTACT PERSON

Joe Enke, Supervising Civil Engineer, Public Works Commission Secretary (510) 981-6411

Attachment:

1: Resolution

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

NAMING OF FOUR CITY PATHWAYS FOR FOUR FOUNDERS OF THE
BERKELEY PATH WANDERERS ASSOCIATION

WHEREAS, refurbishment of the Berkeley path system enjoys broad and sustained support from residents and the City; and

WHEREAS, in the past women contributors have rarely been recognized in the naming of City assets; and

WHEREAS, the Public Works Commission has reviewed the request for renaming and found the proposal to be in accordance with the City's Naming Policy.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the path from Keith Avenue near Shasta Road, currently named Eleanor Path, be known as "Eleanor Hall Gibson Path".

The extension connector of Walnut Street through the UC complex between Hearst and Berkeley Way be named "Ruth Armstrong Path".

The path running between Solano Avenue and Los Angeles Avenues at be named "Jacque Ensign Way".

The unbuilt path from Sterling Avenue to Miller Avenue be renamed from "Path 71" to "Patricia DeVito Path.

In honor of the aforementioned founders of the Berkeley Path Wanderers Association (BPWA).



Cheryl Davila
Councilmember
District 2

REVISED AGENDA MATERIAL

Meeting Date: December 15, 2020

Item: Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025

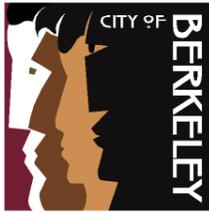
Submitted by: Councilmember Cheryl Davila

Revisions:

Council Report and Resolution amended to reflect the action at the Wednesday, November 18, 2020 Meeting of the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee, the Committee reviewed this item and voted with a positive recommendation with the following amended actions:

1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.
2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.

Blue font and strike throughs are tracked changes. Clean version at end of document.



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
January 21, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025

RECOMMENDATION

Adopt a resolution with the following actions:

~~1. Direct the City Attorney to prepare any draft ordinances to terminate the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025; this shall include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out such as cars over \$28K by 2023, cars over \$22K by 2024, and all cars by 2025, so as to actively create a used electric vehicle market for lower income customers.~~

(At the Wednesday, November 18, 2020 Meeting of the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee, the Committee reviewed this item and voted with a positive recommendation with the following amended actions)

1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.

~~2. Short term referral to the City Manager and/or designee(s) to report to the City Council in 90 days, in consultation with other City Departments with the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the sale of all electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates; the simplification of building code requirements for chargers; and the establishment of charging stations and related infrastructure to support all electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.~~

2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.

POLICY COMMITTEE RECOMMENDATION

On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Davila) to the send the item with a positive recommendation as amended by the committee with the following recommendation:

Adopt a resolution with the following actions: 1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars over \$28K by 2025, cars over \$23K by 2026, and all other cars by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.

2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments with the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between

an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.

Vote: All Ayes.

BACKGROUND

The earth is already too hot for safety. Humanity can no longer safely emit greenhouse gases if it wishes to avoid reaching irreversible climate tipping points.

Only one degree Celsius of global warming is already causing excessive and unnecessary damage worldwide. Together, Hurricanes Harvey and Irma are estimated to have cost upwards of \$290 billion dollars. Hurricane Maria has cost Puerto Rico up to \$90 billion. Hurricane Dorian was the most costly disaster in Bahamian history, estimated at \$7 billion in property damage. The combined death tolls from these hurricanes are unprecedented.

Closer to home, the devastating wildfires in California have killed dozens of people, burned thousands of homes and other structures, caused the evacuation of hundreds of thousands of people, and are estimated to cost the state upwards of \$80 billion a year.

Low income communities of color continue to suffer the most extreme impacts of climate disasters, underlying the environmental justice component of inaction. The nation and the world is in a climate emergency.

Extreme storm damage to refineries in Florida, Texas and along the Gulf Coast have caused price spikes in gasoline prices across the country. The volatility of fossil fuel prices will continue in a climate-disrupted future and will particularly impact low income residents.

Additionally, emissions from vehicles powered by fossil fuels and from production and refinement of fossil fuels contribute substantially to health problems for frontline communities living near freeways, oil drill sites and refineries. Disproportionately, the burden of dirty fuel energy is borne by low income communities of color, while reductions in fossil fuel burning would have a measurable impact on asthma-induced emergency room visits across.

To drastically reduce greenhouse gas emissions, countries such as Great Britain, India, China and Germany have already set an end date on the sales of gasoline and diesel powered passenger vehicles. Due to the short-term climate emission dangers posed by methane leaks associated with natural gas extraction, the sale of natural gas vehicles should be included in any ban.

Furthermore, automobile manufacturers such as Audi and Volvo are moving toward all-electric vehicle (EV) sales and General Motors, Ford, Land Rover and BMW are introducing new lines as well. A healthy secondary electric vehicle market is already making EVs more affordable than ever.

If the City is to continue to thrive and play a role as an international leader in climate action, all efforts must be made to reduce greenhouse gas emissions in every sector, including transportation, as soon as possible. In order to protect and promote the health of its residents, the City should make all efforts to reduce exposure to toxic emissions from freeways, oil drill sites and refineries.

FINANCIAL IMPLICATIONS

To be determined.

ENVIRONMENTAL SUSTAINABILITY

The Berkeley City Council unanimously passed the Climate Emergency Declaration in June 2018, and has a record of passing legislation to protect our climate. It is important, now more than ever to take the next step to insure that we are prepared and ready for the climate crisis we will face.

CONTACT PERSONS

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY IN SUPPORT OF INTRODUCING AN ORDINANCE TERMINATING THE SALE OF GASOLINE, DIESEL, NATURAL GAS VEHICLES THROUGHOUT THE CITY OF BERKELEY BY 2025

WHEREAS, The Berkeley City Council unanimously passed the Climate Emergency Declaration on June 12, 2018; and

WHEREAS, the cities of Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations; and

WHEREAS, There are over 48 cities throughout the United States who have declared, as well as over 1180 governments and 23 countries throughout the world. The declaration is the first step; and

WHEREAS, As unprecedented winter wildfires and ensuing mudslides destroyed parts of our City and region, a climate emergency mobilization of our City has never been more fiercely urgent; and

WHEREAS, Such an effort must end to the maximum extent technically feasible city-wide greenhouse gas emissions in every sector by 2025 and begin a large-scale effort to safely and justly remove carbon from the atmosphere; and

WHEREAS, Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate; and

WHEREAS, To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters; and

WHEREAS, Abnormal wildfires, mudslides and other demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impacted lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South; and

WHEREAS, Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen after Hurricanes Katrina, Sandy, Harvey, Irma, Maria and Dorian how environmentally and economically vulnerable have been generally left to fend for themselves; and

WHEREAS, The City must therefore aggressively move to reduce and remove greenhouse gas emissions and adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so,

Berkeley can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity; and

~~NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council directs the City Attorney be to prepare any draft ordinances to terminating the sale of gasoline, diesel and natural gas passenger vehicles by 2025; this shall include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out such as cars over \$28K by 2023, cars over \$22K by 2024, and all cars by 2025, so as to actively create a used electric vehicle market for lower income customers.~~

NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles; and

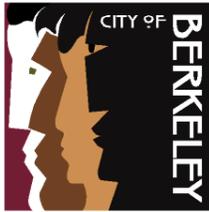
BE IT FURTHER RESOLVED, that the Berkeley City Council refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.

~~BE IT FURTHER RESOLVED, that the City Council directs the City Manager and Staff to be instructed to report to the Council in 90 days, in consultation with other City Departments on the feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the city by 2025; this review should also include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out such as cars over \$28K by 2023, cars over \$22K by 2024, and all cars by 2025, so as to actively create a used electric vehicle market for lower income customers.~~

~~BE IT FURTHER RESOLVED, that the City Council directs all City Departments and proprietaries to report back on maximum emergency reductions in greenhouse gas emissions from their operations feasible by the end of 2025, with the highest priority on an equitable and just transition in all sectors; and~~

~~BE IT FURTHER RESOLVED, that the City Council directs the City Manager and/or Designee to report on ways to promote and facilitate the sale of all electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates; the simplification of building code requirements for chargers; and the establishment of charging stations and related infrastructure to support all electric vehicles.~~

~~BE IT FURTHER RESOLVED, that the City Council directs the City Manager and/or Designee, in consultation with the Economic Development Department, be directed to report to Council in 90 days on any "just transition" elements related to the above action, including the impact and opportunities upon auto mechanics.~~



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025

RECOMMENDATION

Adopt a resolution with the following actions:

(At the Wednesday, November 18, 2020 Meeting of the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee, the Committee reviewed this item and voted with a positive recommendation with the following amended actions)

1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.
2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.

POLICY COMMITTEE RECOMMENDATION

On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Davila) to the send the item with a positive recommendation as amended by the committee with the following

recommendation:

Adopt a resolution with the following actions: 1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars over \$28K by 2025, cars over \$23K by 2026, and all other cars by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.

2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments with the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.

Vote: All Ayes.

BACKGROUND

The earth is already too hot for safety. Humanity can no longer safely emit greenhouse gases if it wishes to avoid reaching irreversible climate tipping points.

Only one degree Celsius of global warming is already causing excessive and unnecessary damage worldwide. Together, Hurricanes Harvey and Irma are estimated to have cost upwards of \$290 billion dollars. Hurricane Maria has cost Puerto Rico up to \$90 billion. Hurricane Dorian was the most costly disaster in Bahamian history, estimated at \$7 billion in property damage. The combined death tolls from these hurricanes are unprecedented.

Closer to home, the devastating wildfires in California have killed dozens of people, burned thousands of homes and other structures, caused the evacuation of hundreds of thousands of people, and are estimated to cost the state upwards of \$80 billion a year.

Low income communities of color continue to suffer the most extreme impacts of climate disasters, underlying the environmental justice component of inaction. The nation and the world is in a climate emergency.

Extreme storm damage to refineries in Florida, Texas and along the Gulf Coast have caused price spikes in gasoline prices across the country. The volatility of fossil fuel prices will continue in a climate-disrupted future and will particularly impact low income residents.

Additionally, emissions from vehicles powered by fossil fuels and from production and refinement of fossil fuels contribute substantially to health problems for frontline communities living near freeways, oil drill sites and refineries. Disproportionately, the burden of dirty fuel energy is borne by low income communities of color, while reductions in fossil fuel burning would have a measurable impact on asthma-induced emergency room visits across.

To drastically reduce greenhouse gas emissions, countries such as Great Britain, India, China and Germany have already set an end date on the sales of gasoline and diesel powered passenger vehicles. Due to the short-term climate emission dangers posed by methane leaks associated with natural gas extraction, the sale of natural gas vehicles should be included in any ban.

Furthermore, automobile manufacturers such as Audi and Volvo are moving toward all-electric vehicle (EV) sales and General Motors, Ford, Land Rover and BMW are introducing new lines as well. A healthy secondary electric vehicle market is already making EVs more affordable than ever.

If the City is to continue to thrive and play a role as an international leader in climate action, all efforts must be made to reduce greenhouse gas emissions in every sector, including transportation, as soon as possible. In order to protect and promote the health of its residents, the City should make all efforts to reduce exposure to toxic emissions from freeways, oil drill sites and refineries.

FINANCIAL IMPLICATIONS

To be determined.

ENVIRONMENTAL SUSTAINABILITY

The Berkeley City Council unanimously passed the Climate Emergency Declaration in June 2018, and has a record of passing legislation to protect our climate. It is important, now more than ever to take the next step to insure that we are prepared and ready for the climate crisis we will face.

CONTACT PERSONS

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY IN SUPPORT OF INTRODUCING AN ORDINANCE TERMINATING THE SALE OF GASOLINE, DIESEL, NATURAL GAS VEHICLES THROUGHOUT THE CITY OF BERKELEY BY 2025

WHEREAS, The Berkeley City Council unanimously passed the Climate Emergency Declaration on June 12, 2018; and

WHEREAS, the cities of Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations; and

WHEREAS, There are over 48 cities throughout the United States who have declared, as well as over 1180 governments and 23 countries throughout the world. The declaration is the first step; and

WHEREAS, As unprecedented winter wildfires and ensuing mudslides destroyed parts of our City and region, a climate emergency mobilization of our City has never been more fiercely urgent; and

WHEREAS, Such an effort must end to the maximum extent technically feasible city-wide greenhouse gas emissions in every sector by 2025 and begin a large-scale effort to safely and justly remove carbon from the atmosphere; and

WHEREAS, Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate; and

WHEREAS, To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters; and

WHEREAS, Abnormal wildfires, mudslides and other demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impacted lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South; and

WHEREAS, Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen after Hurricanes Katrina, Sandy, Harvey, Irma, Maria and Dorian how environmentally and economically vulnerable have been generally left to fend for themselves; and

WHEREAS, The City must therefore aggressively move to reduce and remove greenhouse gas emissions and adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeley can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity; and

NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles; and

BE IT FURTHER RESOLVED, that the Berkeley City Council refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.



~~Cheryl Davila~~Kate Harrison
Councilmember
District ~~42~~

CONSENT CALENDAR
~~January 19, 2020~~December 15, 2020

To: Honorable Mayor and Members of the City Council

From: ~~Councilmember Cheryl Davila and~~ Councilmember Kate Harrison

Subject: Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible ~~by only selling eggs and meat from cage-free facilities.~~

RECOMMENDATION

Adopt a Resolution calling upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible. ~~urge the to only selling eggs and meat from cage-free facilities.~~

BACKGROUND

California’s Proposition 12, the Prevention of Cruelty to Farm Animals Act, passed into law on the 2018 ballot. ~~V~~; ~~v~~oters approved Proposition 12 by an overwhelming 25-point margin.

71.6% of voters in Alameda county voted in favor of Proposition 12.

Proposition 12 ensures that egg-laying hens, mother pigs, and calves used for veal ~~aren’t~~are ~~not~~ confined in tiny cages, and that the products sold from these caged animals ~~aren’t~~are not sold in the California marketplace.

The Proposition 12 mandate came into effect for calves used for veal on December 31, 2019, and the standards for egg-laying hens and mother pigs ~~standards~~ have a compliance date of December 31, 2021.

In passing Proposition 12, California voters sent a strong message that it is cruel and inhumane to lock animals in cramped cages for their whole lives.

~~By approving Proposition 12, Californians and residents of Berkeley, CA made clear that they~~ and do not want eggs, pork and veal sold in the city to be sourced from animals confined in cages.

Proposition 12 builds on the momentum of McDonald's, Walmart, Costco, and 200 other major food companies, as well as numerous small businesses, that have pledged to stop sourcing eggs and other animal products from animals forced to live in extreme confinement.

Multiple food corporations headquartered in California, such as Safeway, Chipotle, Taco Bell, Jack in the Box, IHOP, and Bon Appétit Management Company have adopted cage-free policies.

There is a national trend to help curb factory farm abuses and move toward cage-free housing systems for egg-laying hens, mother pigs and calves used for veal.

In addition to California, eleven states have passed laws to phase out intensive confinement of farm animals.

The conditions required by Proposition 12 confer significant local benefits for food safety, public health and protection of the environment as well as the humane treatment of animals.

Berkeley, CA is known for its social responsibility and humane values, including its adoption of the [Fish Prize / Award](#) [Fur](#) Ban, Declawing Ban, and Meatless Mondays.

FINANCIAL IMPLICATIONS

To be determined.

ENVIRONMENTAL SUSTAINABILITY

Confined animal feeding operations (CAFOs, or "factory farms") pack enormous numbers of animals into small spaces by confining egg-laying hens, mother pigs, and veal calves in cages so restrictive they are rendered virtually immobile. Factory farms are a leading cause of air and water pollution. The prestigious Pew Commission on Industrial Farm Animal Production released the results of a 2.5-year investigation into the problems associated with factory farming. The Commission found that the factory farming system "often poses unacceptable risks to public health, the environment and the welfare of the animals themselves."

Proposition 12 helps reduce some of the worst environmental impacts of CAFOs. Encouraging companies to come into compliance with Proposition 12 as soon as possible sends a strong message about the importance of protecting rivers, air and land from factory farms.

CONTACT PERSONS

[Cheryl Davila](#) [Kate Harrison](#)

Councilmember District 4

510.981.7120 [7140](#)

cdavila@cityofberkeley.info kharrison@cityofberkeley.info

ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA SUPPORT CALLING UPON FOOD COMPANIES WITHIN BERKELEY TO IMPLEMENT THE REQUIREMENTS OF PROPOSITION 12 AS SOON AS POSSIBLE BY ONLY SELLING EGGS AND MEAT FROM CAGE-FREE FACILITIES

WHEREAS, California's Proposition 12, the Prevention of Cruelty to Farm Animals Act, passed into law on the 2018 ballot; voters approved Proposition 12 by an overwhelming 25-point margin; and

WHEREAS, 71.6% of voters in Alameda county voted in favor of Proposition 12; and

WHEREAS, Proposition 12 ensures that egg-laying hens, mother pigs, and calves used for veal are n'ot confined in tiny cages, and that the products sold from these caged animals are n'ot sold in the California marketplace; and

WHEREAS, The Proposition 12 mandate came into effect for calves used for veal on December 31, 2019, and the egg-laying hens and mother pigs standards have a compliance date of December 31, 2021; and

WHEREAS, In passing Proposition 12, California and Berkeley voters sent a strong message that it is cruel and inhumane to lock animals in cramped cages for their whole lives; and

~~WHEREAS, By approving Proposition 12, Californians and residents of Berkeley, CA made clear that they do not want eggs, pork and veal sold in the city to be sourced from animals confined in cages; and~~

WHEREAS, Proposition 12 builds on the momentum of McDonald's, Walmart, Costco, and 200 other major food companies, as well as numerous small businesses, that have pledged to stop sourcing eggs and other animal products from animals forced to live in extreme confinement; and

WHEREAS, Multiple food corporations headquartered in California, such as Safeway, Chipotle, Taco Bell, Jack in the Box, IHOP, and Bon Appétit Management Company have adopted cage-free policies; and

WHEREAS, There is a national trend to help curb factory farm abuses and move toward cage-free housing systems for egg-laying hens, mother pigs and calves used for veal; and

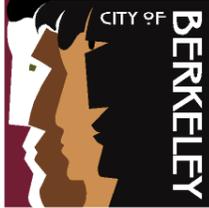
WHEREAS, In addition to California, eleven states have passed laws to phase out intensive confinement of farm animals; and

WHEREAS, The conditions required by Proposition 12 confer significant local benefits for food safety, public health and protection of the environment as well as the humane treatment of animals; and

WHEREAS, Berkeley, CA is known for its social responsibility and humane values, including its adoption of the ~~Fish Prize / Award~~Fur Ban, Declawing Ban, and Meatless Mondays.

NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley hereby calls upon supermarkets, restaurants ~~companies~~, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible ~~by only selling eggs and meat from cage-free facilities~~

~~BE IT FURTHER RESOLVED, that the City Council takes the monitoring and enforcement of animal cruelty laws seriously, and is committed to ensuring compliance of this important law.~~



Cheryl Davila
Councilmember
District 2

ACTION CALENDAR

January 19, 2021

(Continued from December 15, 2020)

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila and Councilmember Kate Harrison

Subject: Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.

RECOMMENDATION

Adopt a Resolution calling upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.

BACKGROUND

California's Proposition 12, the Prevention of Cruelty to Farm Animals Act, passed into law on the 2018 ballot; voters approved Proposition 12 by an overwhelming 25-point margin.

71.6% of voters in Alameda county voted in favor of Proposition 12.

Proposition 12 ensures that egg-laying hens, mother pigs, and calves used for veal aren't confined in tiny cages, and that the products sold from these caged animals aren't sold in the California marketplace.

The Proposition 12 mandate came into effect for calves used for veal on December 31, 2019, and the egg-laying hens and mother pigs standards have a compliance date of December 31, 2021.

In passing Proposition 12, California voters sent a strong message that it is cruel and inhumane to lock animals in cramped cages for their whole lives.

By approving Proposition 12, Californians and residents of Berkeley, CA made clear that they do not want eggs, pork and veal sold in the city to be sourced from animals confined in cages.

Proposition 12 builds on the momentum of McDonald's, Walmart, Costco, and 200 other major food companies, as well as numerous small businesses, that have pledged to stop sourcing eggs and other animal products from animals forced to live in extreme confinement.

Multiple food corporations headquartered in California, such as Safeway, Chipotle, Taco Bell, Jack in the Box, IHOP, and Bon Appétit Management Company have adopted cage-free policies.

There is a national trend to help curb factory farm abuses and move toward cage-free housing systems for egg-laying hens, mother pigs and calves used for veal.

In addition to California, eleven states have passed laws to phase out intensive confinement of farm animals.

The conditions required by Proposition 12 confer significant local benefits for food safety, public health and protection of the environment as well as the humane treatment of animals.

Berkeley, CA is known for its social responsibility and humane values, including its adoption of the Fish Prize / Award Ban, Declawing Ban, and Meatless Mondays.

FINANCIAL IMPLICATIONS

To be determined.

ENVIRONMENTAL SUSTAINABILITY

Confined animal feeding operations (CAFOs, or "factory farms") pack enormous numbers of animals into small spaces by confining egg-laying hens, mother pigs, and veal calves in cages so restrictive they are rendered virtually immobile. Factory farms are a leading cause of air and water pollution. The prestigious Pew Commission on Industrial Farm Animal Production released the results of a 2.5-year investigation into the problems associated with factory farming. The Commission found that the factory farming system "often poses unacceptable risks to public health, the environment and the welfare of the animals themselves."

Proposition 12 helps reduce some of the worst environmental impacts of CAFOs. Encouraging companies to come into compliance with Proposition 12 as soon as possible sends a strong message about the importance of protecting rivers, air and land from factory farms.

CONTACT PERSONS

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA SUPPORT CALLING UPON FOOD COMPANIES WITHIN BERKELEY TO IMPLEMENT THE REQUIREMENTS OF PROPOSITION 12 AS SOON AS POSSIBLE BY ONLY SELLING EGGS AND MEAT FROM CAGE-FREE FACILITIES

WHEREAS, California's Proposition 12, the Prevention of Cruelty to Farm Animals Act, passed into law on the 2018 ballot; voters approved Proposition 12 by an overwhelming 25-point margin; and

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WHEREAS, In addition to California, eleven states have passed laws to phase out intensive confinement of farm animals; and

WHEREAS, The conditions required by Proposition 12 confer significant local benefits for food safety, public health and protection of the environment as well as the humane treatment of animals; and

WHEREAS, Berkeley, CA is known for its social responsibility and humane values, including its adoption of the Fish Prize / Award Ban, Declawing Ban, and Meatless Mondays.

NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley hereby call upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.

BE IT FURTHER RESOLVED, that the City Council takes the monitoring and enforcement of animal cruelty laws seriously, and is committed to ensuring compliance of this important law.



Open Government Commission

ACTION CALENDAR
January 19, 2021

To: Honorable Mayor and Members of the City Council
 From: Brad Smith, Chair, Open Government Commission
 Submitted by: Samuel Harvey, Secretary, Open Government Commission
 Subject: Amendments to the Berkeley Lobbyist Registration Act

RECOMMENDATION

Adopt an ordinance amending the Berkeley Lobbyist Registration Act (BMC Chapter 2.09) to incorporate the recommendations of the Open Government Commission (OGC).

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

These recommended amendments to the Berkeley Lobbyist Registration Act were approved by the Open Government Commission at its regular meeting of September 17, 2020

Action: Motion to approve proposed amendments to Lobbyist Registration Act and send to City Council.

Vote: M/S/C: Metzger/Sheahan; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, McLean, Tsang, Smith Noes: none; Abstain: none; Absent: none.

This recommendation is provided by the OGC pursuant to its authority under BMC § 2.06.190.A.2 to “propose additional legislation or procedures that it deems advisable to ensure the City’s compliance with ... the Lobbyist Registration Act, and advise the City Council as to any other action or policy that it deems advisable to enhance open and effective government in Berkeley.” This ordinance may be adopted by majority vote of the Council. The Council may amend the proposed ordinance without resubmitting the ordinance to the OGC.

BACKGROUND

The Berkeley Lobbyist Registration Act (BMC Chapter 2.09) was adopted by the City Council on October 16, 2018 and went into effect on January 1, 2020. During the first year of implementation, City staff and the OGC have fielded a variety of questions from

residents and entities subject to the Act. During this period, staff and the OGC have noted some areas where the Act could benefit from amendments in order to facilitate easier compliance and provide greater clarity while ensuring fairness and transparency.

Particularly, staff have identified areas where the Act's provisions pertaining to registration, payment of fees, lobbyist training and reporting are silent as to their application in certain scenarios. Additionally, the OGC has noted that a number of organizations subject to the Act have expressed concern about the burdensomeness of complying with the Act. The OGC therefore is recommending the Act be amended to enable entities and organizations that employ in-house lobbyists to prepare and submit all required registrations, reports and declarations on behalf of their in-house lobbyists to simplify compliance with the Act. Finally, the OGC is recommending a number of minor "clean-up" changes which generally provide clarity without substantively altering the affected provisions.

To these ends, the amendments to the Act in the attached Ordinance make the following changes and clarifications:

Definitions:

1. Clarifies that, in the case of an in-house lobbyist, the "client" for the sake of registration and reporting is the in-house lobbyist's employer. (BMC § 2.09.050.C)
2. Adds clarifying language to the definition of "governmental action." (BMC § 2.09.050.K)
3. Creates three new defined terms as part of clarifying the treatment of in-house lobbyists and organizations: "in-house local governmental lobbyist," "lobbyist employer," and "lobbying firm." (BMC § 2.09.050.M-O)
4. Clarifies that a lobbyist includes someone paid to lobby by their employer regardless of whether they are salaried or paid hourly. (BMC § 2.09.050.P)

Registration and reporting:

1. Allows a grace period of ten business days for registration fee payment with provision that failure to timely pay will invalidate registration. (BMC § 2.09.050.E-F)
2. Provides that registration fees are non-refundable. (BMC § 2.09.060.E)
3. Provides that registrations and fees are non-transferrable. (BMC § 2.09.060.G)
4. Provides/clarifies that failure to complete lobbyist training and file signed declaration within 30 days of registration is a violation of the Act and may result in invalidation of registration. (BMC § 2.09.080.D)
5. Adds 501(c)(6) organizations (i.e., non-profit business leagues, chambers of commerce, real-estate boards, boards of trade) to groups exempt from paying the registration fee. (BMC § 2.09.060.G)
6. Clarifies that proof of tax-exempt status includes IRS determination letter or other documentation deemed sufficient by City Clerk. (BMC § 2.09.060.G)

7. Clarifies that a lobbyist who terminates lobbying activities must file a final disclosure report and final registration indicating termination. (BMC § 2.09.070)
8. Clarifies that a lobbyist must submit an amended registration form when they add a new client. (BMC § 2.09.170)

Exemptions:

1. Adds language clarifying but not changing exemption for persons acting on behalf of a union. (BMC § 2.09.090.H)
2. Adds exemption for an attorney acting on behalf of a party to litigation or administrative proceeding. (BMC § 2.09.090.I)

Registration and reporting by businesses and organizations retaining in-house lobbyists:

1. Provides that a lobbyist-employer (e.g., company or organization employing an in-house lobbyist) may prepare and submit registrations, reports and declarations on behalf of in-house lobbyists. (BMC §§ 2.09.120, 2.09.150)
2. Provides that an in-house lobbyist whose employer has four or fewer employees must file annual rather than quarterly reports. (BMC § 2.09.140)

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The proposed amendments to the Berkeley Lobbyist Registration Act will provide clarification, simplify compliance for certain regulated persons and entities, and improve the Act's ability to provide the public important information about lobbying in the City of Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

CONTACT PERSON

Brad Smith, Chair, Open Government Commission, (510) 981-6998

Samuel Harvey, Commission Secretary, Open Government Commission (510) 981-6998

Attachments:

1. Ordinance

ORDINANCE NO. -N.S.

AMENDMENTS TO THE BERKELEY LOBBYIST REGISTRATION ACT

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

That Chapter 2.09 of the Berkeley Municipal Code (Berkeley Lobbyist Registration Act) is hereby amended to read as follows:

Chapter 2.09

LOBBYIST REGISTRATION AND REGULATIONS

Article 1. General Provisions

Section 2.09.010 Title.

This chapter shall be known as the Berkeley Lobbyist Registration Act, hereafter "the Act."

Section 2.09.020 Findings.

A. Democracy in our representative form of government requires that the public have an opportunity to know as much as possible what lobbying efforts are taking place that may affect decisions being made by our elected officials, City staff, boards, and commissions.

B. To the extent possible, it is the government's responsibility to balance the responsibility to ensure the health, safety, and general welfare of the public at large in a fiscally and environmentally sustainable manner.

Section 2.09.030 Purpose.

Therefore, the purpose of this ordinance is to codify certain existing practices, as well as to adopt new practices, to ensure that the public has an adequate opportunity to be informed of the City's activities and to communicate its concerns to its elected and appointed officials.

Article 2. Definitions and Interpretation of This Act

Section 2.09.040 Words and phrases.

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12) and the Political Reform Act of 1974, California Government Code 81000 — 91014, hereafter the Political Reform Act, as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires.

Section 2.09.050 Definitions.

For the purposes of this Act, the following definitions shall be applicable:

A. "Campaign consultant" means any person or entity that receives or is promised

economic consideration equaling \$1,000 or more in a calendar year for campaign consulting services. The term "campaign consultant" includes any person or entity that subcontracts with a campaign consultant to provide campaign consulting services, and that receives or is promised economic consideration equaling \$1,000 or more in a calendar year for providing campaign consulting services. The term "campaign consultant" does not include attorneys who provide only legal services, accountants who provide only accounting services, pollsters who provide only polling services, and treasurers who provide only those services which are required of treasurers by the Political Reform Act and the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

B. "Campaign consulting services" means participating in campaign management or developing or participating in the development of campaign strategy.

C. "Client" means the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed. In the case of an in-house local governmental lobbyist, "client" means the lobbyist employer of which the in-house local governmental lobbyist is an employee, officer or director. An individual member of an organization shall not be deemed to be a "client" solely by reason of the fact that such member is individually represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.

D. "Committee" shall be defined as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

E. "Contractor" means any party to an agreement in which the value of the consideration exceeds one thousand dollars (\$1,000), and, (1) The City is a party, or (2) the agreement or its effectiveness is in any way dependent or conditioned upon approval by the City Council or any board or commission, officer or employee of the City.

F. "Contribution" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

G. "Controlled committee" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), but shall not include any state committees.

H. "Employee" shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).

I. "Gift" shall be defined as set forth in the Political Reform Act, and the regulations adopted thereunder.

J. "Gift of travel" shall mean payment, advance, or reimbursement for travel, including transportation, lodging, and food and refreshment connected with the travel.

K. "Governmental action" means any discretionary administrative or legislative action of the City other than an action which is ministerial in nature. An action is ministerial in nature if it does not require the City official or employee who is the subject of the communication or contact to exercise any discretion concerning an outcome or course of action.

L. "Influence" or "influencing" means contacting a City elected or appointed official or employee, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions.

M. "In-house local governmental lobbyist" means a local governmental lobbyist who is an employee, officer or director of a business, firm or organization and who lobbies solely on behalf of that business, firm or organization. "In-house local governmental lobbyist" does not include a local governmental lobbyist who is a partner, owner, officer or employee of a lobbying firm.

N. "Lobbyist employer" means any business, firm, or organization for which an employee, officer or director qualifies as an in-house local governmental lobbyist. "Lobbyist employer" does not include a lobbying firm.

O. "Lobbying firm" means any business entity which receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing any proposed or pending governmental action of the City on behalf of any other person or entity, and any partner, owner, officer, or employee of the business entity is a local governmental lobbyist. "Lobbying firm" does not include a bona fide trade, labor or membership organization which is ongoing in nature and whose membership services are not limited to influencing governmental action of the City.

M. P. "Local governmental lobbyist" means any individual who: (1) receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, to communicate directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City; or (2) whose duties as a ~~paid~~salaried employee, officer or director of any ~~corporation, organization or association~~business, firm, or organization include communication directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City. No person is a local governmental lobbyist by reason of activities described in Section 2.09.090. In case of any ambiguity, the definition of "local governmental lobbyist" shall be interpreted broadly.

M.Q. "Payment" means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

N.R. "Person doing business with the City" means any person whose financial interests are materially affected by governmental action as defined by Section 2.09.050(K). It includes persons currently doing business with the City, planning to do business with the City, or having done business with the City within two years. For purposes of this Act a person's financial interests shall not be found to be materially affected by the issuance of any license or permit which does not require the exercise of discretion by City elected or appointed officials or employees.

O.S. "Public event" shall mean an event or gathering that any member of the public may attend, has been publicly announced and publicized in advance, and for which there is no admission cost or fee.

P.T. "Public official" means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the State of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.

Q.U. "Registered client" means any client of a local governmental lobbyist listed as part of the requirements of sections 2.09.060 and 2.09.140.

~~R.V.~~ "State committee" shall mean a committee that makes contributions or expenditures to support or oppose candidates or measures voted on in state elections, or in more than one county.

Article 3. Registration of Lobbyists

Section 2.09.060 Registration with the Open Government Commission.

A. No person shall act as local governmental lobbyist before registering as a local governmental lobbyist with the Open Government Commission, through the office of the City Clerk.

B. At the time of registering, the local governmental lobbyist shall file with the City Clerk, in writing:

1. His or her name, business address, e-mail address, and business telephone number.
2. The name, business address, and business telephone number of each client for whom the local governmental lobbyist attempts or receives compensation to influence any proposed or pending governmental action of the City.
3. The name, business address, and business telephone number of the local governmental lobbyist's employer, firm or business affiliation.

C. The local governmental lobbyist shall reregister annually during the month of January and at that time shall resubmit the required information.

D. Local governmental lobbyists shall amend any information submitted to the Open Government Commission through registration and quarterly disclosures within five business days of the changed circumstances that require correction or updating of such information.

E. ~~At the time of~~ Within ten business days of initial registration, and ~~during~~ each annual registration, each local governmental lobbyist shall pay a non-refundable fee of \$500.

F. Failure to pay the annual fee shall ~~constitute a termination of~~ invalidate a local governmental lobbyist's registration with the Open Government Commission. The Open Government Commission is also authorized to establish additional processes for the termination of a local governmental lobbyist's registration.

G. The City Clerk shall waive all registration fees for any employee, officer or director of a tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Sections 501(c)(3), or 501(c)(4), or 501(c)(6) so long as they are acting in that capacity. Proof of an organization's tax-exempt status shall include an Internal Revenue Service determination letter or other documentation deemed sufficient by the City Clerk.

H. The City Clerk shall deposit all fees collected pursuant to this Section in the General Fund of the City of Berkeley.

I. A local governmental lobbyist's registration and fee are not transferrable to any other local governmental lobbyist.

Section 2.09.070 Cessation of ~~employment~~ Lobbying Activities.

A local governmental lobbyist who has terminated all activities requiring registration shall ~~notify the City Clerk of that fact~~ file a final disclosure report no later than the date required by Section 2.09.140 along with a final registration form indicating that all lobbying activities have terminated, and thereupon shall be relieved of any further obligations under this Act until such time as he or she commences activity requiring registration.

Section 2.09.080 Lobbyist training.

A. Each local governmental lobbyist must complete a lobbyist training session offered by the Open Government Commission, through the Office of the Clerk, within 30 days of the local governmental lobbyist's initial registration. Thereafter, local governmental lobbyists shall engage in additional training sessions as required by the Open Government Commission, at its discretion.

B. The Open Government Commission shall make local governmental lobbyist training sessions available on its website.

C. On or before the deadline for completing any required local governmental lobbyist training session, a local governmental lobbyist must file a signed declaration with the Open Government Commission stating, under penalty of perjury, that the local governmental lobbyist has completed the required training session.

D. Failure to file the signed declaration required by this section within 30 days of the local governmental lobbyist's initial registration shall constitute a violation of this Act. The Open Government Commission may invalidate a registration for failure to comply with this section.

Section 2.09.090 Exceptions.

The provisions of this Act shall not apply:

A. To a public official acting in his or her official capacity.

B. To the publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.

C. To a person specifically invited by the City Council or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the City charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation.

D. To a person who, without extra compensation and not as part of, or in the ordinary course of, his or her regular employment, presents the position of his or her organization when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.

E. To designated representatives of a recognized employee organization whose activities are limited to communicating with elected or appointed City officials or their representatives regarding (1) wages, hours and other terms and conditions of employment pursuant to the procedures set forth in Government Code Sections 3500—3510, or (2) the administration, implementation or interpretation of an existing employment agreement.

F. To persons whose only activity is to (1) submit a bid on a competitively bid contract, (2) respond to a request for proposal or qualifications, or (3) apply for grant funding or (4) negotiate the terms of a written contract or grant if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award or terms of a contract or grant with any elected or appointed official, unless their attempts are limited to speaking during public comment at a publicly noticed meeting.

G. To any individuals serving in their professional capacity (e.g. attorneys, architects, or engineers), who are employed by a local government lobbyist, and whose attempts to influence governmental action are limited to:

(1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public to represent or testify on behalf of a proposed development;

(2) Preparing or submitting documents or writings in connection with the proposed development for use at a public meeting, public hearing, or other official proceeding open to the public; and

(3) Contacting city employees or agents working under the direction of the city manager directly relating to (1) and (2) above, or contacting elected or appointed City officials directly relating to (1) and (2) above.

H. ~~To Ppersons appearing or acting on behalf of employed by, or a member of,~~ a labor union of which they are an employee or member.

I. To an attorney who communicates with a City official or employee regarding representation of a party or potential party to pending or actual litigation, or to a pending or actual administrative enforcement proceeding, brought by or against the City or City agent, officer or employee.

Section 2.09.100 Failure to Register.

If the Open Government Commission determines that a person is subject to registration and he or she fails to register within seven days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the City Council or other board or commission at a noticed public meeting. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later.

Section 2.09.110 Availability of information.

All registration information shall be retained by the City Clerk for a period of five years from the date of filing, shall constitute part of the public records of the City, and shall be open to public inspection.

Section 2.09.120 Filing under penalty of perjury.

All information required by this Act shall be filed with the City Clerk on forms prescribed by the Open Government Commission, and accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury. In the case of an in-house local governmental lobbyist, the lobbyist employer, or agent thereof, may complete and file any declaration required by this section.

Section 2.09.130 Records.

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under this Chapter.

Article 4. Disclosure of Lobbying Activities and Audits

Section 2.09.140 Quarterly/Annual disclosure.

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the City Clerk, unless the local governmental lobbyist is a sole proprietorship, is an in-house local governmental lobbyist who lobbies solely on behalf of a lobbyist employer with four or fewer employees, or works for a lobbying firm with four or fewer employees, in which case they shall file annually. The

reports shall be due no later than thirty (30) days after the end of the reporting period. The report shall contain the following information:

A. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.

B. For each item of governmental action sought to be influenced, the name and title of each City employee, or elected or appointed City official with whom the local governmental lobbyist specifically met or communicated.

C. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.

D. If any local governmental lobbyist, or a registered client at the behest of a local governmental lobbyist, employs or requests, recommends or causes a client of the local governmental lobbyist to employ, and such client does employ, any City employee, or elected or appointed City official, in any capacity whatsoever, or a member of the immediate family of one of these individuals, the local governmental lobbyist shall disclose (1) the name of the person employed or hired, (2) a description of the services actually performed, and (3) the total payments made to the City employee or elected or appointed City official during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

E. If any elected City officeholder or candidate for elected City office employs or hires a local governmental lobbyist to provide compensated services to the officeholder or candidate, the local governmental lobbyist shall disclose (1) the name of the person who employed or hired the local governmental lobbyist, (2) a description of the services actually performed, and (3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

F. If a local governmental lobbyist solicits any person to make a contribution to an elected City officeholder, candidate for City office or to any committee or campaign fund controlled by such officeholder or candidate, the local governmental lobbyist shall disclose the names of the persons whom the local governmental lobbyist solicited, and the officeholder or candidate for whose benefit each solicitation was made. A solicitation does not include a request for a contribution made:

1. in a mass mailing sent to members of the public;
2. in response to a specific request for a recommendation;
3. to a gathering which members of the public may attend; or
4. in a newspaper, on radio or television, or in any other mass media.

A local governmental lobbyist does not "solicit" solely because his or her name is printed with other names on stationery or a letterhead used to request contributions. If a local governmental lobbyist sources a donation from more than fifty individual members or employees of a corporation, union or other association that is a registered client of the local governmental lobbyist, or if the local governmental lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client of the local governmental lobbyist, the local governmental lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the lobbyist actually solicited.

Section 2.09.150 Registration and filing of disclosures by organizations.

A lobbyist employer, or agent thereof, may complete and submit any registration or local governmental lobbyist disclosure on behalf of any in-house local governmental lobbyist it employs. The Open Government Commission is authorized to establish procedures to permit the registration and filing of local governmental lobbyist disclosures by a business, firm, or organization on behalf of the in-house local governmental~~individual local governmental~~ lobbyists employed by those businesses, firms, or organizations.

Section 2.09.160 Audits.

At least once every year, the Open Government Commission shall initiate audits of at least 5% of registered local governmental lobbyists, at minimum one local governmental lobbyist, selected at random. At the request of the Open Government Commission, the City Clerk may assist in conducting these audits. This requirement shall not restrict the authority of the Open Government Commission or the City Clerk to undertake any other audits or investigations of a local governmental lobbyist authorized by law or regulation. Within ten business days of a request by the Open Government Commission or City Clerk, a local governmental lobbyist or anyone required to register as a local governmental lobbyist shall provide the requested documents required to be retained under this Chapter. (Ord. 7629-NS § 1 (part), 2018)

Article 5. Prohibitions

Section 2.09.170 No unregistered employment or activity.

A. A local governmental lobbyist shall not engage in any activity on behalf of a client as a local governmental lobbyist unless such local governmental lobbyist is registered and has listed such client with the City Clerk. A local governmental lobbyist shall submit an amended registration form indicating the addition of a new client before lobbying on behalf of that client.

B. No person shall accept compensation for acting as a local governmental lobbyist except upon condition that he or she forthwith register as required by this Act.

Section 2.09.180 Personal obligation of City officials prohibited.

Local governmental lobbyists, or clients shall abstain from carrying out any act with the express purpose and intent of placing any elected or appointed City official or City employee under personal obligation to such local governmental lobbyist, client, contractor or person.

Section 2.09.190 Deception prohibited.

No local governmental lobbyist or client shall deceive or attempt to deceive a City employee, or elected or appointed City official as to any material fact pertinent to any pending or proposed governmental action.

Section 2.09.200 False appearances prohibited.

No local governmental lobbyist or client shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a city employee in the name of any fictitious person or in the name of any real person without the real person's consent.

Section 2.09.210 Prohibited representations.

No local governmental lobbyist or client shall represent, either directly or indirectly, orally or in writing that such person can control or obtain the vote or action of any City employee, or elected or appointed City official.

Section 2.09.220 Restrictions on payments and expenses benefiting local public officials.

A. No local government lobbyist or a registered client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. This \$240 limit may be adjusted every four years by the OGC to account for inflation. The payments and expenses specified in subsections 2.09.220(A)-(D) include gifts, honoraria and any other form of compensation but do not include:

1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;
3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present;
4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
5. informational material;
6. campaign contributions not to exceed the limit imposed by the Berkeley Election Reform Act or state law, as applicable; and
7. salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

For purposes of the gift limits imposed by subsections (A)-(C), gifts shall be aggregated set forth in California Code of Regulations, Title 2, Section 18945.1, as it may hereafter be amended.

B. No lobbyist or a lobbyist's registered client shall make any payment to a third-party for the purpose of making any payment or incurring any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.

C. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.

D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.

Section 2.09.230 Restriction on campaign consultants lobbying current and former clients.

A. No campaign consultant, individual who has an ownership interest in the campaign consulting business, or employee of the campaign consultant shall lobby any elected or appointed City official of the city who is a current or former client of the campaign consultant.

B. This prohibition shall not apply to:

1. an employee of a campaign consultant whose sole duties are clerical; or
2. an employee of a campaign consultant who did not personally provide campaign consulting services to the officer of the city with whom the employee seeks to communicate in order to influence local legislative or administrative action.

C. The exceptions in Subsection (B) shall not apply to any person who communicates with an officer of the city in his or her capacity as an employee of the campaign consultant who is prohibited by Subsection (A) from making the communication.

D. Whenever the following words or phrases are used in this Section, they shall be defined as follows:

1. "Current client" shall mean a person for whom the campaign consultant has been contracted to provide campaign consulting services. If such person is a committee as defined by Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), the current client shall be any individual who controls such committee; any candidate that such committee was primarily formed to support; and any proponent or opponent of a ballot measure that the committee is primarily formed to support or oppose.
2. "Employee" shall mean an individual employed by a campaign consultant, but does not include any individual who has an ownership interest in the campaign consultant that employs them.
3. "Former client" shall mean a person for whom the campaign consultant has terminated all campaign consulting services within the past twenty-four (24) months.

Article 6. Enforcement

Section 2.09.240 Rules and regulations.

The Open Government Commission may adopt, amend, and rescind rules, procedures, and regulations to carry out the purposes of this Chapter, and to govern the Commission's procedures to enforce this Chapter.

Section 2.09.250 Complaint, investigative procedures, and probable cause.

A. Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the Open Government Commission. The Open Government Commission may initiate an investigation of a possible violation of this chapter based on information brought before the commission, including information presented by staff.

B. After receiving a complaint or information regarding a possible violation of this chapter, the Open Government Commission shall decide whether to (1) refer to the secretary to investigate, to the extent the secretary has not done so; (2) dismiss the complaint; or (3) find probable cause that a violation of this chapter has occurred.

Section 2.09.260 Notice and hearing on violations.

After the Open Government Commission determines there is probable cause for believing that a provision of this Chapter has been violated and makes a good faith effort to give reasonable written notice to the person or persons involved in the allegation using the contact information with which they registered, it may hold a hearing to determine if a violation has occurred, and may determine an appropriate remedy if a violation is found. The hearing pursuant to this section shall be conducted in an impartial manner, consistent with the requirements of due process. A record shall be maintained of the proceedings, and a report summarizing the facts, issues, and any remedial actions shall be issued by the commission following the conclusion of the hearing.

The commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures. All interested persons may participate in the hearing.

Section 2.09.270 Violations – commission action.

If the Open Government Commission finds a violation of this Act, the Open Government Commission may:

(1) Find mitigating circumstances and take no further action; (2) issue a public statement or reprimand, (3) impose a civil penalty in accordance with this Act, or (4) take other action as specified in 2.06.190(A)(1).

Section 2.09.280 Civil actions.

If the commission has reason to believe that a violation of this chapter has occurred or is about to occur, it may also institute action at law or equity to enforce and compel compliance with the provision of this chapter. Any resident of the City who believes that a violation of this chapter has occurred, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this chapter.

Section 2.09.290 Civil penalties.

A. Except as otherwise specified in this Act, the Open Government Commission may impose penalties of up to one thousand dollars (\$1,000) for each violation or, if the violation was a prohibited payment, expense or gift under section 2.09.220, of up to three times the value of each prohibited payment, expense or gift.

B. If any civil penalty imposed by the Open Government Commission is not timely paid, the Open Government Commission shall refer the debt to the appropriate City agency or department for collection.

C. For local government lobbyists found to have repeatedly over more than one quarter, knowingly, or willfully violated the Act, the Open Government Commission may impose penalties of up to twenty-five thousand dollars (\$25,000) for any violation, using factors adopted by the Open Government Commission through its rules, regulations, or procedures.

Section 2.09.300 Criminal violation.

A. Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor.

B. The prosecution of any misdemeanor violation of this Act shall commence within four years after the date on which the alleged violation occurred.

C. No person convicted of a misdemeanor violation of this Act may act as a local governmental lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction.

Section 2.09.310 Joint and several liability.

A. Should two or more persons be responsible for any violation under this Chapter, they may be jointly and severally liable.

B. The client or employer of a local governmental lobbyist shall be jointly and severally liable for all violations of this Chapter committed by the local governmental lobbyist in connection with acts or omissions undertaken on behalf of that client or employer.

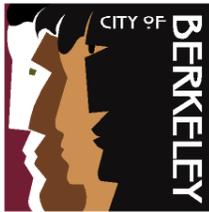
C. If a business, firm or organization registers or files local governmental lobbyist disclosures on behalf of its employees pursuant to Section 2.09.150 the business, firm or organization may be held jointly and severally liable for any failure to disclose its employees' lobbying activities.

Section 2.09.320 Effective date.

The effective date of this Act shall be January 1, 2020. The Act may be effective at an earlier date if administratively feasible.

Section 2.09.330 Severability.

The provisions of this Chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Chapter, or the validity of its application to other persons or circumstances.



Cheryl Davila
Councilmember
District 2

ACTION CALENDAR
January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila (Author) and Ben Bartlett (Co-Sponsor)

Subject: Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley

RECOMMENDATION

Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley, and commit to eliminate all socioeconomic barriers to health equity. In addition:

1. Declare the resolution an emergency measure for the immediate preservation of public peace, property, health, or safety, especially during the COVID-19 pandemic and it shall take effect and be in force immediately upon its adoption.
2. Budget Referral to convene a series of town hall sessions for all community members, City workers, and small business owners to discuss the concerns of people of color and marginalized community members, and develop strategies and programs (especially Mental Health Programs for the unhoused stay housed) for greater inclusivity, understanding, empathy, compassion, and unity. The purpose of these meetings should be to strengthen anti-racist capacity building and commitments within the city. This can be done by discussing the current quantitative and qualitative reality of racial justice and injustice, racism and non-racism in all areas of city life toward developing measures to ensure the achievement racial equity in Berkeley. These town halls, strategies and programs could include: the definition and lived experience of racism in systemic and institutional forms the effects and trauma caused by them, and provide resources to combat implicit bias on all levels. Community partners to consider to facilitate such workshops include Beyond Diversity: Courageous Conversations About Race and Showing Up for Racial Justice (SURJ).
3. City Council will establish a working group to promote racial equity as well as the development of programs to address racial equity in this City.
4. Direct the City Manager or his/her designee to record COVID-19 data by race/ethnicity and to explore greater health disparities that have emerged as a result of this crisis.
5. Direct the City Manager or his/her designee to hold several fundraisers at town hall sessions for black-owned small businesses, research of state and federal RFPs for the purpose of grants acquisitions for program development in the City of Berkeley that have been affected by Covid-19 and/or recent protests.
6. Direct the City Manager or his/her designee to prepare a Health in All Policies Ordinance (see attached City of Richmond Ordinance) for Council review and adoption, critically evaluating the public health impact of all legislative and budgetary proposals, especially upon people of color and marginalized community members.

7. Direct the City Manager or his/her designee to adopt a mandatory requirement of 16 hours of ongoing annual online and in-person training on implicit bias, cultural sensitivity, and cultural humility for City Employees, commissioners, and community members; and
8. Direct the City Manager or his/her designee in partnership with the Berkeley Public Health Division and the Mental Health Division to develop a Strategic Plan for Health Equity, with the inclusion of a diverse group of staff with expertise in this subject matter and begin immediate implementation of recommendations.
9. Direct the City Manager or his/her designee to have an antiracism dashboard that delineates and tracks progress towards specific antiracist goals. This would involve: 1) tracking and measuring specific data that shows the extent to which racism has become a public health crisis; which would in turn enable 2) the City and the Community to dramatically reduce instances of racism, if not totally eliminate some of them; and 3) demonstrate to constituents that the other recommendations have made, and must continue to make, a tangible difference. The dashboard shall include: analyzing hospital infant mortality by race; tracking food insecurity among Berkeley residents, and correlation to racial demographics; analyzing the effects of biological weathering and resultant mental health challenges on immune strength for black individuals, and studying mental health resource availability and outreach targeting at-risk black communities; analyzing the administration of medications and health therapies by race, in an attempt to understand Berkeley health providers position vis a vis the systemic under-prescription and under-treatment of Black patients pain; tracking violent incidents targeting queer Black residents, and studying the availability of mental health resources and culturally competent healthcare for queer Black patients; identifying the largest sources of corporate environmental or carcinogenic pollution in Berkeley, and the racial demographics of people with prolonged exposure to those regions (i.e. workers and residents within range of toxic substances); identifying the locations of city waste storage/processing and the racial demographics of those most closely exposed; examining property taxes by neighborhood, and correlation to school resources and student racial demographics; examining the availability of stable and affordable Internet access, as necessary for all possible student activities offered and required by Berkeley public schools;
10. Collaborate with the Berkeley Unified School District and the Vision 2020 to see how this is correlated to household racial demographics; analyzing students' realistic access to extracurricular activities such as arts and athletics; race-based differential access means that some students have less access to educational opportunities that help with physical and mental health; identifying the levels of lead and other toxins in public school buildings, and correlation to resource allocation and racial demographics among schools.
11. Submit copies of this resolution to State Assemblymember Buffy Wicks, State Senator Nancy Skinner, Congresswoman Barbara Lee, Alameda County Supervisor Keith Carson, as well as various organizations such as the Berkeley NAACP, the African American Holistic Resource Center Steering Committee, and Healthy Black Families.

POLICY COMMITTEE RECOMMENDATION

On November 23, 2020, the Health, Life Enrichment, Equity & Community Committee made a qualified positive recommendation (M/S/C Bartlett/Hahn) for the City Council to take the following action:

1. Make the following statement:
Declare Racism as a public health crisis and a threat and safety issue for the City of Berkeley, and commit the City of Berkeley to eliminating all racial and socioeconomic barriers to health equity.
2. Recommend that City Councilmembers consider working together or independently to convene a public session or sessions in their districts on racism as a public health crisis and threat and safety issue, to further public knowledge and input on these

important matters and help create a movement to address racial disparities in Berkeley.

3. Refer to the Mayor and City Manager to discuss how to incorporate programs and policies to address racial equity in the work of the City of Berkeley.
4. Refer to the City Manager and Office of Economic Development to consider how the City of Berkeley can support women and minority owned businesses through the COVID crisis and recovery period.
5. Refer to the City Manager to adapt the Richmond Health in All Policies Ordinance and return to Council a version for the City Council to consider adopting, or any other recommendation related to the proposed Ordinance.
6. Refer to the City Manager to consider requiring and providing antiracism, implicit bias, cultural sensitivity and cultural humility training for all City of Berkeley employees, and the City Council, and to consider ways to make such training accessible to the public via online or other training opportunities.
7. Refer to the City Manager to include an Anti-Racism dashboard on the City of Berkeley's new website, to consolidate information about racial disparities across all City of Berkeley services and initiatives.
8. Recommit to continuing the City of Berkeley's work with Berkeley Unified School District through the 2020 Vision process, and recommend adding a focus on extracurricular activities and access to enrichment and support outside of the classroom.

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

BACKGROUND

There is clear data that proves racism negatively impacts the lives of people of color in the City of Berkeley and throughout the County and Nation.

Almost all 400 years of African American's experience was under enslavement and Jim Crow laws and upheld White Supremacy that provided preferential opportunity to some, while at the same time subjected people of color, especially African Americans to hardship and disadvantages in all areas of life.

Racism – not race - causes disproportionately high rates of homelessness, incarceration, poor education and health outcomes, and economic hardship for African Americans in this country.

Racism acts on systemic, institutional, and interpersonal levels, all of which operate throughout time and across generations.

Racism is an organized social system in which a dominant group categorizes and ranks people into social groups, "races", and uses its power to devalue, disempower, and differentially allocate valued societal resources and opportunities to groups classified as inferior. Racism can act in multiple domains, including structural/institutional, cultural, and individual-level discrimination, reinforcing ideologies of inferiority and hierarchy in media images, laws, interpersonal interactions, and opportunities. Structural or institutional racism embeds racism into policies and practices in society that provide advantages for racial groups deemed superior, while oppressing, disadvantaging, or neglecting racial groups viewed as inferior. Structural racism results in differential access to housing, employment, education, healthy food, clean air and drinking water, and exposure to violence, thus has a significant impact on public health.

Structural racism has profound public health impacts. Now, in this critical moment of a global pandemic caused by COVID-19, previous health disparities are being exacerbated by the lack of infrastructure and provisions of basic resources afforded to marginalized communities. While coronavirus does not seem to discriminate against whom it infects, it does have differential

impacts on people who were already in a compromised position in society, due to socioeconomic factors, access to healthcare and housing, and suffering from a compromised immune system due to the effects of stress, the trauma experience of discrimination and the impacts of living in communities that are disproportionately impacted by environmental injustice.

Reports are emerging, highlighting the disparity in the rates of COVID-19 outcomes for communities of color. Cities like Milwaukee, Washington DC, Detroit, Chicago, and New Orleans have experienced a disproportionate morbidity and mortality for black residents due to Coronavirus. The Congressional Black Caucus has called for all states to track public health data regarding coronavirus by race and ethnicity¹. To this point, Representative Robin Kelly, Chair of the Congressional Black Caucus Healthcare Braintrust, stated: “the reason more Blacks are dying from COVID-19 is a result of a history of structural racism, environmental injustice, income inequality, and the lack of resources in Black communities, which have led to the prominence of health-related risk factors such as diabetes and hypertension.” According to data from the Centers for Disease Control, almost one-third of infections nationwide have affected black-Americans, even though blacks only represent 13% of the U.S. population. Additionally, an analysis done by the Associated Press found that nearly one-third of those who passed due to COVID-19 across the country are black.

Racism Forms Defined:

- **Racism** - Racism is the belief that groups of humans possess different behavioral traits corresponding to physical appearance, and can be divided based on the superiority of one race over another.^{[1][2][3][4]} It may also mean prejudice, discrimination, or antagonism directed against other people because they are of a different race or ethnicity.^{[2][3]} Modern variants of racism are often based in social perceptions of biological differences between peoples. These views can take the form of social actions, practices or beliefs, or political systems in which different races are ranked as inherently superior or inferior to each other, based on presumed shared inheritable traits, abilities, or qualities.^{[2][3][5]}
- **Environmental racism** - Environmental racism is a concept used to describe environmental injustice that occurs in practice and in policy within a racialized context.^[1] In a national context, environmental racism criticizes inequalities between urban and exurban areas after white flight. Charges of environmental racism can also prompt usages of civil rights legislation like the Civil Rights Act of 1964 to prosecute environmental crimes in the areas in which racialized people live. Internationally, environmental racism can refer to the effects of the global waste trade, like the negative health impact of the export of electronic waste to China from developed countries.
- **Institutional/systemic racism** - Institutional racism (also known as systemic racism) is a form of racism expressed in the practice of social and political institutions. It is reflected in disparities regarding wealth, income, criminal justice, employment, housing, health care, political power, and education, among other factors. The term "institutional racism" was coined by Stokely Carmichael and Charles V. Hamilton. Carmichael and Hamilton wrote that while individual racism is often identifiable because of its overt nature, institutional racism is less perceptible because of its "less overt, far more subtle" nature. Institutional racism "originates in the operation of established and respected forces in the society, and thus receives far less public condemnation than [individual racism]".^[2]
- **Interpersonal racism** - Interpersonal racism is a component of individual-level racism and has been defined as “directly perceived discriminatory interactions between individuals whether in their institutional roles or as public and private individuals” (Krieger, 1999, p. 301). Interpersonal racism includes maltreatment that the targeted

¹ <https://cbc.house.gov/news/documentsingle.aspx?DocumentID=2174>

individual attributes, at least in part, to conscious or unconscious racial/ethnic bias on the part of the perpetrator of the maltreatment.

- **Internalized racism** - Internalized racism is a form of internalized oppression, defined by sociologist Karen D. Pyke as the "internalization of racial oppression by the racially subordinated."^[1] In her study *The Psychology of Racism*, Robin Nicole Johnson emphasizes that internalized racism involves both "conscious and unconscious acceptance of a racial hierarchy in which whites are consistently ranked above people of color."^[2] These definitions encompass a wide range of instances, including, but not limited to, belief in negative racial stereotypes, adaptations to white cultural standards, and thinking that supports the status quo (i.e. denying that racism exists).^[3]
- **Structural racism** - Structural Racism in the U.S. is the normalization and legitimization of an array of dynamics – historical, cultural, institutional, and interpersonal – that routinely advantage whites while producing cumulative and chronic adverse outcomes for people of color. It is a system of hierarchy and inequity, primarily characterized by white supremacy – the preferential treatment, privilege, and power for white people at the expense of Black, Latino, Asian, Pacific Islander, Native American, Arab, and other racially oppressed people.
- **Prejudice** - Prejudice^[1] is an affective feeling towards a person based on their perceived group membership. The word is often used to refer to a preconceived, usually unfavorable, evaluation of another person based on that person's political affiliation, sex, gender, beliefs, values, social class, age, disability, religion, sexuality, race/ethnicity, language, nationality, beauty, occupation, education, criminality, sport team affiliation or other personal characteristics.^[2]
- **Discrimination** - In human social behavior, discrimination is prejudiced treatment or consideration of, or making a distinction towards, a being based on the group, class, or category to which they are perceived to belong. These include age, caste, criminal record, height, disability, family status, gender identity, gender expression, generation, genetic characteristics, marital status, nationality, color, race and ethnicity, religion, sex and sex characteristics, sexual orientation, social class, species, as well as other categories. Discrimination consists of treatment of an individual or group, based on their actual or perceived membership in a certain group or social category, "in a way that is worse than the way people are usually treated".^[1] It involves the group's initial reaction or interaction going on to influence the individual's actual behavior towards the group leader or the group, restricting members of one group from opportunities or privileges that are available to another group, leading to the exclusion of the individual or entities based on illogical or irrational decision making.^[2]
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- **Systemic Racism:** Systemic racism today is composed of intersecting, overlapping, and codependent racist institutions, policies, practices, ideas, and behaviors that give an unjust amount of resources, rights, and power to white people while denying them to people of color. Developed by sociologist Joe Feagin, systemic racism is a popular way of explaining, within the social sciences and humanities, the significance of race and racism both historically and in today's world. Feagin describes the concept and the realities attached to it in his well-researched and readable book, *Racist America: Roots, Current Realities, & Future Reparations*. In it, Feagin uses historical evidence and demographic statistics to create a theory that asserts that the United States was founded in racism since the Constitution classified black people as the property of whites. Feagin illustrates that the legal recognition of racialized slavery is a cornerstone of a racist social system in which resources and rights were and are unjustly given to white people and unjustly denied to people of color. (thoughtco.com)
 - The effects of systemic racism are pervasive in Indigenous communities. The causal pathways driving racism and its negative effects are complex, intertwined, and deeply embedded in diverse systems, including economic, political, and psychosocial. Below are some examples of how systemic racism leads to health

inequities that are reflective of the broad disadvantage that Indigenous communities face:

- Colonial policies: Mandatory residential schools, the outlawing of Indigenous gatherings and ceremonies, forced community dislocations, and discriminatory child welfare legislation have had lasting and intergenerational effects on mental health, family relationships, and Indigenous language and culture.
- Limited healthy food choices: Dispossession of traditional lands has interfered with traditional economies and access to traditional foods; urban, rural, and remote Indigenous peoples often have inadequate access to affordable healthy and nutritious foods.
- Inadequate living conditions: Indigenous peoples living in cities and rural and remote communities are faced with inadequate housing and living conditions. For example, the peoples of Inuit Nunangat experience overcrowding and poor respiratory health from low-quality housing stock, leading to elevated rates of TB infection. There is also increased overcrowding in housing.
- Substandard health care: In addition to the differential access to acute cardiac imaging and intervention, studies describe high levels of perceived interpersonal racism toward Indigenous patients from health care providers across health care settings. Experiences of racism, including unfair treatment as a result of racism, have been reported in multiple Indigenous survey studies, across geographic settings, with prevalence rates ranging from 39 percent to 78 per cent. In some cases, this is so severe that Indigenous patients strategized on how to manage racism before seeking care in the emergency room.
- **Islamophobia** - Islamophobia is the fear, hatred of, or prejudice against the Islamic religion or Muslims generally, especially when seen as a geopolitical force or the source of terrorism.
- **Xenophobia** - Xenophobia is the fear or hatred of that which is perceived to be foreign or strange. It is an expression of the perceived conflict between an ingroup and an outgroup and may manifest in suspicion by one of the other's activities, a desire to eliminate their presence, and fear of losing national, ethnic, or racial identity.
- Anti-semitism - Anti-semitism is hostility to, prejudice, or discrimination against [Jews](#).^{[1][2][3]} A person who holds such positions is called an anti-semite. Anti-semitism is generally considered to be a form of [racism](#). Anti-semitism may be manifested in many ways, ranging from expressions of hatred of or discrimination against individual Jews to organized by mobs, state police, or even military attacks on entire Jewish communities. Anti-zionism is not anti-semitism
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- **Intersectionality** - Intersectionality is a theoretical framework for understanding how aspects of one's social and political identities (e.g., gender, race, class, sexuality, disability, etc.) might combine to create unique modes of discrimination. It aims to broaden the agenda of the first waves of feminism, which largely focused on the experiences of white, middle-class women. The broad agenda means that intersectionality is used to find combinations of injustices that are felt by members of society. For example, a black woman might face discrimination from a company that is not distinctly due to her race (because the company does not discriminate against black men) nor her gender (because the company does not discriminate against white women), but by a unique combination of the two. Intersectional feminism aims to separate itself from white feminism by acknowledging the fact that all women have different experiences and identities.^[1] It is a qualitative analytic framework that identifies how interlocking systems of power affect those who are most marginalized in society.^[2]

- **Zionism** - Zionism ~~is~~ is a political ideology, a form of Jewish nationalism. Zionism is a set of beliefs that drove the founding of the State of Israel in Palestine. Also defined as the nationalist movement of the Jewish people that espouses the re-establishment of and support for a Jewish state in the territory defined as the historic Land of Israel (roughly corresponding to Canaan, the Holy Land, or the region of Palestine). Anti-Zionism is not anti-semitism, it is the opposition to Zionism, the racist, apartheid policies of the Israeli state. Anti-Zionism is Anti Racist.
- **"ISM"** - a system of oppression based on target identity (race, sex, etc)

Racism, sexism, heterosexism (homophobia), ageism, ableism, classism, xenophobia, religious prejudice, and other forms of oppression have damaged us all. All the -isms are connected.

Beyond this, the COVID-19 (Coronavirus) Pandemic has unleashed an increased amount of racism in this country. There have been a number of documented instances of harassment and physical violence targeting Asian people since the outbreak of the coronavirus, as well as the use of stigmatizing terms like "Chinese Virus" to denote COVID-19. The President of the United States has continued to spew hate, racism, xenophobia, and Islamophobia since he began campaigning for office. COVID-19 has exacerbated the President's racism towards our commUNITY members, and throughout the world, **as** a number of violent attacks have been made towards Asian Americans.

The World Health Organization defines "public health" as "the art and science of preventing disease, prolonging life and promoting health through the organized efforts of society" and those efforts "aim to provide conditions under which people can... be healthy, improve their health and well-being, or prevent the deterioration of their health."

The United States Office of Disease Prevention recognizes that discrimination negatively impacts health outcomes.

The negative repercussions of historical racism, including but not limited to, discriminatory lending practices of the 20th century known as "redlining," impact current outcomes regarding access to nutritious food, economic security, educational achievement, rates of lead poisoning, and infant mortality.

Research indicates that adverse childhood experiences are disproportionately experienced by black children when compared to white children thus having negative impacts on academic, behavioral, and physical health outcomes of black children.

Statistics show a national disparity between black and white infant mortality rates, and the State consistently ranks among the worst states concerning black infant mortality rates.

The rates of chronic diseases, including asthma, diabetes, and hypertension, are significantly higher in predominantly black neighborhoods.

The Department of Health and Human Services defines the social determinants of health as conditions in the environments in which people are born, live, learn, work, play, worship, and age, which affect a wide range of health, functioning, and quality-of-life outcomes and risks. Social determinants of health include access to resources like safe and affordable housing, education, public safety, availability of healthy foods, local emergency/health services, and environments free of life-threatening toxins. Beyond genetic predispositions or individual life choices, the World Health Organization notes that the social determinants of health predict a

person's life expectancy. By these means, structural racism threatens public health by hindering equitable access to the social determinants of health.

Utilizing an intersectional framework, it is clear that discrimination based on race can be linked to disadvantages for a number of people with marginalized identities, in particular the poor or unhoused, queer and trans, disabled, Muslim, immigrant, and Indigenous communities.^{JP}

Massar because higher levels of discrimination are associated with an elevated risk to a broad range of diseases, for instance, contraction of heart disease, cancer, and HIV. And everyday over 200 Black people die prematurely due to health inequities between Whites and Blacks.

Like many cities in the United States, the City of Berkeley has a long history of racism. Studies conducted on Berkeley's employment practices and modes of policing have demonstrated structural racism and discrimination at the core of the City's functions. Waves of racial housing segregation, codified by redlining in the past, and currently operating through gentrification and displacement, is a major factor influencing racial/ethnic disparities in health outcomes. The 2018 Berkeley Health Status Report demonstrated that within the City of Berkeley, African Americans and other People of Color die prematurely and are more likely to experience a wide variety of adverse health conditions throughout their lives. Specifically, Black people make up a disproportionately high percentage of the city's homeless population, are less likely to attain higher education, are more likely to live in poverty, and have poorer health outcomes, morbidity, and mortality from cardiovascular disease, heart disease, cancers, and birth complications.

The Alameda County Department of Public Health has demonstrated racial/ethnic health disparity in our community, noting a 17-year difference in life expectancy between a child born in West Oakland and the Oakland Hills. Supervisor Keith Carson has begun a process of trying to address health inequities through the launch of the Health Matters Initiative.

Additionally, the City of Richmond also views racism as a major threat to public health and has adopted a Health in all Policies Ordinance in order to rectify health inequities. Other cities throughout the United States, like Kansas City, Milwaukee, Pittsburgh, and Cleveland, have also come to view racism as a public health crisis, passing legislation to turn the tide and ensure everyone (regardless of their race or ethnicity) has the opportunity to live healthy, fulfilling lives.

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

The City of Berkeley should follow the example of other cities that have declared racism as a threat to public health. We should adopt a Health in All Policies Ordinance, and take all necessary legislative steps to ensure health equity in our city. Minimally this will involve the curation of a number of town hall sessions to hear the concerns of marginalized community members and with careful collaborations, develop a strategic plan for health equity. Additionally, the City should provide training on ways to reduce implicit bias for City employees and interested members of the community. This will allow us to critically evaluate our prejudices and take the initiative to reduce bias and remove racist barriers to the social determinants of health.

The City must recognize that racism is a public health crisis that affects all members of our society both locally and nationwide and deserves action from all levels of government and civil society.

The time is *now* to declare racism as a public health threat in our community. The time has come to change business as usual. We must confront the systemic racism that has permeated society throughout our lifetime. Because in the words of Ibram X. Kendi, “the only way to undo racism is to consistently identify and describe it - and then to dismantle it.”

The City Council should support the establishment of a working group to address these issues and to: seek solutions to reshape the discourse and actively engage all citizens in racial justice work; continue to work to build alliances with organizations that are confronting racism and encourage partners to recognize racism as a public health crisis; continue to promote racially equitable economic and workforce development; continue to promote racially equitable hiring and promotion of all employees including City employees; and advocate and draft relevant policies that prioritize the health of people of color and mitigate exposure to adverse childhood experiences and trauma in childhood.

California Government Code 54956.5 states: “An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.”

With multiple crises to contend with (COVID-19 pandemic, racism, etc), and all the reasons stated earlier, it is the utmost urgency to declare racism as a nuisance and a crisis to public health and safety in the City of Berkeley, as well as adopt it as an emergency measure for the immediate preservation of public peace, property, health or safety.

FISCAL IMPACTS OF RECOMMENDATION

It is estimated \$50,000 for hiring of facilitators and the coordination of 3-5 town hall sessions.

ENVIRONMENTAL SUSTAINABILITY

With a focus on health equity and the adoption of a ‘Health in All Policies ’ordinance, a number of environmental benefits should result in the City, including reduced air pollution, cleaner waterways, and reduced greenhouse gas emissions by being proactive about ending environmental racism.

CONTACT PERSON

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution
2. Racism - Public Health Crisis, published on May 5, 2017
Leslie Gregory, Founder and Director of Right to Health in Portland, Oregon
https://www.youtube.com/watch?v=9oKg-870R3I&feature=emb_title
3. City of Richmond Health in All Policies Ordinance:
<http://www.ci.richmond.ca.us/ArchiveCenter/ViewFile/Item/6999>

REFERENCES:

1. Williams, David R., Jourdyn A. Lawrence, and Brigette A. Davis. "Racism and health: evidence and needed research." *Annual review of public health* 40 (2019): 105-125.
2. Smedley, Audrey, and Brian D. Smedley. "Race as biology is fiction, racism as a social problem is real: Anthropological and historical perspectives on the social construction of race." *American Psychologist* 60.1 (2005): 16.

3. Paradies, Yin, et al. "Racism as a determinant of health: a systematic review and meta-analysis." *PloS one* 10.9 (2015): e0138511.
4. <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health>
5. <http://www.ci.richmond.ca.us/2574/Richmond-Health-Equity-Partnership-RHEP>
6. http://www.euro.who.int/_data/assets/pdf_file/0003/109146/E89260.pdf
7. <http://www.ci.richmond.ca.us/DocumentCenter/View/27173/Tool-Kit-DRAFT-52813-v3?bidId=>
8. <https://triblive.com/local/pittsburgh-allegheeny/pittsburgh-councilmen-want-racism-to-be-treated-as-a-public-health-crisis/>
9. <https://ips-dc.org/racism-is-a-public-health-crisis/>
10. <https://www.kansascity.com/opinion/editorials/article234471712.html>
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13. <https://www.berkeleyside.com/2018/09/20/redlining-the-history-of-berkeleys-segregated-neighborhoods>
14. https://www.urbandisplacement.org/sites/default/files/images/urban_displacement_project_-_executive_summary.pdf
15. <https://www.urbandisplacement.org/rentchangemap>
16. <https://www.cdc.gov/healthypeople/healthtopics/gentrification.htm>
17. https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Mason%20Tillman%20Associates%20Report%20051614.pdf
18. <https://www.berkeleyside.com/wp-content/uploads/2018/05/Berkeley-Report-May-2018.pdf>
19. <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>
20. <http://www.ihl.org/communities/blogs/how-to-reduce-implicit-bias>
21. https://cbc.house.gov/uploadedfiles/cbc-cbc_health_braintrust_racial_disparities_letter_to_cdc.pdf
22. <https://www.nationalgeographic.com/history/2020/04/coronavirus-disproportionately-impacts-african-americans/#close>
23. <https://societyforhealthpsychology.org/resources/research-advocacy/diversity-racism/interpersonal/>
24. <https://www.racialequitytools.org/resourcefiles/Definitions-of%20Racism.pdf>
25. <https://cbc.house.gov/news/documentsingle.aspx?DocumentID=2174>

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

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY TO DECLARE RACISM AS A PUBLIC HEALTH CRISIS, A THREAT AND SAFETY ISSUE IN THE CITY OF BERKELEY

WHEREAS, Racism is defined as “an organized social system in which the dominant racial group categorizes and ranks people into social groups called “races” and uses its power to devalue, disempower, and differentially allocate valued societal resources and opportunities to groups defined as inferior”²; and

WHEREAS, Racism can take on many principal domains, including structural/institutional, cultural, and individual-level discrimination; and

WHEREAS, Racism Forms are defined as:

- **Racism** - Racism is the belief that groups of humans possess different behavioral traits corresponding to physical appearance, and can be divided based on the superiority of one race over another.^{[1][2][3][4]} It may also mean prejudice, discrimination, or antagonism directed against other people because they are of a different race or ethnicity.^{[2][3]} Modern variants of racism are often based in social perceptions of biological differences between peoples. These views can take the form of social actions, practices or beliefs, or political systems in which different races are ranked as inherently superior or inferior to each other, based on presumed shared inheritable traits, abilities, or qualities.^{[2][3][5]}
- **Environmental racism** - Environmental racism is a concept used to describe environmental injustice that occurs in practice and in policy within a racialized context.^[1] In a national context, environmental racism criticizes inequalities between urban and exurban areas after white flight. Charges of environmental racism can also prompt usages of civil rights legislation like the Civil Rights Act of 1964 to prosecute environmental crimes in the areas in which racialized people live. Internationally, environmental racism can refer to the effects of the global waste trade, like the negative health impact of the export of electronic waste to China from developed countries.
- **Institutional/systemic racism** - Institutional racism (also known as systemic racism) is a form of racism expressed in the practice of social and political institutions. It is reflected in disparities regarding wealth, income, criminal justice, employment, housing, health care, political power, and education, among other factors. The term "institutional racism" was coined by Stokely Carmichael and Charles V. Hamilton. Carmichael and Hamilton wrote that while individual racism is often identifiable because of its overt nature, institutional racism is less perceptible because of its "less overt, far more subtle" nature. Institutional racism "originates in the operation of established and respected forces in the society, and thus receives far less public condemnation than [individual racism]".^[2]

² Williams, David R., Jourdyn A. Lawrence, and Briggette A. Davis. "Racism and health: evidence and needed research." *Annual review of public health* 40 (2019): 105-125.

- **Interpersonal racism** - Interpersonal racism is a component of individual-level racism and has been defined as “directly perceived discriminatory interactions between individuals whether in their institutional roles or as public and private individuals” (Krieger, 1999, p. 301). Interpersonal racism includes maltreatment that the targeted individual attributes, at least in part, to conscious or unconscious racial/ethnic bias on the part of the perpetrator of the maltreatment.
- **Internalized racism** - Internalized racism is a form of internalized oppression, defined by sociologist Karen D. Pyke as the "internalization of racial oppression by the racially subordinated."^[1] In her study *The Psychology of Racism*, Robin Nicole Johnson emphasizes that internalized racism involves both "conscious and unconscious acceptance of a racial hierarchy in which whites are consistently ranked above people of color."^[2] These definitions encompass a wide range of instances, including, but not limited to, belief in negative racial stereotypes, adaptations to white cultural standards, and thinking that supports the status quo (i.e. denying that racism exists).^[3]
- **Structural racism** - Structural Racism in the U.S. is the normalization and legitimization of an array of dynamics – historical, cultural, institutional, and interpersonal – that routinely advantage whites while producing cumulative and chronic adverse outcomes for people of color. It is a system of hierarchy and inequity, primarily characterized by white supremacy – the preferential treatment, privilege, and power for white people at the expense of Black, Latino, Asian, Pacific Islander, Native American, Arab, and other racially oppressed people.
- **Prejudice** - Prejudice^[1] is an affective feeling towards a person based on their perceived group membership. The word is often used to refer to a preconceived, usually unfavorable, evaluation of another person based on that person's political affiliation, sex, gender, beliefs, values, social class, age, disability, religion, sexuality, race/ethnicity, language, nationality, beauty, occupation, education, criminality, sport team affiliation or other personal characteristics.^[2]
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- **Systemic Racism:** Systemic racism today is composed of intersecting, overlapping, and codependent racist institutions, policies, practices, ideas, and behaviors that give an unjust amount of resources, rights, and power to white people while denying them to people of color. Developed by sociologist Joe Feagin, systemic racism is a popular way of explaining, within the social sciences and humanities, the significance of race and racism both historically and in today's world. Feagin describes the concept and the realities attached to it in his well-researched and readable book, *Racist America: Roots, Current Realities, & Future Reparations*. In it, Feagin uses historical evidence and demographic statistics to create a theory that asserts that the United States was founded in racism since the Constitution classified black people as the property of whites. Feagin illustrates that the legal recognition of racialized slavery is a cornerstone of a racist social system in which resources and rights were and are unjustly given to white people and unjustly denied to people of color. (thoughtco.com)

- The effects of systemic racism are pervasive in Indigenous communities. The causal pathways driving racism and its negative effects are complex, intertwined, and deeply embedded in diverse systems, including economic, political, and psychosocial. Below are some examples of how systemic racism leads to health inequities that are reflective of the broad disadvantage that Indigenous communities face:
 - Colonial policies: Mandatory residential schools, the outlawing of Indigenous gatherings and ceremonies, forced community dislocations, and discriminatory child welfare legislation have had lasting and intergenerational effects on mental health, family relationships, and Indigenous language and culture.
 - Limited healthy food choices: Dispossession of traditional lands has interfered with traditional economies and access to traditional foods; urban, rural, and remote Indigenous peoples often have inadequate access to affordable healthy and nutritious foods.
 - Inadequate living conditions: Indigenous peoples living in cities and rural and remote communities are faced with inadequate housing and living conditions. For example, the peoples of Inuit Nunangat experience overcrowding and poor respiratory health from low-quality housing stock, leading to elevated rates of TB infection. There is also increased overcrowding in housing.
 - Substandard health care: In addition to the differential access to acute cardiac imaging and intervention, studies describe high levels of perceived interpersonal racism toward Indigenous patients from health care providers across health care settings. Experiences of racism, including unfair treatment as a result of racism, have been reported in multiple Indigenous survey studies, across geographic settings, with prevalence rates ranging from 39 percent to 78 per cent. In some cases, this is so severe that Indigenous patients strategized on how to manage racism before seeking care in the emergency room.
- **Islamophobia** - Islamophobia is the fear, hatred of, or prejudice against the Islamic religion or Muslims generally, especially when seen as a geopolitical force or the source of terrorism.
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different experiences and identities.^[1] It is a qualitative analytic framework that identifies how interlocking systems of power affect those who are most marginalized in society.^[2]

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- **“ISM”** - a system of oppression based on target identity (race, sex, etc)

WHEREAS, Racism, sexism, heterosexism (homophobia), ageism, ableism, classism, xenophobia, religious prejudice, and other forms of oppression have damaged us all. All the -isms are connected; and

WHEREAS, Structural racism is supported by and reinforced in multiple societal systems, including the housing, labor, and credit markets, as well as education, criminal justice, the economy, and health care systems; and

WHEREAS, Sequencing the human genome has revealed that racial groups are not genetically discrete, reliably measured, or scientifically meaningful, and thus “race” is a social construction, not a biological category³; and

WHEREAS, A number of epidemiological studies have demonstrated the negative impacts of racism on both physical and mental health⁴, with racism acting through a number of pathways to increase stress and allostatic load, which have been associated with chronic disease and mortality, diminish participation in healthy behaviors, and result in greater exposure to physical violence; and

WHEREAS, almost all of the 400 years of Black American’s experience under slavery and Jim Crow laws has allowed preferential opportunity to some while at the same time subjected people of color to hardship and disadvantage in all areas of life; and

WHEREAS, still now, racism – not race- causes disproportionately high rates of homelessness, incarceration, poor education and health outcomes, and economic hardship for African Americans; and

WHEREAS, racism acts on systemic, institutional, interpersonal level and psychological levels, all of which operate throughout time and across generations; and

WHEREAS, this Council believes that the time is now to declare racism a public health crisis in our community; and

WHEREAS, the World Health Organization defines “public health” as “the art and science of preventing disease, prolonging life and promoting health through the organized efforts of

³ Smedley, Audrey, and Brian D. Smedley. "Race as biology is fiction, racism as a social problem is real: Anthropological and historical perspectives on the social construction of race." *American Psychologist* 60.1 (2005): 16.

⁴ Paradies, Yin, et al. "Racism as a determinant of health: a systematic review and meta-analysis." *PloS one* 10.9 (2015): e0138511.

society” and those efforts “aim to provide conditions under which people can... be healthy, improve their health and well-being, or prevent the deterioration of their health”; and

WHEREAS, the United States Office of Disease Prevention recognizes that discrimination negatively impacts health outcomes; and

WHEREAS, the Social Determinants of Health – the social and material factors that influence health outcomes - impact life-long outcomes beginning even before birth; and

WHEREAS, the negative repercussions of historical racism, including but not limited to discriminatory lending practices of the 20th century known as “redlining,” impact current outcomes regarding access to nutritious food, economic security, educational achievement, rates of lead poisoning, wealth accumulation, and infant mortality; and

WHEREAS, research indicates that adverse childhood experiences are disproportionately experienced by black children when compared to white children thus having negative impacts on academic, behavioral, and physical health outcomes of black children; and

WHEREAS, The United States Department of Health and Human Services defines social determinants of health as “conditions in the environments in which people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks,” and has highlighted access to resources like safe and affordable housing, education, public safety, availability of healthy foods, local emergency/health services, and environments free of life-threatening toxins as major foci for community health promotion⁵; and

WHEREAS, Principally racism works to compromise public health by hindering equitable access to housing, employment, education, and safety, which are social determinants of health; and

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

WHEREAS, The Alameda County Public Health Department has stated their vision for health equity in our county, declaring that “every resident – no matter who you are, where you live, how much money you make, or the color of your skin – should have the opportunity to lead a healthy, fulfilling, and productive life”; and

WHEREAS, The neighboring City of Richmond has established a Health Equity Partnership with the goal of addressing “avoidable inequalities by equalizing the conditions for health for all groups, especially for those who have experienced socioeconomic disadvantage or historical injustices (such as racism)”⁶ and adopted a Health in All Policies Ordinance; and

WHEREAS, Health in All Policies is a healthcare framework proposed by the World Health Organization, also known as “healthy public policy,” which acknowledges health begins in the places that people live, work, learn, worship, and play, and more so than individual choices,

⁵ <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health>

⁶ <http://www.ci.richmond.ca.us/2574/Richmond-Health-Equity-Partnership-RHEP>

health is influenced by a plethora of societal factors, such as policies related to agriculture, education, the environment, fiscal planning, housing, and transport⁷; and

WHEREAS, The City of Richmond has developed a toolkit for implementation of Health in All Policies and views this ordinance as an “integrated and comprehensive approach to bring health, well-being, and equity considerations into the development and implementation of policies, programs, and services of traditionally non-health related government systems or agencies”⁸

WHEREAS, Other cities in the country have introduced legislation declaring racism a threat to public health, for instance, Pittsburgh, PA,⁹ proposed a trio of bills that would declare racism a public health crisis in the City, establish a leadership forum, and invest in a fund to eliminate racial inequalities and barriers; and

WHEREAS, Milwaukee, WI,¹⁰ passed legislation declaring racism a public health crisis and is undergoing a process to advocate for policies that improve health for communities of color and will train city employees to understand how racism impacts residents; and

WHEREAS, Kansas City, MI,¹¹ introduced a resolution likewise declaring racism a public health crisis, tasking the city manager to establish a comprehensive plan to address inequities that leave black men and other people of color vulnerable to early death; and

WHEREAS, Cleveland, OH, passed a resolution also declaring racism to be a public health crisis, creating a working group to promote racial equity in their City that seeks solutions to reshape the discourse and actively engage all citizens in racial justice work; continues to work to build alliances with organizations that are confronting racism and encourage partners to recognize racism as a public health crisis; continues to promote racially equitable economic and workforce development; continues to promote racially equitable hiring and promotion of all employees including City employees; and advocates and draft relevant policies that prioritize the health of people of color and mitigate exposure to adverse childhood experiences and trauma in childhood; and

WHEREAS, Increasing opportunities for good health requires investment in the municipality and community infrastructure by facilitating access to parks, safe walkable streets, grocery stores, quality housing, public transportation, good jobs, strong local business, and financial institutions, as well as clean air and water; and

WHEREAS, The Alameda County Place Matters Initiative¹², spearheaded by Supervisor Keith Carson, was successful in its attempts to address and analyze social determinants of health, including criminal justice, economics, education, housing, land-use, and transportation; and

WHEREAS, The City of Berkeley’s Strategic Plan includes goals to ‘Champion and demonstrate social and racial equity ’and ‘Be a global leader in... advancing environmental justice’; and

⁷ http://www.euro.who.int/_data/assets/pdf_file/0003/109146/E89260.pdf

⁸ <http://www.ci.richmond.ca.us/DocumentCenter/View/27173/Tool-Kit-DRAFT-52813-v3?bidId=>

⁹ <https://triblive.com/local/pittsburgh-allegheeny/pittsburgh-councilmen-want-racism-to-be-treated-as-a-public-health-crisis/>

¹⁰ <https://ips-dc.org/racism-is-a-public-health-crisis/>

¹¹ <https://www.kansascity.com/opinion/editorials/article234471712.html>

¹² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3945449/>

WHEREAS, The City of Berkeley Health Status Report of 2018¹³ demonstrated that in Berkeley, African Americans and other People of Color die prematurely and are more likely than White people to experience a wide variety of adverse health conditions throughout their lives; and

WHEREAS, The Health Status Report specifically highlights how African Americans make up a disproportionately high percentage of Berkeley's homeless population (50%), earn 3.4x less than White families, are 2.8x less likely to have a college degree, and have a 9x higher teenage birth rate than White families, and additionally, at every life-stage African Americans have poorer health outcomes, including lower birth weight, cardiovascular disease, heart disease, cancer, asthma, and hypertension; and

WHEREAS, Berkeley's historical legacy of redlining (the process by which mortgage lenders determined the value of neighborhoods and whether to provide loans in those areas according to the racial composition and socioeconomic status of residents) has had a lingering impact of racial/ethnic segregation and the ability of Black families to build intergenerational wealth through home-ownership, particularly in South Berkeley and District 2¹⁴; and

WHEREAS, Gentrification, the process by which the influx of capital and higher-income, higher educated residents, move into working-class neighborhoods, has strongly impacted the Bay Area and has resulted in displacement (forced movement attributable to changes in housing conditions) in 48% of neighborhoods¹⁵; and

WHEREAS, Between the years 2000-2015, Berkeley (specifically District 2), has experienced a change in median rent over 50%, resulting in displacement of low-income communities of color¹⁶; and

WHEREAS, The Center for Disease Control has linked gentrification with negative health outcomes for women, children, the elderly, and racial/ethnic minorities, through processes which trigger stress, and increase exposure to injury, violence and crime, mental health disorders, and social and environmental hazards¹⁷; and

WHEREAS, The City of Berkeley as an employer has come under scrutiny for the way it has discriminated against Black employees, warranting investigations by an outside consulting firm (Mason Tillman)¹⁸ to assess the response to labor grievances raised by people of color; and

WHEREAS, An investigative study by the Center for Policing Equity also demonstrated discrimination by Berkeley Police in their detainment and treatment of people color, noting that Black people were 6.5x more likely to be stopped by BPD than White people while driving, and 4.5x more likely to be stopped on foot, and additionally Black people were 4x more likely to be searched compared to Whites¹⁹; and

WHEREAS, In addition to struggling with racism, the City of Berkeley is confronted with issues of Islamophobia, xenophobia, transphobia, and the dehumanization of homeless people; and

¹³ https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/health-status-summary-report-2018.pdf

¹⁴ <https://www.berkeleyside.com/2018/09/20/redlining-the-history-of-berkeleys-segregated-neighborhoods>

¹⁵ https://www.urbandisplacement.org/sites/default/files/images/urban_displacement_project_-_executive_summary.pdf

¹⁶ <https://www.urbandisplacement.org/rentchangemap>

¹⁷ <https://www.cdc.gov/healthyplaces/healthtopics/gentrification.htm>

¹⁸ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Mason%20Tillman%20Associates%20Report%20051614.pdf

¹⁹ <https://www.berkeleyside.com/wp-content/uploads/2018/05/Berkeley-Report-May-2018.pdf>

WHEREAS, Implicit bias is defined as the attitudes or stereotypes that affect our understanding, actions, and decisions in a subconscious manner, encompassing both favorable and unfavorable assessments that cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, gender, and appearance²⁰; and

WHEREAS, A number of tools, programs, and trainings exist to help individuals and organizations reduce their implicit bias, with strategies involving stereotype replacement, counter-stereotypic imaging, individuation, perspective taking, increasing opportunities for contact with individuals from different groups, and partnership building²¹; and

WHEREAS, The Congressional Black Caucus sent a letter to the Center of Disease Control asking for states to report statistics of COVID-19 morbidity and mortality by race and ethnicity, and data emerged that Black people in Milwaukee and Illinois are dying of coronavirus at disproportionately high rates²²; and

WHEREAS, The Centers for Disease Control finds that almost one-third of infections nationwide have affected black-Americans, even though blacks only represent 13% of the U.S. population; nearly one-third of those who passed due to COVID-19 across the country are black; and

WHEREAS, this Council recognizes that racism is a public health crisis that affects all members of our society both locally and nationwide and deserves action from all levels of government and civil society; and

WHEREAS, this Council supports the establishment of a working group to address these issues and to: seek solutions to reshape the discourse and actively engage all citizens in racial justice work; continue to work to build alliances with organizations that are confronting racism and encourage partners to recognize racism as a public health crisis; continue to promote racially equitable economic and workforce development in the city; continue to promote racially equitable hiring and promotion of all employees including City employees; and advocate and draft relevant policies that prioritize the health of people of color and mitigate exposure to adverse childhood experiences and trauma in childhood; and

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley declare racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley, and commit to eliminate all socioeconomic barriers to health equity;

BE IT FURTHER RESOLVED, Declare the resolution an emergency measure for the immediate preservation of public peace, property, health, or safety, especially during the COVID-19 pandemic and it shall take effect and be in force immediately upon its adoption.

BE IT FURTHER RESOLVED, A Budget Referral to convene a series of town hall sessions for all community members, City workers, and small business owners to discuss the concerns of people of color and marginalized community members, and develop strategies and programs (especially Mental Health Programs for the unhoused stay housed) for greater inclusivity, understanding, empathy, compassion, and unity. The purpose of these meetings should be to strengthen anti-racist capacity building and commitments within the city. This can be done by discussing the current quantitative and qualitative reality of racial justice and injustice, racism and non-racism in all areas of city life toward developing measures to ensure the achievement

²⁰ <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>

²¹ <http://www.ihl.org/communities/blogs/how-to-reduce-implicit-bias>

²² https://cbc.house.gov/uploadedfiles/cbc-cbc_health_braintrust_racial_disparities_letter_to_cdc.pdf

racial equity in Berkeley. These town halls, strategies and programs could include: the definition and lived experience of racism in systemic and institutional forms the effects and trauma caused by them, and provide resources to combat implicit bias on all levels. Community partners to consider to facilitate such workshops include Beyond Diversity: Courageous Conversations About Race and Showing Up for Racial Justice (SURJ).

BE IT FURTHER RESOLVED, City Council will establish a working group to promote racial equity as well as the development of programs to address racial equity in this City.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to record COVID-19 data by race/ethnicity and to explore greater health disparities that have emerged as a result of this crisis.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to hold several fundraisers at town hall sessions for black-owned small businesses, research of state and federal RFPs for the purpose of grants acquisitions for program development in the City of Berkeley that have been affected by Covid-19 and/or recent protests.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to prepare a Health in All Policies Ordinance (see attached City of Richmond Ordinance) for Council review and adoption, critically evaluating the public health impact of all legislative and budgetary proposals, especially upon people of color and marginalized community members.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to adopt a mandatory requirement of 16 hours of ongoing annual online and in-person training on implicit bias, cultural sensitivity, and cultural humility for City Employees, commissioners, and community members; and

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee in partnership with the Berkeley Public Health Division and the Mental Health Division to develop a Strategic Plan for Health Equity, with the inclusion of a diverse group of staff with expertise in this subject matter and begin immediate implementation of recommendations.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to have an antiracism dashboard that delineates and tracks progress towards specific antiracist goals. This would involve: 1) tracking and measuring specific data that shows the extent to which racism has become a public health crisis; which would in turn enable 2) the City and the Community to dramatically reduce instances of racism, if not totally eliminate some of them; and 3) demonstrate to constituents that the other recommendations have made, and must continue to make, a tangible difference. The dashboard shall include: analyzing hospital infant mortality by race; tracking food insecurity among Berkeley residents, and correlation to racial demographics; analyzing the effects of biological weathering and resultant mental health challenges on immune strength for black individuals, and studying mental health resource availability and outreach targeting at-risk black communities; analyzing the administration of medications and health therapies by race, in an attempt to understand Berkeley health providers position vis a vis the systemic under-prescription and under-treatment of Black patients pain; tracking violent incidents targeting queer Black residents, and studying the availability of mental health resources and culturally competent healthcare for queer Black patients; identifying the largest sources of corporate environmental or carcinogenic pollution in Berkeley, and the racial demographics of people with prolonged exposure to those regions (i.e. workers and residents within range of toxic substances); identifying the locations of city waste storage/processing and the racial demographics of those most closely exposed; examining property taxes by

neighborhood, and correlation to school resources and student racial demographics; examining the availability of stable and affordable Internet access, as necessary for all possible student activities offered and required by Berkeley public schools;

BE IT FURTHER RESOLVED, Collaborate with the Berkeley Unified School District and the Vision 2020 to see how this is correlated to household racial demographics; analyzing students' realistic access to extracurricular activities such as arts and athletics; race-based differential access means that some students have less access to educational opportunities that help with physical and mental health; identifying the levels of lead and other toxins in public school buildings, and correlation to resource allocation and racial demographics among schools.

BE IT FURTHER RESOLVED, Submit copies of this resolution to State Assemblymember Buffy Wicks, State Senator Nancy Skinner, Congresswoman Barbara Lee, Alameda County Supervisor Keith Carson, as well as various organizations such as the Berkeley NAACP, the African American Holistic Resource Center Steering Committee, and Healthy Black Families.



Racism - Public Health Crisis

1,354 views · May 5, 2017

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White On Race
14 subscribers

SUBSCRIBE

Leslie Gregory, founder and director of Right to Health in Portland, Oregon, makes her case to the CDC (Center for Disease Control) for racism being a public health threat.

https://www.youtube.com/watch?v=9oKg-870R3I&feature=emb_title

ORDINANCE NO. 27-15 N.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF RICHMOND AMENDING ARTICLE IX OF THE MUNICIPAL CODE OF THE CITY OF RICHMOND. THIS ORDINANCE AMENDS THE HEALTH IN ALL POLICIES ORDINANCE.

The Council of the City of Richmond do ordain as follows:

Section I. Amendment of Chapter 9.15. Chapter 9.15 of the Municipal Code of the City of Richmond is hereby amended to read as follows:

CHAPTER 9.15

HEALTH IN ALL POLICIES

Sections:

9.15.010 Findings

9.15.020 Definitions

9.15.030 Health in All Policies Implementation

9.15.010 Findings.

- (a) Health starts where we live, learn, work and play, and everyday decisions within the City of Richmond can promote greater health and equity.
- (b) All Richmond residents should have the opportunity to make the choices that allow them to live a long, healthy life, regardless of their job, neighborhood of residence, level of education, immigration status, sexual orientation, ethnic background or religion.
- (c) Good health enhances quality of life, improves workforce productivity, increases the capacity for learning, strengthens families and communities, supports environmental sustainability and helps reduce overall economic and social insecurity.
- (d) In the City of Richmond, those at greatest risk for poor health outcomes are low-income residents of color, especially African Americans residents, who have a shorter life expectancy than other county residents.
- (e) In comparison to other cities in Contra Costa County, Richmond residents experience the highest proportion of deaths from diabetes, a higher than average rate of children requiring hospitalization due to asthma, and the second highest number of hospitalizations for mental health disorders and substance abuse.
- (f) Richmond residents are also disproportionately affected by heart disease, cancer and stroke.
- (g) Recognizing the presence of critical health disparities in the community and the opportunity to intervene on health outcomes, the City has developed and defined public health broadly in the Community Health and Wellness Element of the General Plan 2030.
- (h) Health in All Policies is an approach to operationalizing the vision of health laid out in the Richmond General Plan 2030 and to creating institutional change by prioritizing health and health equity in all policies.
- (i) Health in All Policies is fundamentally about creating systems-level change both within City departments and in the community.
- (j) In developing strategies to address health disparities, it is important to recognize that at its heart, promoting equity is not just about providing more services.

- (k) It is also about how services are developed, prioritized and delivered.
- (l) The Health in All Policies strategy guides the City of Richmond on how to address the social determinants of health, or the root causes of current health disparities in the development, prioritization and delivery of these services and policies.
- (m) The City of Richmond's Health in All Policies is designed to be consistent with the State of California's Health in All Policies Plan and the California Health and Safety Code Section 131019.5.

9.15.020 Definitions.

The definitions in this section apply throughout this ordinance unless the context clearly requires otherwise:

- (a) "Health in All Policies" (HiAP) is both a process and a goal.
 - (1) The goal of HiAP is to address inequities at the systems, policy and structural levels to eliminate the resulting health disparities.
 - (2) At the root of the HiAP is an approach to improving health of all people by incorporating health considerations into collaborative decision-making across sectors, agencies, and departments. HiAP brings city departments and community groups together to identify ways in which all policies can take health outcomes into consideration. The HiAP process places health at the center of all work, and through discussion and compromise, gains stakeholder buy-in from all agencies, groups, and departments.
 - (3) Health in All Policies works to create a new policy and organizing framework within city government and beyond in the community. It emphasizes the consequences of public policies, plans, and programs on health determinants, and aims to improve health outcomes at all levels of government within the city and those agencies responsible for serving Richmond residents.
 - (4) Robust stakeholder engagement is essential for ensuring that Health in All Policies is responsive to community needs. Community-based knowledge provides important information about opportunities and barriers for health and insight into the ways in which policies may impede or promote health.
- (b) "Health" is not simply the absence of disease, but the state of complete physical, mental, cultural and social well-being. HiAP is based on the premise that good health is fundamental for a strong economy and vibrant society, and that health outcomes are largely dependent on the social determinants of health, which in turn are shaped by decisions made within the health sector and internally and externally outside of the health sector.
- (c) "Health equity" refers to efforts to ensure that all people have full and equal access to opportunities that enable them to lead healthy lives, while respecting differences that include but are not limited to culture, language, race, gender, sexuality, economic status, citizenship, ability, age and religion.
 - (1) Health equity entails focused societal efforts to address avoidable inequalities by equalizing the conditions for health for all groups, especially for those who have experienced socioeconomic disadvantage or historical injustices.
 - (2) These communities include, but are not limited to women, people of color, low-income individuals and families, individuals who have been incarcerated, individuals with disabilities, individuals with mental health

conditions, children, youth and young adults, seniors, immigrants and refugees, individuals who are limited-English proficient (LEP), and lesbian, gay, bisexual, transgender, questioning, intersex and asexual (LGBTQIA) communities, or combinations of these populations.

- (d) “Health disparities” are differences of presence of disease, health outcomes, or access to care among distinct segments of the population, including differences that occur by race or ethnicity, gender identity, sexual orientation, education or income, immigration status, age, disability or functional impairment, or geographic location, or the combination of any of these factors.
- (e) “Health inequities” are health disparities resulting from factors that are systemic and avoidable and, therefore, considered unjust or unfair.
- (f) Determinants of health equity include the social, economic, geographic, political, institutional and physical environmental conditions that lead to the creation of a fair and just society.
- (g) “Social determinants of health” refer to everything outside of direct health care services, such as the conditions in the environment in which people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks. The social determinants of health include but are not limited to:
 - (1) The availability of resources to meet our daily needs (e.g. safe housing, access to healthy and affordable food).
 - (2) Access to educational, economic, and job opportunities that lead to sustainable employment.
 - (3) Neighborhood safety and communities free of crime, violence, and social disorder (e.g. presence of trash and other forms of blight); and
 - (4) Accessible built environments that promote health and safety, including improved pedestrian, bicycle, and automobile safety, parks and green space, and healthy school siting.
 - (5) Social norms and attitudes (e.g. discrimination and racism), socioeconomic conditions (e.g. concentrated poverty and the chronically stressful conditions that accompany it).
- (h) “Toxic stress” refers to prolonged and repeated exposure to multiple negative factors, especially in early childhood. Contributing factors include but are not limited to racial profiling, poor air quality, residential segregation and economic insecurity. Toxic stress has known physical and mental health impacts and contributes to a host of chronic conditions such as heart disease and diabetes. Toxic stress has also been shown to have negative intergenerational health effects. Toxic stress does not refer to individual stressful events, but rather the unrelieved accumulation of these events over one’s life.

9.15.030 Health in All Policies Implementation.

To effectively implement and maintain Health in All Policies the City shall:

- (a) Apply health equity and social justice foundational practices to City actions and endeavor to integrate these practices into the city’s strategic, operational and business plans; management and reporting systems for accountability and performance; and budgets in order to eliminate inequities and create opportunities for all people and neighborhoods;

- (b) Use the Health in All Policies Strategy Document as the guiding plan for implementing Health in All Policies in the City. The strategy document will outline the vision, mission and goals, and identify a timeline as well as the process to reach these goals. The strategy document will be a living plan that is designed to grow over time as progress is made and the needs of the community and City change;
- (c) Establish the Interdepartmental Health in All Policies Team. The Interdepartmental team will be comprised of representatives from each department within the City and are responsible for:
 - (1) Selecting health and health equity indicators for each department to track as a way of prioritizing goals and measuring progress aligned with existing City guiding documents (General Plan, 5 Year Strategic Business Plan, etc.);
 - (2) Attending regularly scheduled Interdepartmental Team meetings chaired by the City Manager's office;
 - (3) Reporting to the Interdepartmental Team on progress and challenges from his or her respective department;
 - (4) Working with his or her respective department to integrate and track health equity indicators for his or her department;
 - (5) Committing to attending ongoing health equity training, such as health equity impact assessments; and
 - (6) Assisting with the writing of the Tri-Annual HiAP Report and provide a report with the adoption of the City budget.
- (d) Design and publish a tri-annual report on the status of health and health equity in the City of Richmond and progress of HiAP implementation for the City Council, city staff, community organizations, residents, businesses, and other governmental agencies within the City.
 - (1) Implementation will be measured based on health and health equity indicators selected by the Interdepartmental HiAP Team.
 - (2) In addition to reporting on indicators, the Tri-Annual Report will include any updates to the HiAP strategy document.
- (e) Develop and implement an ongoing community engagement plan to work directly with stakeholders throughout the process of the HiAP Strategy development and implementation to ensure that perspectives are consistently understood, considered, and reflected in decisions. The goal is to partner with stakeholders in each aspect of decision making in order to develop and implement collaborative solutions.

Section II. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section III. Effective Date.

This Ordinance becomes effective 30 days after its final passage and adoption.

First read at a regular meeting of the Council of the City of Richmond held on November 24, 2015, and finally passed and adopted at a regular meeting thereof held on December 15, 2015, by the following vote:

| | |
|--------------|---|
| AYES: | Councilmembers Bates, Beckles, Martinez, McLaughlin, Pimplé, Vice Mayor Myrick, and Mayor Butt. |
| NOES: | None. |
| ABSTENTIONS: | None. |
| ABSENT: | None. |

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

TOM BUTT
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

| | | |
|------------------------|---|-------|
| State of California | } | |
| County of Contra Costa | } | : ss. |
| City of Richmond | } | |

I certify that the foregoing is a true copy of **Ordinance No. 27-15 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on December 15, 2015.


Pamela Christian, City Clerk of the City of Richmond



Office of the Mayor

CONSENT CALENDAR

January 19, 2021

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Revisions to Enabling Legislation for Reimagining Public Safety Task Force

RECOMMENDATION:

Adopt a Resolution:

1. Rescinding Resolution No. 69,673-N.S.; and
2. Establishing a Reimagining Public Safety Task Force, comprised of: (a) one representative appointed by each member of the City Council and Mayor pursuant to the Fair Representation Ordinance, B.M.C. Sections 2.04.030-2.04.130, (b) one representative appointed by the Mental Health Commission, Youth Commission, and Police Review Commission (to be replaced by a representative of the Police Accountability Board once it is established), and (c) one representative appointed by the Associated Students of the University of California (ASUC) External Affairs Vice President, one representative appointed by the Berkeley Community Safety Coalition (BCSC) Steering Committee, and three additional members to be appointed “At-Large” by the Task Force, with appointments subject to confirmation by the City Council.

The Task Force will be facilitated by a professional consultant, the National Institute for Criminal Justice Reform (NICJR), with administrative support by the City Manager’s office, and will serve as the hub of community engagement for the Reimagining Public Safety effort initiated and guided by the NICJR team. The Task Force will also include the participation of City Staff from the City Manager’s Office, Human Resources, Health, Housing and Community Services, Berkeley Fire Department, Berkeley Police Department, and Public Works Department. For visual, see Attachment 3.

With the exception of “At-Large” appointments, appointments to the Task Force should be made by January 31, 2021,¹ and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council’s July 14, 2020,² commitment to

¹ With the exception of the “At Large” appointments, which will be selected by the initial appointees with an eye for adding outstanding perspectives, knowledge and experience.

² “Be It Further Resolved that the City Council will engage with every willing community member in Berkeley, centering the voices of Black people, Native American people, people of color, immigrants, LGBTQ+ people, victims of harm, and other stakeholders who have been historically marginalized or under-served by our present

centering the voices of those most impacted in our process of reimagining community safety appointments should be made with the goal of achieving a balance of the following criteria:

- a. Active Members of Berkeley Community (Required of All)*³
- b. Representation from Impacted Communities
 - Formerly incarcerated individuals
 - Victims/family members of violent crime
 - Immigrant community
 - Communities impacted by high crime, over-policing and police violence
 - Individuals experiencing homelessness
 - Historically marginalized populations
- c. Faith-Based Community Leaders
- d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
- e. Health/ Public Health Expertise
- f. City of Berkeley labor/union representation
- g. Law Enforcement Operation Knowledge
- h. City Budget Operations/Knowledge
- i. Committed to the Goals and Success of The Taskforce (Required of All)

As outlined in the July 14, 2020, City Council Omnibus Action,⁴ City Council provided direction for the development of a new paradigm of public safety that should include, but is not limited to:

- 1) Building on the work of the City Council, the City Manager, Berkeley Police Department (BPD), the Police Review Commission and other City commissions and other working groups addressing community health and safety.
- 2) Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
- 3) Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform considering,⁵ among other things:

system. Together, we will identify what safety looks like for everyone.”, [Item 18d, Transform Community Safety, July 14, 2020, Berkeley City Council Agenda](#),

³ * At Large Appointees are not required to be Berkeley Residents, as long as they are active, committed Berkeley Stakeholders.

⁴ [July 14th, 2020, Berkeley City Council Item 18a-e Proposed Omnibus Motion on Public Safety Items](#)

⁵ [Transforming Police](#), NICJR

- A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety.
- B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
- C. Limiting militarized weaponry and equipment.
- D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
- E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
- F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit.

Direct the City Manager to ensure that the working group of City Staff as outlined in the October 28th Off-Agenda Memo is coordinating with the Task Force.⁶

The Task Force will provide input to and make recommendations to NICJR and City Staff on a set of recommended programs, structures and initiatives incorporated into a final report and implementation plan developed by NICJR to guide future decision making in upcoming budget processes for FY 2022-23 and, as a second phase produced, in the FY 2024-2025 budget processes.⁷

FINANCIAL IMPLICATIONS

City Council allocated \$270,000 in General Fund revenues to support engagement of outside consultants in the Reimagining Public Safety process.

BACKGROUND

On July 14, 2020, the Berkeley City Council made a historic commitment to reimagine the City's approach to public safety with the passage of an omnibus package of referrals, resolutions and directions. Central to this proposal is a commitment to a robust community process to achieve this "new and transformative model of positive, equitable and community centered safety for Berkeley". Item 18d, Transforming Community Safety, provides direction on the development of a "Community Safety Coalition", goals and a timeline led by a steering committee and guided by professional consultants. Recommendation 3 above reflects the original scope voted on by the council. However,

⁶[October 28, 2020 Off-Agenda Memo: Update on Re-Imagining Public Safety](#)

⁷ The final report and implementation plan are referenced in the contract approved by the City Council with the NICJR Consultant team on December 15, 2020.

that item did not specify the structure, exact qualifications or process of appointing this steering committee. This item follows the spirit of the original referral, and provides direction on structure, desired qualifications and appointment process.

To avoid confusion with the community organization that has independently formed since the passage of that referral, this steering committee is now being referred to as the Reimagining Public Safety Task Force.

City staff has been diligently been working to implement the referrals in the omnibus motion, including the development, release and evaluation of a request for proposals (RFP) for a consultant to facilitate this process.⁸ Initially, the expectation was that the development of a structure and process for the Task Force would be developed in consultation with the professionals selected by this RFP. However, to ensure thorough review of these proposals the timeline for selecting the consultant is longer than initially expected. At the July 18, 2020, meeting, City Council clearly stated that the Task Force will begin meeting no later than January 2021. To meet this timeline, the Council should adopt the proposed framework and appointment process so that the Task Force and our community process can begin shortly after the RFP process is completed.

This resolution is being reintroduced to clarify the process for transitioning appointments from the Police Review Commission to the newly established Police Accountability Board and to ensure that the Task Force works with the NICJR consultant team to develop one report and set of recommendations. The initial resolution was written prior to the finalization of a contract with NICJR. After consultation with city staff and the consultant team, the revised language will set clear expectations and a foundation for successful collaboration between the work of the Task Force and the consultant team.

RATIONALE FOR RECOMMENDATION

The proposed structure creates a Task Force with 17 total seats, ensuring representation from each Councilmember and the Mayor, key commissions including the Police Review Commission, the Youth Commission and the Mental Health Commission as well as representation from the ASUC, the Berkeley Community Safety Coalition (BCSC) and three “at-large” members to be selected by the Task Force to fill any unrepresented stakeholder position or subject matter expertise, with the community based organization and at-large appointments subject to confirmation by the City Council.⁹

This model was developed with input from all co-authors, the City Manager, community stakeholders including the ASUC and BCSC as well organizations and experts with experience running community engagement processes. Additionally, the Mayor’s office researched a wide range of public processes that could inform the structure and approach

⁸ Ibid

⁹ [The Berkeley Community Safety Coalition](#), initially known as Berkeley United for Community Safety, produced a 40 page report that was shared with the council in July. Their recommendations were referred to the reimagining process as part of the Mayor’s omnibus motion. Co-Founder Moni Law describes BCSC as a “principled coalition that is multiracial, multigenerational and Black and brown centered. We include over 2,000 people and approximately a dozen organizations and growing.”

for Berkeley, including youth-led campaigns, participatory budgeting processes, and long-term initiatives like the California Endowment Building Healthy Communities initiative.¹⁰

The proposed Task Force structure and process draws most directly on the processes underway in Oakland and in Austin, Texas.¹¹¹² In July, Oakland voted to establish a Reimagining Public Safety Task Force with 17 members, including appointees from all councilmembers and the Mayor, three appointees from their public safety boards, two appointees to represent youth and two at-large appointees selected by their council co-chairs¹³. The model proposed for Berkeley draws heavily from the Oakland approach. A key difference is that, unlike Oakland, this proposed structure does not recommend developing additional community advisory boards. Instead, it is recommended that Berkeley leverage our commissions and community organizations to provide additional input and research to inform the Task Force’s work rather than establish additional community advisory boards.

The list of proposed qualifications for appointees (recommendation 2) is also modeled after Oakland’s approach. In July, the city council committed to centering the voices of those that are most impacted by our current system of public safety as we reimagine it for the future. The list of qualifications is intended to guide councilmembers and other appointing bodies and organizations to ensure that the makeup of the Task Force reflects that commitment. After all appointments are made, the Task Force will select 3 additional “at large” members to join the Task Force with an eye on adding perspectives, expertise or experience that are missing in initial appointments.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the action requested in this report.

ALTERNATIVE ACTIONS CONSIDERED

Alternative appointment structures were evaluated, including a citywide application process and an independent selection committee. However, given that the Task Force will ultimately advise the City Council, there was broad agreement that the Council should have a strong role in appointing the Task Force.

CONTACT PERSON

Jesse Arreguín, Mayor, (510) 981-7100

Attachments:

1. Resolution Establishing Reimagining Public Safety Task Force
2. Resolution No. 69,673-N.S.

¹⁰ [California Endowment Building Healthy Communities Initiative.](#)

¹¹ [Austin, Texas Reimagining Public Safety Task Force](#)

¹² [Reimagining Public Safety](#), Oakland website

¹³ [Oakland Reimagining Public Safety Task Force Framework](#)

3. Framework for Reimagining Public Safety Task Force
4. July 14, 2020 City Council Item 18d, Transforming Community Safety
5. July 14, 2020 City Council Item a-e, Proposed Omnibus Motion on Public Safety Items

RESOLUTION NO.

ESTABLISHING THE REIMAGINING PUBLIC SAFETY TASK FORCE

WHEREAS, On July 14, 2020, the Berkeley City Council made a historic commitment to reimagine the City's approach to public safety with the passage of an omnibus package of referrals, resolutions and directions; and

WHEREAS, Central to this proposal is a commitment to a robust community process to achieve this "new and transformative model of positive, equitable and community centered safety for Berkeley". Item 18d, Transforming Community Safety, provides direction on the development of a "Community Safety Coalition", goals and a timeline led by a steering committee and guided by professional consultants; and

WHEREAS, on December 15, 2020, the City Council authorized the City Manager to enter into a contract with the National Institute for Criminal Justice Reform (NICJR) who will conduct research, analysis, and use its expertise to develop reports and recommendations for community safety and police reform as well as plan, develop, and lead an inclusive and transparent community engagement process to help the City achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley; and

WHEREAS, the NICJR has agreed to perform the following work:

- Working with the City Auditor on the assessment of emergency and non-emergency calls for service.
- Developing a summary and presentation of new and emerging models of community safety and policing.
- Developing and implementing a communications strategy to ensure that the community is well informed, a robust community engagement process, and managing the Task Force to be established by the City Council.
- Identifying the programs and/or services that are currently provided by the Berkeley Police Department that can be provided by other City departments and / or organizations.
- Developing a final report and implementation plan that will be used to guide future decision making.

WHEREAS, to avoid confusion with the community organization that has independently formed since the passage of that referral, this steering committee is now being referred to as the Reimagining Public Safety Task Force; and

WHEREAS, the purpose of this Resolution is to specify the structure, criteria, and role of the Reimagining Public Safety Task Force.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution No. 69,673-N.S. is hereby rescinded; and

BE IT FURTHER RESOLVED that the Berkeley City Council does hereby establish the Reimagining Public Safety Task Force.

1. The membership shall be comprised of:
 - a. One (1) representative appointed by each member of the City Council and Mayor, pursuant to the Fair Representation Ordinance, B.M.C. Sections 2.04.030-2.04.130,
 - b. One (1) representative appointed from the Mental Health Commission, Youth Commission and Police Review Commission (to be replaced by a representative of the Police Accountability Board once it is established), and
 - c. Subject to confirmation by the City Council, one (1) representative appointed by the Associated Students of the University of California (ASUC) External Affairs Vice President, one (1) representative appointed by the Berkeley Community Safety Coalition (BCSC) Steering Committee, and three (3) additional members to be appointed “At-Large” by the Task Force.

2. With the exception of the “At-Large” appointments, appointments to the Task Force should be made by January 31, 2021,¹⁴ and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council’s July 14, 2020,¹⁵ commitment to centering the voices of those most impacted in our process of reimagining community safety, appointments should be made with the goal of achieving a balance of the following criteria:
 - a. Active Members of Berkeley Community (Required of All)^{*16}
 - b. Representation from Impacted Communities
 - Formerly incarcerated individuals
 - Victims/family members of violent crime
 - Immigrant community
 - Communities impacted by high crime, over-policing and police violence
 - Individuals experiencing homelessness
 - Historically marginalized populations

¹⁴ With the exception of the “At Large” appointments, which will be selected by the initial appointees with an eye for adding outstanding perspectives, knowledge and experience.

¹⁵ “Be It Further Resolved that the City Council will engage with every willing community member in Berkeley, centering the voices of Black people, Native American people, people of color, immigrants, LGBTQ+ people, victims of harm, and other stakeholders who have been historically marginalized or under-served by our present system. Together, we will identify what safety looks like for everyone.”, [Item 18d, Transform Community Safety, July 14, 2020, Berkeley City Council Agenda](#).

- c. Faith-Based Community Leaders
 - d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
 - e. Health/ Public Health Expertise
 - f. City of Berkeley labor/union representation
 - g. Law Enforcement Operation Knowledge
 - h. City Budget Operations/Knowledge
 - i. Committed to the Goals and Success of The Taskforce (Required of All)
3. At Large Appointees are not required to be Berkeley Residents, as long as they are active, committed Berkeley stakeholders.
 4. As outlined in the July 14, 2020, City Council Omnibus Action,¹⁷ City Council provided direction for the development of a new paradigm of public safety that should include, but is not limited to:
 - 1) Building on the work of the City Council, the City Manager, Berkeley Police Department, the Police Review Commission and other City commissions and other working groups addressing community health and safety.
 - 2) Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
 - 3) Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (NICJR) considering,¹⁸ among other things:
 - A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety.
 - B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
 - C. Limiting militarized weaponry and equipment.
 - D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
 - E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with

¹⁷ [July 14th, 2020, Berkeley City Council Item 18a-e Proposed Omnibus Motion on Public Safety Items](#)

¹⁸ [Transforming Police](#), NICJR

educational, community serving, restorative and other positive programs, policies and systems.

- F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit; and

BE IT FURTHER RESOLVED, that the Task Force will provide input to and make recommendations to NICJR and City Staff on a set of recommended programs, structures and initiatives incorporated into a final report and implementation plan developed by NICJR to guide future decision making in upcoming budget processes for FY 2022-23 and, as a second phase produced, in the FY 2024-2025 budget processes.¹⁹; and

BE IT FURTHER RESOLVED, that the City Manager is requested to provide updates and coordinate with the Task Force regarding the work that is underway on various aspects of the July 14, 2020 Omnibus package adopted by City Council including the Specialized Care Unit, BerkDoT, and priority dispatching (For visual, see Attachment 2); and

BE IT FURTHER RESOLVED, the Task Force shall sunset at the earlier of City Council's adoption of the final report and implementation plan developed by NICJR or three years after appointments are made unless the Task Force is otherwise extended by the City Council; and

BE IT FURTHER RESOLVED, the Task Force should be subject to the Commissioner's Manual; and

BE IT FURTHER RESOLVED, Mayor and City Council appointments to the Task Force shall be made, and vacancies shall be filled, in accordance with the provisions of Sections 2.04.030 through 2.04.130 of the Berkeley Municipal Code; and

BE IT FURTHER RESOLVED, The appointment of any member of the Task Force shall automatically terminate as set forth in Berkeley Municipal Code Chapter 3.02 due to attendance; and

BE IT FURTHER RESOLVED, The City Clerk shall notify any member whose appointment has automatically terminated and report to the appointing City Councilmember or appointing authority that a vacancy exists on the Task Force and that an appointment should be made to fill the vacancy; and

BE IT FURTHER RESOLVED, Temporary appointments may be made and leaves of absence may be granted by the appointing authority pursuant to Berkeley Municipal Code Section 3.03.030 and the Commissioners' Manual; and

¹⁹ The final report and implementation plan are referenced in the contract approved by the City Council with the NICJR Consultant team on December 15, 2020

BE IT FURTHER RESOLVED, A majority of the members appointed to the Task Force shall constitute a quorum and the affirmative vote of a majority of the members appointed is required to take any action; and

BE IT FURTHER RESOLVED, The Task Force shall keep an accurate record of its proceedings and transactions; and

BE IT FURTHER RESOLVED, The Task Force may make and alter rules governing its organization and procedures which are not inconsistent with Resolution or any other applicable ordinance of the city, or any resolution of the city governing commission procedures and conduct; and

BE IT FURTHER AND FINALLY RESOLVED, The Task Force shall establish a regular place and time for meeting. All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. The frequency of meetings shall be as determined by the Task Force Chair in consultation with NICJR and City Staff.

RESOLUTION NO. 69,673-N.S.

ESTABLISHING THE REIMAGINING PUBLIC SAFETY TASK FORCE

WHEREAS, On July 14, 2020, the Berkeley City Council made a historic commitment to reimagine the City's approach to public safety with the passage of an omnibus package of referrals, resolutions and directions; and

WHEREAS, Central to this proposal is a commitment to a robust community process to achieve this "new and transformative model of positive, equitable and community centered safety for Berkeley". Item 18d, Transforming Community Safety, provides direction on the development of a "Community Safety Coalition", goals and a timeline led by a steering committee and guided by professional consultants; and

WHEREAS, that item did not specify the structure, exact qualifications or process of appointing this steering committee; and

WHEREAS, To avoid confusion with the community organization that has independently formed since the passage of that referral, this steering committee is now being referred to as the Reimagining Public Safety Task Force.

NOW, THEREFORE BE IT RESOLVED that the City Council does hereby establish the Reimagining Public Safety Task Force.

1. The membership shall be comprised of: One (1) representative appointed by each member of the City Council and Mayor, one (1) representative appointed by the Mental Health, Police Review and Youth Commissions, one (1) representative appointed by the Associated Students of the University of California (ASUC), one (1) representative appointed by the Berkeley Community Safety Coalition (BCSC), and three (3) additional members to be appointed "At Large" by the Task Force, all subject to confirmation by the City Council. The Task Force will be guided by a professional consultant, and will include the participation of City Staff from the City Manager's Office, Human Resources, Health, Housing and Community Services, Berkeley Fire Department, Berkeley Police Department, and Public Works Department. For visual, see Attachment 2.
2. Appointments to the Task Force should be made by January 31, 2021,¹ and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council's July 14, 2020,² commitment to centering the voices of those most

¹ With the exception of the "At Large" appointments, which will be selected by the initial appointees with an eye for adding outstanding perspectives, knowledge and experience.

² "Be It Further Resolved that the City Council will engage with every willing community member in Berkeley, centering the voices of Black people, Native American people, people of color, immigrants, LGBTQ+ people, victims of harm, and other stakeholders who have been historically marginalized or

impacted in our process of reimagining community safety appointments should be made with the goal of achieving a balance of the following criteria:

- a. Active Members of Berkeley Community (Required of All)*³
 - b. Representation from Impacted Communities
 - Formerly incarcerated individuals
 - Victims/family members of violent crime
 - Immigrant community
 - Communities impacted by high crime, over-policing and police violence
 - Individuals experiencing homelessness
 - Historically marginalized populations
 - c. Faith-Based Community Leaders
 - d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
 - e. Health/ Public Health Expertise
 - f. City of Berkeley labor/union representation
 - g. Law Enforcement Operation Knowledge
 - h. City Budget Operations/Knowledge
 - i. Committed to the Goals and Success of The Taskforce (Required of All)
3. The charge of the Task Force is as outlined in the July 14, 2020, City Council Omnibus Action,⁴ and should include but is not limited to:
- 1) Building on the work of the City Council, the City Manager, BPD, the PRC and other City commissions and other working groups addressing community health and safety.
 - 2) Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
 - 3) Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform considering,⁵ among other things:
 - A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety.

under-served by our present system. Together, we will identify what safety looks like for everyone.”, Item 18d, Transform Community Safety, July 14, 2020, Berkeley City Council Agenda,

³ * At Large Appointees are not required to be Berkeley Residents, as long as they are active, committed Berkeley Stakeholders.

⁴ July 14th, 2020, Berkeley City Council Item 18a-e Proposed Omnibus Motion on Public Safety Items

⁵ Transforming Police, NICJR

- B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
- C. Limiting militarized weaponry and equipment.
- D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
- E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
- F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit; and

BE IT FURTHER RESOLVED, that the outcome of the Task Force will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY 2024-2025 budget processes to ensure that recommended changes will be achieved. The Task Force shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY 2022-23 Budget Process; and

BE IT FURTHER RESOLVED, the Task Force shall sunset after two years unless otherwise extended by the City Council;

BE IT FURTHER RESOLVED, the Task Force should be subject to the Commissioner's Manual; and

BE IT FURTHER RESOLVED, Berkeley City Council appointments to the Task Force shall be made, and vacancies shall be filled, in accordance with the provisions of Sections 2.04.030 through 2.04.130 of the Berkeley Municipal Code; and

BE IT FURTHER RESOLVED, The appointment of any member of the Task Force shall automatically terminate as set forth in Berkeley Municipal Code Chapter 3.02 due to attendance; and

BE IT FURTHER RESOLVED, The City Clerk shall notify any member whose appointment has automatically terminated and report to the appointing City Councilmember or appointing authority that a vacancy exists on the Task Force and that an appointment should be made to fill the vacancy; and

BE IT FURTHER RESOLVED, Temporary appointments may be made and leaves of absence may be granted by the appointing authority pursuant to Berkeley Municipal Code Section 3.03.030 and the Commissioners' Manual; and

BE IT FURTHER RESOLVED, The Task Force annually shall elect one of its members as the chairperson and one of its members as the vice-chairperson; and

BE IT FURTHER RESOLVED, A majority of the members appointed to the Task Force shall constitute a quorum and the affirmative vote of a majority of the members appointed is required to take any action; and

BE IT FURTHER RESOLVED, The Task Force shall keep an accurate record of its proceedings and transactions; and

BE IT FURTHER RESOLVED, The Task Force may make and alter rules governing its organization and procedures which are not inconsistent with this Resolution or any other applicable ordinance of the city, or any resolution of the city governing commission procedures and conduct; and

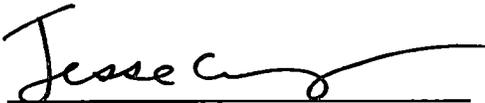
BE IT FURTHER RESOLVED, The Task Force shall establish a regular place and time for meeting. All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. The frequency of meetings shall be as determined by the Task Force Chair in consultation with City Staff.

The foregoing Resolution was adopted by the Berkeley City Council on December 15, 2020 by the following vote:

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

Noes: None.

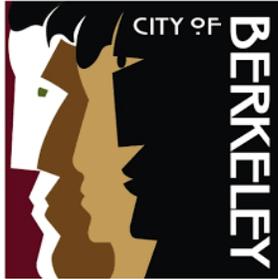
Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk



Reimagining Public Safety Task Force



Task Force Purpose & Goals



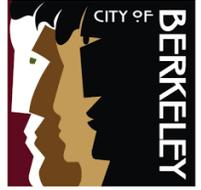
As Defined by July 14th Council Action

Purpose: The Community Safety Coalition, guided by a task force, will serve as the hub for a broad, deep and representative process, and uplift the community's input into a new positive, equitable, anti-racist system of community health and safety.

The work of the task force should include but not be limited to:

1. Building on the work of the City Council, the City Manager, BPD, the PRC and other City commissions and other working groups addressing community health and safety.
2. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.

Task Force Purpose & Goals



Continued...

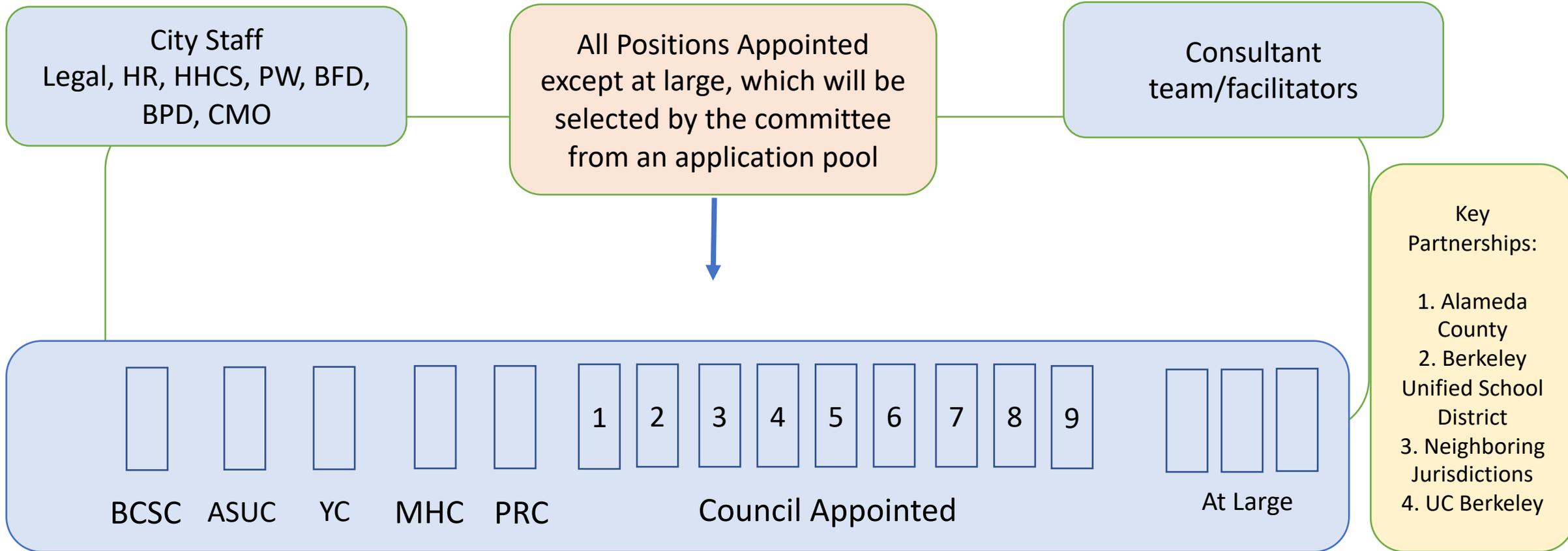
3. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform considering, among other things:

- a) The social determinants of health and changes required to deliver a holistic approach to community-centered safety
- b) The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
- c) Limiting militarized weaponry and equipment.
- d) Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
- e) Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
- f) Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit

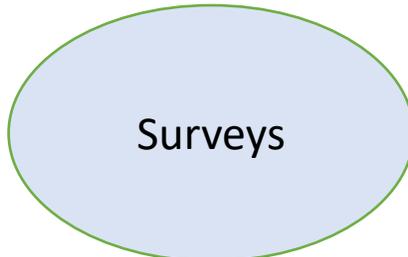


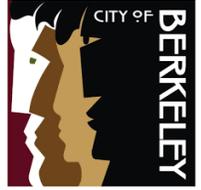
Proposed Task Force Structure

Selected by Councilmembers, Mayor & Key Commissions and Community Stakeholders



Parallel
Community
Engagement





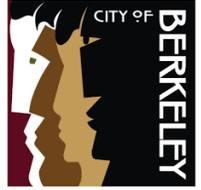
Task Force Membership

Knowledge, Expertise, & Experience Needed

- Active Members of Berkeley Community (Required of All*)
- Representation from Impacted Communities
 - Formerly incarcerated individuals
 - Victims/family members of violent crime
 - Immigrant community
 - Communities impacted by high crime, over-policing and police violence
 - Individuals experiencing homelessness
 - Historically marginalized populations
- Faith-Based Community Leaders
- Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
- Health/ Public Health Expertise
- City of Berkeley labor/union representation
- Law Enforcement Operation Knowledge
- City Budget Operations/Knowledge
- Committed to the Goals and Success of The Taskforce (Required of All)

**At Large appointees may not be Berkeley residents, so long as they are active and committed stakeholders*

Task Force Responsibilities



Active membership & Participation Required of Selected members

- Work collaboratively to achieve the purpose and goals established
- Thorough preparation for and active participation in all taskforce meetings (1-2 meetings per month)
- Participate in and support various community engagement efforts
- Other responsibilities – to be determined



Office of the Mayor
Jesse Arreguín

ACTION CALENDAR
July 14, 2020

To: Honorable Members of the City Council
From: Mayor Jesse Arreguín, Vice-Mayor Sophie Hahn, Councilmember Ben Bartlett, Councilmember Kate Harrison
Subject: Transform Community Safety and Initiate a Robust Community Engagement Process

RECOMMENDATIONS

1. Adopt a Resolution expressing the City Council’s commitment to:
 - a. A transformative approach to community-centered safety and reducing the scope of policing,
 - b. Equitable investment in the essential conditions of a safe and healthy community, especially for those who have been historically marginalized and have experienced disinvestment, and
 - c. A broad, inclusive community process that will result in deep and lasting change to support safety and wellbeing for all Berkeley residents.
2. Direct the City Manager to track and report progress on actions to implement this initiative, and other actions that may be identified by the Coalition and referred by Council to the City Manager. Updates shall be provided by written and verbal reports to Council and posted on a regularly updated and dedicated page on the City website.
3. Direct the City Manager to collaborate with Mayor and select Councilmembers to complete the following work, to inform investments and reallocations to be incorporated into future Budget processes:
 - a. Contract with independent subject matter experts to:
 - i. Analyze the scope of work of, and community needs addressed by, the Berkeley Police Department, to identify a more limited role for law enforcement, and identify elements of police work that could be achieved through alternative programs, policies, systems, and community

investments. Analysis should include but not be limited to: calls received by dispatch by type of complaint, stops by law enforcement generated at officer discretion (as contained in the Police Department's open data portal) or on request of other city agencies, number of officers and staff from other city agencies that respond to incidents, estimated time in response to different types of calls, daily patrol activities, organizational structure, and beat staffing. Work to include broad cost estimates of police and other city agency response to different types of calls, and other information and analysis helpful to identify elements of current police work that could be transferred to other departments or programs or achieved through alternative means. Work should be completed in time for the November 2020 Annual Appropriation Ordinance revision.

- ii. Identify immediate and longer-term opportunities to shift policing resources to alternative, non-police responses and towards alternative and restorative justice models, to better meet community needs, that could be considered in the November 2020 AAO#1 budget process. Some areas to be considered include homeless outreach and services, substance abuse prevention and treatment, and mental health/crisis management, as well as alternative models for traffic and parking enforcement, "neighborhood services" and code enforcement. Provide a broad timeline and process for transitioning functions not ready for transition at this first milestone.

Deliverables should coincide with budget cycles, including the November 2020 AAO and FY 2022-2023 Budget processes, and provide a suggested timeline for transitioning functions at these and other budget opportunities, so that alternative investments may be considered for funding and launched in a timely and orderly manner.

- b. Contract with independent Change Management experts to initiate and facilitate a representative Community Safety Coalition, guided by a Steering Committee, that will begin meeting no later than January 2021. The CSC and its Steering Committee should be broadly inclusive and representative of Berkeley residents and stakeholders. The Steering Committee, with the support of Change Management professionals, shall be responsible for engaging the Coalition and the broader Berkeley community and relevant City Staff in a robust process, to achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley.

The work of the Coalition should include but not be limited to:

1. Building on the work of the City Council, the City Manager, the PRC and other City commissions and other working groups addressing community health and safety.
2. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
3. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (Attachment 3), considering, among other things:
 - a. The social determinants of health and changes required to deliver a holistic approach to community-centered safety
 - b. The appropriate response to community calls for help including size, scope of operation and powers and duties of a well-trained police force.
 - c. Limiting militarized weaponry and equipment.
 - d. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
 - e. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
- c. The Coalition's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY2024-2025 budget processes to ensure that recommended changes will be achieved. The Coalition shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY2022-23 Budget Process.

SUMMARY

Local government's most fundamental role is to provide for the health and safety of its residents. Cities around the country are acknowledging that they are falling behind in this basic function, and are embarking on efforts to reimagine health and safety, and to consider reallocating resources towards a more holistic approach; one that shifts resources away from policing towards health, education and social services, and is able to meet crises with a variety of appropriate responses.

The current re-energized movement for social justice and police reform highlights a problematic expansion, over many decades, in the roles and responsibilities of the police. As other systems have been defunded, most notably mental health, education, affordable housing and other health and safety-net programs, the police have been asked to respond to more and more crises that could have been avoided with a different set of investments in community wellbeing. Rather than being the responders of last resort, focused on criminal, aggressive and violent behaviors, police are now frontline responders routinely called to address mental health crises, poverty and homelessness, substance abuse, stress in the school environment, traffic and code violations and neighborhood disputes. This is an extensive set of responsibilities that is not traditionally the purview of the police.

This item initiates a restructure and redefinition of "health and safety" for all Berkeleyans, with immediate, intermediate and longer-term steps to transform the city to a new model that is equitable and community-centered. It roots the transformative process in broad, deep and representative community engagement which empowers the community to address social determinants of health and safety and deliver transformative change, with the help of change management professionals and informed by research and analysis of current and best practices.

BACKGROUND

The recent murders of George Floyd, Breonna Taylor and Ahmaud Arbery have ignited the nation in passionate protest against police brutality and racial injustice. Across the country, community members have gathered for weeks to demand change and called out the enduring, systemic racism, white supremacy and accompanying police brutality that have defined the United States for too long. Among the more immediate demands are calls to reduce funding and the scope of police work and to invest in alternative models to achieve positive, equitable community safety.

These demands for change go beyond necessary efforts in procedural justice, implicit bias training, and improved use of force policies. Activists, organizers and their allies in our community are seeking a broader discussion about the true foundations for a safe and healthy community for all people. For too long, "public safety" has been equated

with more police, while economic and social welfare programs have been viewed as special projects unrelated to health and safety.

Responding from the epicenter of this moment, the City of Minneapolis has voted to disband their police department and engage in a deep and detailed year long process to fundamentally transform community health and safety in their city.¹ Closer to home, Mayor London Breed has announced that San Francisco will demilitarize their police force and end the use of police as a response for non-criminal activity.²

As this movement ripples across the nation, Berkeley has an opportunity to lead in transforming our approach to public health and safety. We need the right response for each crisis rather than defaulting to police. This resolution and recommendations initiate a thoughtful, thorough approach to restructuring and redefining health and safety through investment in the social determinants of health, rooted in deep community engagement and empowerment.

Community members are calling on city leaders to be creative in reimagining the city's approach to health and safety and to make clear, demonstrated commitments and timelines for this work.

In order to earn community buy-in for these important changes it is critical that the future of community health and safety be defined by the Berkeley community, centering the voices of our Black, Native American/First Peoples and other communities of color, LGBTQ+ people, victims of harm and other stakeholders that have been historically, and continue to be, marginalized and under-served by our current system. A community-wide process would ultimately inform recommended investments and approaches to achieve a higher and more equitable level of community safety for the entire community.

CURRENT SITUATION AND ITS EFFECTS

Despite strong efforts and leadership on police reform, homelessness, health, education and housing affordability in Berkeley, racial disparities remain stark across virtually every meaningful measure. According to the City of Berkeley's 2018 Health Status Summary Report, African Americans are 2.3 times more likely to die in a given year from any condition as compared to Whites. In 2013, African Americans were twice as likely to live in poverty in Berkeley. By 2018, they were eight times more likely. The Center for Policing Equity (CPE) found that Black drivers are 6.5 times as likely as white drivers to be stopped by Berkeley police officers and four times as likely to be searched. Latinx people are also searched far more often than white people. Furthermore, there is a striking disproportionality in BPD's use of force against Black community members.

¹ <https://lms.minneapolismn.gov/Download/File/3806/Transforming%20Community%20Safety%20Resolution.pdf>

² <https://sfmayor.org/article/mayor-london-breed-announces-roadmap-new-police-reforms>

Black people comprise 8% of Berkeley's population but 46% of people who are subjected to police force.³

Local government's most fundamental role is to provide for the health and safety of its residents. Cities around the country are acknowledging that they are falling behind in this basic function and are embarking on efforts to reimagine health and safety, and to consider reallocating resources towards a more holistic approach; one that shifts resources away from policing towards health, education and social services, and is able to meet crises with a variety of appropriate responses.

In addition to renewed efforts around policing in places like Minneapolis and San Francisco that were prompted by George Floyd's murder, the financial and public health impacts of COVID-19 had already required Berkeley to reimagine and innovate to meet the moment. Berkeley now faces multiple intersecting crises: the COVID-19 pandemic and its economic impacts, the effects of systemic racism and the ongoing climate emergency. There is no returning to "normal."

COVID-19 has demonstrated that we are only as healthy and safe as the most vulnerable amongst us, and we are in fact one community. There is both a moral and fiscal imperative to restructure the way Berkeley envisions and supports health and safety.

Berkeley is facing a \$40 million budget deficit, and while deferrals of projects and positions can help close the gap in the short term, the economic impacts of the pandemic will require deeper restructuring in the coming years. The current structure of the police department consumes over 44% of the City's General Fund Budget. With the increase in payments required to meet pension and benefit obligations, the police budget could overtake General Fund capacity within the next 10 years. Thus, even before the important opportunity for action created through outrage at the murder of George Floyd, the City's current investments in safety were unsustainable. To provide meaningful safety and continue critical health and social services, Berkeley must commit to, and invest in, a new, positive, equitable and community-centered approach to health and safety - this is affordable and sustainable.

³ <https://www.berkeleyside.com/wp-content/uploads/2018/05/Berkeley-Report-May-2018.pdf>

RATIONALE FOR RECOMMENDATIONS

1. Resolution expressing City Council's commitment to a new city-wide approach to public health and safety

Transforming our system of health and safety requires strong commitment from our leaders and the community. This resolution (Attachment 1) is an expression of commitment and a tool for accountability to the public.

The proposed set of principles as well as specific initiatives are the starting point for a robust and inclusive process. Some actions will require significantly more work and additional council direction prior to implementation. For example, moving traffic and parking enforcement from police is a concept that is recommended but would require a significant redesign of city operations. Other changes may be able to move forward more quickly. These ideas are submitted in a spirit of conviction and humility. The future of community health and safety must be addressed in a fundamentally different way and the Council is committed to collaborating with the community to define a new, positive and equitable model of health and safety for everyone.

2. Direct the City Manager to publicly track progress on actions that respond to the directives of the principles herein and others identified by the Coalition. Progress shall be updated regularly and available on a dedicated page on the City website.

This webpage should include a summary of the actions outlined in this item, as well as other work already underway such as the Mayor's Fair and Impartial Working group, the Use of Force policy updates, other work underway by the Police Review Commission and any other Council referrals or direction on public safety, including existing referrals addressing alternative and restorative justice, that reflect the spirit and scope of this item.

Transformative change will only be successful if processes are transparent and information widely disseminated, as the City has so successfully demonstrated in managing the COVID-19 crisis. By publicly posting this information, the public will have the capacity to keep its elected officials, city staff, and our whole community accountable for realizing a new system of community centered safety that meets the needs of all of Berkeley's residents.

3. Direct the City Manager to collaborate with Mayor and select Councilmembers to complete the following work, to inform investments and reallocations to be incorporated into future Budget processes:

(a) Begin the process of structural change including directing the analysis of the activities of the Berkeley Police Department and other related departments.

Transforming community health and safety has to start by understanding the existing system, the calls to which it responds and other activities. This recommendation seeks to build on Councilmember Bartlett's George Floyd Community Safety Act to immediately engage independent, outside experts to conduct a data-driven analysis of police calls and responses and a broader understanding of how the police actually spend their time.⁴⁵

Engaging the services of outside experts will ensure a transparent and trusted process and provide accurate data required to effectuate substantive change will be identified and that data will inform immediate change and the work throughout the community engagement process. The experts must be knowledgeable about policing, code enforcement, criminal justice and community safety and have deep experience with current and emerging theories, as well as expertise in data collection and analysis to inform recommendations for transformative change.

This analysis should commence as quickly as possible with the goal of providing some recommendations in time for the November 2020 AAO and then to more broadly inform the work of the Community Safety Coalition.

(b) Identify immediate opportunities to shift elements of current policing resources to fund more appropriate community agency responses

This re-energized movement for social justice also highlights a problematic expansion, over many decades, in the roles and responsibilities of the police. As other systems have been defunded, most notably mental health, education, affordable housing and other health and safety-net programs, the police have been asked to respond to more and more crises that could be avoided with a different set of investments in community wellbeing. Rather than being the responders of last resort, focused on criminal, aggressive and violent behaviors, police are now frontline responders routinely called to address mental health crises, poverty and homelessness, substance abuse, stress in the school environment, traffic and code violations and neighborhood disputes. This is an extensive set of responsibilities that have slowly accreted to the police.

⁴https://www.cityofberkeley.info/uploadedFiles/Clerk/Update_Budget%20Request%20to%20Hire%20a%20Consultant%20to%20Perform%20Police%20Call%20and%20Re...pdf

⁵ [New York Times- How Do the Police Actually Spend Their Time?](#)

By November 2020, with preliminary information provided by outside experts, the City Manager and Council should identify some responsibilities that can be quickly shifted to other programs, departments and agencies. Some areas to be considered include:

- Mental health and crisis management (consideration should be given to possible expansion of the Mobile Integrated Paramedic Unit (MIP) Pilot initiated by the Berkeley Fire Department during the COVID-19 pandemic), and other models for mental health outreach and crisis response, including by non-profits
- Homeless outreach and services
- Civilianizing some or all Code Enforcement + Neighborhood Services and placing these functions elsewhere
- Alternatives for traffic and parking enforcement, and
- Substance abuse prevention and treatment

The consultants should work with the City Manager to provide a specific timeline and process for transitioning functions as quickly as possible, with deliverables to coincide with timelines for budget processes.

(c) Contract with Change Management experts to initiate and facilitate a Community Safety Coalition (“CSC”) and Steering Committee that will begin meeting no later than January 2021.

While the Council can make some important changes and investments in the near future, a complete and enduring transformation in community safety is only possible through robust community engagement. It is critical that the future of community health and safety is defined by the Berkeley community, elevating the voices of our Black, Native American/First Peoples and other communities of color, LGBTQ+ people, victims of harm and other stakeholders that have been historically marginalized and under-served by current systems. The Community Safety Coalition, guided by a steering committee, will serve as the hub for a broad, deep and representative process, and uplift the community’s input into a new positive, equitable, anti-racist system of community health and safety.

Berkeley has a history in leading transformational change to achieve a more equitable society. The robust public process that led to school desegregation is an example of our community’s success in bringing about significant, transformative change (Attachment 4).

The robust public process, led by the Community Safety Coalition and its steering committee, will be guided and facilitated by outside experts.

The work of the Coalition should include but not be limited to:

- Build upon the work of the City Council, City Manager, the Fair and Impartial Policing Working Group, the Use of Force subcommittee and other efforts of the Police Review and other City Commissions, and the work of other community agencies addressing community-centered health and safety
- Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley. This research should explore and propose investments in restorative justice models, gun violence intervention programs, and substance abuse support, among other things.
- Recommend a positive, equitable, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (Attachment 3), considering, among other things:
 - The social determinants of health and changes required to deliver a holistic approach to community-centered safety
 - The appropriate response to community calls for help including size, scope of operation and powers and duties of a well-trained police force.
 - Limiting militarized weaponry and equipment.
 - Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
 - Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.

The Coalition's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY2024-2025 budget processes to ensure that recommended changes will be achieved. The Coalition shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY2022-23 Budget Process.

FINANCIAL IMPLICATIONS

\$160,000 from the Auditor's budget to assess police calls and responses

\$200,000 from current budget cycle from Fund 106, Civil Asset Forfeiture, for initial subject matter expertise and engagement of outside consultants

Staff time to support the process of identifying and implementing change.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS

This effort is in support of the following strategic plan goals:

- Champion and demonstrate social and racial equity
- Create a resilient, safe, connected, and prepared City
- Create affordable housing and housing support services for our most vulnerable community members
- Provide an efficient and financially-healthy City government
- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community

ENVIRONMENTAL SUSTAINABILITY

No Environmental Impact.

CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

Vice-Mayor Sophie Hahn

Councilmember Ben Bartlett

Councilmember Kate Harrison

Attachments:

1. Resolution
2. Safety for All: The George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis
3. "Shrink the Beast" A Framework for Transforming Police, National Institute for Criminal Justice Reform
4. School Desegregation in Berkeley: The Superintendent Reports, Neil Sullivan 1968

RESOLUTION

Whereas, The recent murders of George Floyd, Breonna Taylor and Ahmaud Arbery have ignited the nation in passionate protest against police brutality and racial injustice; and

Whereas, Demands for change go beyond necessary efforts in procedural justice, implicit bias training, and use of force policies and seek a broader discussion about investment in the conditions for a safe and healthy community; and

Whereas, Investment in “public safety” has been equated with more police for too long while economic and social welfare programs have been viewed as special projects unrelated to health and safety; and

Whereas, This movement is highlighting the problematic expansion in the roles and responsibilities of police officers. Rather than being the responders of last resort, focused on criminal, aggressive and violent behaviors, police are now frontline responders to mental health crises, homelessness, drug addiction, sex work, school disruption, traffic and code violations and neighborhood conflicts; and

Whereas, the adopted 2020 budget allocated \$74 million to the Berkeley Police Department, which represents over 44% of the City’s General Fund of \$175 million, and is more than twice as much as the combined City budgets for Health Housing and Community Services, and Economic Development; and

Whereas, It is clear that our current system of public health and safety is not working and is not sustainable in Berkeley. Despite strong efforts and leadership on police reform, homelessness and affordable housing, racial inequity remains stark across virtually every meaningful measure of health and well-being; and

Whereas, Local government’s most fundamental role is to provide for the health and safety of its residents. Cities around the country are acknowledging that they are falling behind in this basic function and are embarking on efforts to reimagine health and safety, and to consider reallocating resources towards a more holistic approach that shifts resources away from policing towards equitable health, education and social services that promote wellbeing up front;⁶⁷⁸ and

Whereas, As this movement ripples across the nation, Berkeley has an opportunity to lead in transforming our approach to public health and safety. We need the right response for each crisis rather than defaulting to using the police; and

⁶ [Transforming Community Safety Resolution-Minneapolis](#)

⁷ [San Francisco Mayor, Supervisor announce effort to redirect some police funding to African-American community](#)

⁸ [The cities that are already defunding the police](#)

Now, Therefore, Be It Resolved by The City Council of The City of Berkeley:

That the City Council commits to the principles of reduce, improve and re-invest: reduce the scope and investment in policing, improve the response and accountability of public and community agencies, reinvest in racial equity and community-based intervention initiatives⁹;

Be It Further Resolved that the City Council will engage with every willing community member in Berkeley, centering the voices of Black people, Native American people, people of color, immigrants, LGBTQ+ people, victims of harm, and other stakeholders who have been historically marginalized or under-served by our present system. Together, we will identify what safety looks like for everyone.

Be It Further Resolved that the process will center the role of healing and reconciliation. The process will require healers, elders, youth, artists, and organizers to lead deep community engagement on race and public safety. We will work with local and national leaders on transformative justice in partnerships informed by the needs of every block in our city.

Be It Further Resolved that decades of police reform efforts have not created equitable public safety in our community, and our efforts to achieve transformative public safety will not be deterred by the inertia of existing institutions, contracts, and legislation.

Be It Further Resolved that these efforts heed the words of Angela Davis, “In a racist society, it is not enough to be non-racist. We must be anti-racist.”

Be It Further Resolved that the transformation under consideration has a citywide impact, and will be conducted by the City Council in a spirit of collaboration and transparency with all constructive stakeholder contributors including the Mayor’s Office, the City Manager, the Police Chief, and community organizations.

Be It Further Resolved that the City Council of the City of Berkeley is committed to:

1. A transformative approach to community-centered safety and reducing the scope of policing
2. Equitable investment in the essential conditions of a safe and health community especially for those who have been historically marginalized and have experienced disinvestment
3. A broad, inclusive community process that will result in deep and lasting change to support safety and wellbeing for all Berkeley residents.

⁹ [A Framework fo Transforming Police- NICJR](#)

Be it Further Resolved that the City Council supports taking the following actions to realize this transformation:

1. Direct the City Manager to track and report progress on actions to implement this initiative, and other actions that may be identified by the Coalition and referred by Council to the City Manager. Updates shall be provided by written and verbal reports to Council, and posted on a regularly updated and dedicated page on the City website.
2. Direct the City Manager to collaborate with Councilmembers later selected by the Mayor to complete the following work, to inform investments and reallocations to be incorporated into future Budget processes:
 - a. Contract with independent consultants/Change Management and subject matter experts to:
 - i. Analyze the scope of work of, and community needs addressed by, the Berkeley Police Department, to identify a more limited role for law enforcement, and identify elements of police work that could be achieved through alternative programs, policies, systems, and community investments. Analysis should include but not be limited to: calls received by dispatch by type of complaint, stops by law enforcement generated at officer discretion (as contained in the Police Department's open data portal) or on request of other city agencies, number of officers and staff from other city agencies that respond to incidents, estimated time in response to different types of calls, daily patrol activities, organizational structure, and beat staffing. Work to include broad cost estimates of police and other city agency response to different types of calls, and other information and analysis helpful to identify elements of current police work that could be transferred to other departments or programs, or achieved through alternative means. Work should be completed in time for the November 2020 Annual Appropriation Ordinance revision.
 - ii. Identify immediate and longer term opportunities to shift policing resources to alternative, non-police responses and towards alternative and restorative justice models, to better meet community needs, that could be considered in the

November 2020 AAO#1 budget process. Some areas to be considered include homeless outreach and services, substance abuse prevention and treatment, and mental health/crisis management, as well as alternative models for traffic and parking enforcement, “neighborhood services” and code enforcement. Provide a broad timeline and process for transitioning functions not ready for transition at this first milestone.

Deliverables should coincide with budget cycles, including the November 2020 AAO and FY 2022-2023 Budget processes, and provide a suggested timeline for transitioning functions at these and other budget opportunities, so that alternative investments may be considered for funding and launched in a timely and orderly manner.

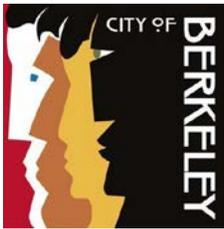
- b. Contract with independent Change Management experts to create and facilitate a representative Community Safety Coalition, guided by a Steering Committee, that will begin meeting no later than January 2021. The CSC and its Steering Committee, should be broadly inclusive and representative of Berkeley residents and stakeholders. The Steering Committee, with the support of Change Management professionals, shall be responsible for engaging the Coalition and the broader Berkeley community and relevant City Staff in a robust process, to achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley.

The work of the Coalition should include but not be limited to:

4. Building on the work of the City Council, the City Manager, the PRC and other City commissions and other working groups addressing community health and safety.
5. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
6. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (Attachment 3), considering, among other things:

- a. The social determinants of health and changes required to deliver a holistic approach to community-centered safety
- b. The appropriate response to community calls for help including size, scope of operation and powers and duties of a well-trained police force.
- c. Limiting militarized weaponry and equipment.
- d. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
- e. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.

The Coalition's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY2024-2025 budget processes to ensure that recommended changes will be achieved. The Coalition shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY2022-23 Budget Process.



Councilmember Ben Bartlett
City of Berkeley, District 3

EMERGENCY ITEM AGENDA MATERIAL

Meeting date: June 16, 2020
Item Description: Safety for All: The George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis
Submitted by: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin, and Councilmembers Kate Harrison (Co-Sponsor)

Rationale:

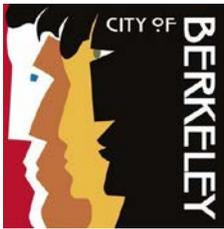
Pursuant to California Government Code Section 54954.2(b) (2), Councilmember Ben Bartlett submits the attached item to the City Council for placement on the June 16, 2020 meeting agenda. Gov. Code Section 54954.2(b) (2) states that “Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).”

This item meets the criteria for “immediate action” as follows:

- 1) The budget is being considered and there is public outcry for Council to take action.
- 2) Racism Is a Public Health Emergency.
- 3) Council is considering numerous police items right now.

Hundreds of thousands of people in every state have marched in solidarity to call for an end to police brutality, to demand police accountability, and to reform law enforcement, bringing justice to the Black lives and people of color who have been wrongfully harmed at the hands of the criminal justice system. Police brutality has taken the lives of 46-year-old Black man George Floyd, 26-year-old Black woman Breonna Taylor, and countless other people of color. Often resorting to violent means of punishment, police officers are not trained to handle noncriminal and nonviolent situations. Unfortunately, the lack of sufficient data and reporting has allowed police misconduct to be swept under the rug, which has increased police militarization, failed to prioritize community safety, and prevented providing the civilian with the necessary treatment to resolve the situation.

To respond to urgent calls for police transparency and accountability, this item requests the City Manager to hire third-party consultants to conduct a data-driven analysis of the Berkeley Police Department’s calls, responses, budget, and expenditures to determine which calls can be serviced to non-law enforcement agencies, ensuring noncriminal and nonviolent situations are properly handled by trained community professionals.



Councilmember Ben Bartlett
City of Berkeley, District 3

CONSENT CALENDAR

June 16, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin, and
Councilmembers Kate Harrison (Co-Sponsor)
Subject: Safety for All: The George Floyd Community Safety Act - Budget Request to
Hire a Consultant to Perform Police Call and Response Data Analysis

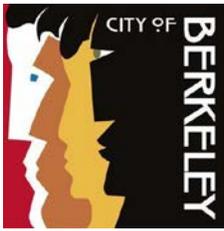
RECOMMENDATION:

1. Refer to the Thursday, 6/18/2020 Budget & Finance Policy Committee and the FY 2020-21 Budget Process the \$150,000 to
 - a. Hire a consultant to conduct a data-driven analysis of police calls and responses to determine the quantity and proportion of these calls that can be responded to by non-police services. The third-party consultant must be hired and engaged in work within three months of the item's passage.
 - b. Hire a consultant to conduct an analysis of the Berkeley Police Department's budget and its expenditures by call type. The third-party consultant must be hired and engaged in work within three months of the item's passage.
2. Direct the City Manager to:
 - a. Implement initiatives and reforms that reduce the footprint of the police department and limit the police's response to violent and criminal service calls.

CURRENT SITUATION

In all 50 states and more than 145 cities, Americans are calling to end police violence and brutality, to legitimize police accountability, and to transform the police system to protect the safety of communities and people of color. Police violence and brutality led to the death of a 46-year-old Black man George Floyd and the murders of other Black people, igniting a flame that has been brewing for a long time. These events of police violence gave rise to a wave of demonstrations and demands for change, including many in the City of Berkeley.

Due to the Coronavirus pandemic, the City of Berkeley is facing a nearly 30+ million dollar budget deficit, sharply stalling economic growth with effects that parallel the Great Depression. At the same time, the City is projected to undergo an increase in people experiencing homelessness, trauma, and mental health crises. Therefore, the City must ensure that each dollar is spent for the residents' best interest and will produce the maximum return.



Councilmember Ben Bartlett
City of Berkeley, District 3

In order to better respond to the needs of the Berkeley community, it is critical that the Council takes local-level action on police reform. In particular, the City must examine the types of calls and responses from the police department and analyze the agency's budgets and expenditures according to call type.

As a component of the **REDUCE, IMPROVE, RE-INVEST** framework, this item works towards the REDUCE goal: *the City should implement initiatives and reforms that reduce the footprint of the police department and limit the police's response to violent and criminal service calls.* Specifically, this item proposes to hire an outside consultant to conduct an analysis of police calls and responses as well as the department budget.

With military-style techniques and structure, police officers are trained to combat crime in a manner that exerts violence through punishments, establishing a monopoly on force in communities. While law enforcement is supposed to protect our communities and keep us safe, crime waves from the 1970s and 1980s have transformed the police community into a body for crime control, maintaining such focus until modern-day despite declines in criminal activity¹. With this focus on crime control, police officers lack the necessary training to adequately respond to noncriminal and nonviolent crimes. Non Criminal crimes refer to issues involving mental health, the unhoused community, school discipline, and neighborhood civil disputes². Nonviolent crimes are categorized as property, drug, and public order offenses where injury or force is absent³. When police respond to these types of matters, they resort to violent means of arrest or problem escalation because they are ill-equipped and not trained to resolve the underlying issues.

According to the Vera Institute of Justice's report between 1980 and 2016, more than 10.5 million arrests are made every year; only 4.83 percent of those arrests were for violent offenses⁴. Eighty percent of these arrests were for low-level offenses, such as "disorderly conduct," non-traffic offenses, civil violations, and other offenses. This criminalization may be attributed to the arrest quotas for police productivity, which promotes punishment by rewarding the number of arrests for police funding instead of finding solutions to these issues⁵. This high percentage of low-level offenses resulted in

¹ <https://www.theatlantic.com/ideas/archive/2020/06/first-step-figuring-out-what-police-are/612793/>

² <https://www.latimes.com/california/story/2020-06-12/san-francisco-police-reforms-stop-response-noncriminal-calls>

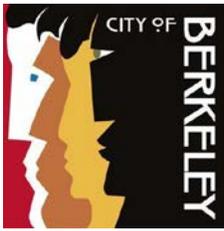
³

<https://www.bjs.gov/content/pub/ascii/pnoesp.txt#:~:text=Nonviolent%20crimes%20are%20defined%20as%20possession%2C%20burglary%2C%20and%20larceny.>

⁴

<https://arresttrends.vera.org/arrests?compare%5Boffense%5D%5Bpart1%5D=part1&compare%5Boffense%5D%5Bpart2%5D=part2#infographic>

⁵ <https://theintercept.com/2019/01/31/arrests-policing-vera-institute-of-justice/>



Councilmember Ben Bartlett
City of Berkeley, District 3

arrest when other nonviolent, rehabilitative methods could have occurred from the solutions of community workers with the experience to handle these situations.

It is imperative that the City of Berkeley develops, implements, and enforces a clear and effective roadmap towards making real change, ending anti-Black racism, stopping police violence, and holding police accountable for their actions. Thus, the Council should direct the City Manager to hire third party consultants to conduct a data-driven analysis of police calls and responses as well as their budget and expenditures in order to determine ways in which experienced community workers can reduce the police footprint by addressing noncriminal situations. We recommend that community workers also resolve nonviolent situations.

BACKGROUND

In order to achieve the aforementioned goals, the City must implement a series of important law enforcement reforms and take action by initiating the following:

REDUCE:

I. Hire a consultant to conduct a data driven analysis of police calls and responses.

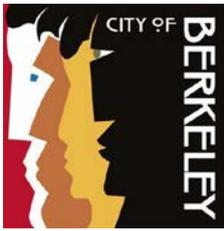
University of Denver Political Science Professor Laurel Eckhouse stated, “One method of reducing police presence... is to separate and reassign to other authorities various problems currently delegated to the police... such as the problems of people who don’t have housing... mental health issues... and even things like traffic⁶.” Community organizations, civilian workers trained in mental health situations, or neighborhood problem-solvers would better address these specific issues due to their experience, ensuring that the police are not the only force addressing these issues and promoting community vitality⁷.

Conducting a data driven analysis of police calls and responses would signify a report of the calls and responses that police receive and would inform the city where to better allocate resources to resolve specific issues. Noncriminal and nonviolent activities can thus be properly addressed by those who are equipped to handle these situations and would relieve law enforcement from these calls to then pursue more serious criminal situations. For example, the San Francisco Police Department receives approximately 40,000 calls per year about homeless people on the streets⁸. Social workers who can help unhoused citizens and those with mental health disorders are better equipped to help these citizens receive

⁶ <https://www.stanforddaily.com/2020/06/04/police-abolition-looks-like-palo-alto/>

⁷ <https://www.theatlantic.com/ideas/archive/2020/06/first-step-figuring-out-what-police-are/612793/>

⁸ <https://www.latimes.com/california/story/2020-06-12/san-francisco-police-reforms-stop-response-noncriminal-calls>



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proper treatment while also protecting the safety of our communities, which would give law enforcement time to handle other crimes.

One suggestion to reduce the costs of policing is to boost productivity by allocating a portion of the calls for service to community organizations who have the resources and training to handle such situations⁹. For example, in Mesa, Arizona from 2006 to 2008, a third of calls for service are handled by civilians; these calls are for incidents of “vehicle burglaries, unsecured buildings, accidents, loose dogs, stolen vehicles, traffic hazards, and residential burglaries¹⁰.” Approximately half of calls for service in Mesa are handled by police officers, but among those, there are ways to reduce police authority. For example, 11 percent of those calls that police officers handled were in response to burglary alarms, where 99 percent were false. Six percent of those calls included “juveniles disturbing the peace.” This situation in Mesa demonstrates the possibility of reduced police force in exchange for community based response teams who can better resolve these issues with their experience.

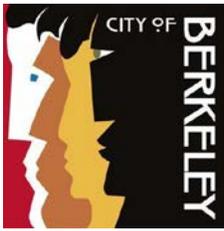
The City Manager should hire a third party consultant within three months of this item’s passage to conduct the data analysis, ensuring that the report is completed in an impartial and timely manner.

The third party consultant should create a report with the following information by analyzing and gathering the data from the police department, reporting their findings to the City every two years. We recommend the following data to be considered for analysis:

- a. Number of calls the police department receives per day, week, month, and year, which will be categorized into noncriminal, misdemeanor, nonviolent felony, and serious and violent felony calls.
- b. Demographics for these calls
- c. Characteristics of traffic stops
 - i. Quantity
 - ii. Type/reason
 - iii. Number of those resulting in searchings paired with the frequency at which illegal items were found
 - iv. Police response (i.e. citation, arrest, use of force)
 - v. Demographics of the civilian in the traffic stop that is broken into type of stop and whether a search occurred
- d. Number of complaints against an officer
 - i. Enumerate the officers with a high number of complaints

⁹ <https://www.ncjrs.gov/pdffiles1/nij/231096.pdf>

¹⁰ <https://www.ncjrs.gov/pdffiles1/nij/231096.pdf>



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ii. Reason behind the complaints.

With the results of the data analysis, the City can determine the portion of calls that the community crisis worker pilot can properly address with the resources and experience they have.

II. Hire a consultant to conduct an analysis of the police department budget.

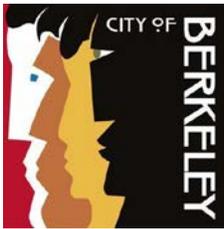
Using the analysis generated by a review of police call and response data, a third party consultant should be hired to analyze the police department's expenditures and budgets for various calls of service and report their findings to the City every two years.

According to the 2019 budget, the Berkeley Police Department's expenditures were approximately \$69 million, which consists of 5.6 percent of the city's net expenditures. However, for the 2020 budget, the BPD is expected to have \$74 million in expenditures, reflecting a \$5 million increase from the previous year and approximately \$8 million higher than 2017's expenditures¹¹. Unfortunately, anecdotal evidence suggests that only 20 percent of police time is spent on solving crime and the majority is spent towards addressing those experiencing homelessness and mental health crises. The City should reallocate resources to a crisis worker entity who would be tasked with responding to noncriminal calls. We recommend that nonviolent calls also be addressed by this entity. This would give police officers more time to focus on crime, leading to better outcomes for public safety, community health, and a higher quality of life.

In Canada, Police Information and Statistics Committee police services Waterloo Police Regional Service and Ontario Provincial Police collaborated with Justice Canada and Public Safety to collect data on their calls for service and determine the costs of policing¹². Their research reported that in 2013, bylaw complaints were listed as the most frequent call for service in Waterloo at 8,769 calls and non-crime policing activities were listed as the most frequent. In contrast, the only criminal activity listed in the top 10 generated calls were domestic dispute, theft under \$5000, and major violent crime in property damage. Considering the most frequent of costly calls are noncriminal activities such as selective traffic enforcement programs (\$22,212.45 in sum of total unit service time in hours) and vehicle stops (\$206,668.13), the greatest cost in calls were for noncriminal activities. As noncriminal activities result in the greatest costs, it would be more efficient for community workers to handle these situations in order to reduce

¹¹ <https://www.cityofberkeley.info/uploadedFiles/Manager/Budget/FY-2020-2021-Adopted-Budget-Book.pdf>

¹² <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2015-r018/index-en.aspx#c-1-i>



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police department costs, allowing trained professionals to resolve the issue and giving police officers time to spend on more serious criminal offenses.

By analyzing the budget expenditures for the police for each call type, the community can divest from the police and reallocate those funds for trained community organizations who can handle noncriminal and nonviolent offenses. Considering the significantly delayed response to former requests for the police department's budget, the data analysis should be conducted by a third party consultant that is hired and engaged in active service within three months of this item's passage, ensuring that the police department's budget information is transparent to the public and reported in an impartial, timely manner.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

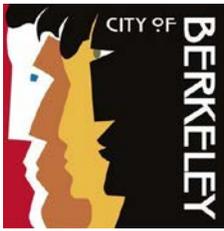
The City Manager provides regular reports on crime in Berkeley and on the policies of the Berkeley Police Department¹³. The data on serious crime is collected annually by the Federal Bureau of Investigation (FBI), which consists of over 17,000 law enforcement agencies that represent over 90 percent of the United States population. The FBI's Uniform Crime Report (UCR) reports crime statistics on violent crimes (including murder, rape, robbery, and aggravated assault) and property crimes (including burglary, larceny, auto theft, and arson). This data allows the BPD to analyze national and local crime trends, determine effectiveness of response to crime, and plan for future policies and resource allocation. Additionally, the City of Berkeley implements the Daily Calls for Service Log that the community can access to see the volume and nature of police activity.

Currently, Utah requires agencies to report tactical deployment and forcible entries where such reports are summarized by the Utah Commission on Criminal and Juvenile Justice. Utah Law Enforcement Transparency reporting interface was added to Utah Criminal Justice Information System in 2014 through the use of federal grant funding. Law enforcement agencies are required to report incidents of forcible entry and the deployment of tactical groups, representing data collection of police use of force¹⁴.

However, these reports do not analyze the demographics or types of calls and responses from the BPD, which makes it difficult to hold police officers accountable for the mistreatment of individuals. Without this information, it becomes difficult to determine how to decrease the police footprint or implement safer policing practices if the analysis only pertains to the quantity and types of arrests and does not include the

¹³ https://www.cityofberkeley.info/Police/Home/Annual_Crime_Reports.aspx

¹⁴ <https://justice.utah.gov/Documents/CCJJ/LETR/2018%20LET%20Annual%20Report.html>



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background, call of service, reason, demographics, complaints against the police officer, and other important factors to the BPD's response.

Despite voluntary data sharing and crime reports, data collection still remains vague and insufficient, leaving many unanswered questions regarding the number of instances of and reasons for use of force, complaint process against police officers, and other information about police actions. This lack of clarity allows police misconduct to perpetuate due to the lack of research that would hold police departments accountable.

ACTIONS/ALTERNATIVES CONSIDERED

One possible alternative to the community response teams would be to implement better training procedures so that police officers are more equipped to handle nonviolent and noncriminal activities. For example, the state of Washington requires both violence de-escalation and mental health training for police officers¹⁵. Such reform may render the data analysis on the types of calls unnecessary because the police department would be trained to handle all services regardless of the type of call.

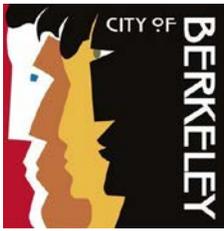
However, training police officers to handle situations such as mental health or homelessness would signify an increase in funding for the police department to provide such training services. Not only would this type of training be difficult to maneuver when police forces are currently trained in a militarized manner, but it would be more efficient for community professionals to peacefully and properly resolve such issues since they have already engaged in this training and experience for years.

Reforming police training may be beneficial, but in this case, it would also indicate the lack of basis for reporting the police department's types of calls and responses, which is necessary to hold the police accountable and ensure safer practices. While reporting the data analysis could still occur without the community crisis workers, only having the police department manage all situations would increase their authority over the communities, which would lead to increased militarization of the police forces if other community organizations do not intervene or hold them accountable.

OUTREACH OVERVIEW AND RESULTS

The District 3 Office has consulted with David Muhammad, who is the Executive Director of the National Institute for Criminal Justice Reform; the former Chief Probation Officer in Alameda County; and the former Deputy Commissioner of Probation in New York City. David Muhammad is a leading expert on criminal justice who has helped inform our response to the current situation.

¹⁵ <https://www.theatlantic.com/ideas/archive/2020/06/how-actually-fix-americas-police/612520/>



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The District 3 Office has also consulted with Marcus McKinney, the Senior Director of Government Affairs & Public Policy at the Center for Policing Equity.

The District 3 Office has also consulted with Professor Tracey L. Meares, Walton Hale Hamilton Professor and Faculty Director of the Justice Collaboratory at Yale Law School.

RATIONALE FOR RECOMMENDATION

Police departments across the country enforce policies and practices that breed a culture of violence resulting in killings--like those of Floyd and Moore, and of countless other people of color. These authoritative, militarized behaviors are often rooted in anti-Black racism, and such behavior must stop being acceptable. Transformation of police departments, their role, and relationship to our communities requires a change in culture, accountability, training, policies, and practices.

To prioritize community safety and reduce police violence, the City must hire a third party consultant to analyze police data in order to decide how to divest from the police to fund experienced community workers who can adequately resolve noncriminal and nonviolent situations. These community workers would protect the community from violence and emphasize revitalization and rehabilitation over the punishment that police officers often enforce. Implementing a data-driven analysis on police data would increase the transparency of the police department and hold them accountable, detecting the issues within the police force that community response teams can help heal. The Council must make informed legislative decisions that will reduce police footprint, improve current practices of law enforcement, and reinvest in the community for the safety of our civilians.

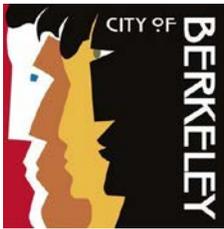
FISCAL IMPACTS OF RECOMMENDATION

The third party consultant/s would cost approximately \$150,000 to \$200,000. It is up to the City Manager to hire the third party consultants who will analyze the data of the police department's calls, responses, budget, and expenditures. Consultants must be hired and engaged in service within three months if this item passes. These consultants would ensure that noncriminal situations are handled by those with the necessary training, which may lead to a decrease in repeat offenses when community workers properly resolve the situation and guide civilians to helpful resources.

ENVIRONMENTAL SUSTAINABILITY

We do not expect this recommendation to have significant negative impacts on environmental sustainability.

OUTCOMES AND EVALUATION



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If this item is passed, third party consultants would be hired by the City and engaged in data analysis within three months of passage. These consultants would produce biennial reports regarding the Berkeley Police Department's types of calls and responses as well as the budgets and expenditures in order to inform the City how to reallocate funds from the police into a community response team with better experience to handle noncriminal situations. We recommend that nonviolent situations also be addressed by community crisis workers.

CONTACT PERSON

Councilmember Ben Bartlett
James Chang
Kyle Tang
Kimberly Woo

510-981-7130
jchang@cityofberkeley.info
ktang@cityofberkeley.info
kimwoo1240@berkeley.edu

ATTACHMENTS

1. Cover Letter - Safety for All: George Floyd Community Safety Act
 - <https://drive.google.com/file/d/16pqqd9J6NPRzh6298Bgazo7jw1qxTK6Y/view?usp=sharing>

SHRINK THE BEAST:

A Framework for Transforming Police

NICJR★
National Institute for
Criminal Justice Reform



The killing of George Floyd by Minneapolis police was the match that lit a fire that has been building in our communities for a long time. Nationwide demands for not just reform, but complete transformation of policing have put pressure on local jurisdictions across the country to make rapid and real change.

Since its founding, the National Institute for Criminal Justice Reform (NICJR) has worked to reform the juvenile and criminal justice systems through a process of Reduce – Improve – and Reinvest. This framework can also be effective in transforming policing. In the past 15 years, the U.S. juvenile justice system has been reduced by more than half. Youth correctional facilities have been shuttered and investment into community services has increased. While there is certainly more progress to be made, the movement to transform policing can learn a great deal from criminal justice reform.

NICJR's framework to Shrink the Beast focuses on three areas: reducing the footprint of law enforcement, significantly improving what remains of policing, and reinvesting the savings from smaller police budgets into community services.

Reduce

One of the most significant structural reforms we must advance in policing, already happening in the criminal justice arena, is shrinking its scope. Officers are asked to do too much with too few resources. The warrior mentality that police are indoctrinated with, starting as early as the first day of the police academy, does not allow them to handle many of those responsibilities well. It is time for an alternative response network for all non-violent calls for service. Similar to the community-based organizations that provide diversion programs for youth and adults who would otherwise end up in the justice system, a new infrastructure of community safety and problem-solving responders, with expertise in crisis response, mental health, and de-escalation techniques, must be developed. Such a network should be vast and well equipped, including 24-hour on-call community crisis response and outreach workers. The resulting reduced police force would then focus primarily on responding to serious violence. Small, but promising examples of this model already exist:

- › **In Oakland, CA**, non-profit organizations employ street outreach workers and crisis response specialists who respond to shooting scenes, intervene in and mediate conflicts, and sit down with young adults who have been identified as being at very high risk of violence to inform them of their risk and offer them intensive services. These City-funded efforts have been credited with a [50 percent reduction in shootings](#) and homicides in the city.
- › **In Eugene, OR**, Crisis Assistance Helping Out on the Streets ([CAHOOTS](#)) responds to more than 22,000 requests for service annually with its Crisis Intervention Workers. This represents nearly 20 percent of the total public safety call volume for the metropolitan area.
- › **In Austin, TX**, the [Expanded Mobile Crisis Outreach Team](#) is equipped to respond to 911 calls where callers indicate that a mental health response, not police, is needed.
- › **In Albuquerque, NM**, where the police have been involved in numerous unjustified killings, the Mayor has proposed creating a [new non-law enforcement public safety agency](#) that will respond to non-violent calls.

Steps To Reduction



Create a robust alternative emergency response network with mental health workers, crisis intervention specialists, and street outreach workers – the Community Emergency Response Network (CERN).



Significantly reduce police patrol divisions which are currently primarily responsible for responding to 911 calls. Police will instead focus on responding to serious and violent incidents, a small percentage of all current calls.



CERN Crisis Intervention Specialists would respond to all other calls.



Traffic policing should be replaced by technology to the maximum extent possible.



Violence reduction teams should be created or remain intact: Patrol and investigation units focused on reducing gun violence. Like all remaining police personnel, these units must be trained in and adhere to strict use of force and Procedural Justice policies.



Investigation Units should also remain intact.

Improve

The primary challenge in police agencies is culture. Many have described it as a warrior culture. Adrenaline-filled young officers want to “knock heads” during their shifts; the “us vs them,” military occupation syndrome. We must confront and transform this destructive culture. Policing should focus on protection and service to the community.

Improving the smaller police departments that remain, after taking the steps to reduction outlined above, includes three components: policy, training, and accountability. Implement new policies including restricting the use of force, mandating verbal de-escalation, community policing, and eliminating stop and frisk. Implement high quality and frequent training on these newly developed policies. And, most importantly, hold all police personnel accountable for adhering to and demonstrating these policies in action.



Steps To Improvement

- 1 Increase hiring standards to screen out candidates with any signs of racial bias, interest in the warrior culture, or those who have been fired or forced to resign from previous law enforcement positions.
- 2 Prioritize hires of those who grew up in the city and/or live in the city.
- 3 Make deliberate efforts to have the police force representative of the community it serves.
- 4 Revise use of force policies to limit any use of deadly force as a last resort in situations where a suspect is clearly armed with a firearm and is using or threatening to use the firearm.
- 5 All other force must be absolutely necessary and proportional.
- 6 Provide thorough, high quality, and intensive training in subjects including:
 - New use of force policy
 - Verbal de-escalation
 - Bias-free policing
 - Procedural Justice
- 7 Transparency: Provide regular reports to the public on stops, arrests, complaints, and uses of force, including totals, demographics, and aggregate outcomes data.
- 8 Effectively use an early intervention system that tracks various data points to identify high risk officers and implement discipline, training, and dismissal where necessary.
- 9 Use aggressive, progressive discipline to root out bad officers.
- 10 Rescind state and local laws that provide undue protection to police unions and prohibit effective and efficient disciplinary action.

Reinvest

A smaller footprint of law enforcement should result in a reduced police budget. Resources should be shifted away from the police department to the CERN and other community-based intervention initiatives, including Credible Messengers/Life Coaches, social workers, and mental health service providers.



The National Institute for Criminal Justice Reform (NICJR) is a non-profit organization providing technical assistance, consulting, research, and organizational development in the fields of juvenile and criminal justice, youth development, and violence prevention. NICJR provides consultation, program development, technical assistance, and training to an array of organizations, including government agencies, non-profit organizations, and philanthropic foundations.

[NICJR.org](https://www.nicjr.org)

R E P O R T R E S U M E S

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SCHOOL DESEGREGATION IN BERKELEY--THE SCHOOL SUPERINTENDENT REPORTS.

BY- SULLIVAN, NEIL V.

PUB DATE NOV 67

EDRS PRICE MF-\$0.25 HC-\$0.92 21P.

DESCRIPTORS- *SCHOOL INTEGRATION, *BOARD OF EDUCATION POLICY, *BOARD OF EDUCATION ROLE, SCHOOL ADMINISTRATION, SCHOOL SUPERINTENDENTS, JUNIOR HIGH SCHOOLS, ELEMENTARY SCHOOLS, COMMUNITY COOPERATION, BUS TRANSPORTATION, STAFF ROLE, ELECTIONS, INTEGRATION PLANS, BERKELEY, CALIFORNIA

DESCRIBED IS THE HISTORY OF THE EFFORTS TO DESEGREGATE THE BERKELEY, CALIFORNIA, SCHOOL DISTRICT, WHICH IS SCHEDULED TO BE FULLY DESEGREGATED BY SEPTEMBER 1968. CHANGE BEGAN IN THE 1950'S WITH THE ELECTION OF A "LIBERAL" TO THE BOARD OF EDUCATION. FIRST STEPS INVOLVED IMPROVING EDUCATIONAL OPPORTUNITIES FOR MINORITY GROUP CHILDREN AND MAKING EFFORTS FOR BETTER RACE RELATIONS. DESEGREGATION BEGAN IN THE JUNIOR HIGH SCHOOLS BUT NOT WITHOUT COMMUNITY FRICTION TO THE POINT OF A DEMAND FOR A RECALL ELECTION OF THE BOARD. HOWEVER THE BOARD WAS VINDICATED ON ITS STAND FOR VOLUNTARY INITIATION OF DESEGREGATION. A NEW SCHOOL SUPERINTENDENT WAS FACED WITH THE JOB OF IMPLEMENTING THE PLAN AND BEGAN HIS EFFORTS BY DEVELOPING COMMUNITY SUPPORT AND PRODUCTIVE LIAISON WITH HIS STAFF. THE NEXT STEP INVOLVED DESEGREGATING THE ELEMENTARY SCHOOLS. THE WIDE GEOGRAPHIC SEPARATION OF IMBALANCED SCHOOLS IN THE CITY REQUIRED THE DESIGNATION OF CERTAIN WHITE SCHOOLS AS RECEIVING SCHOOLS AND THE USE OF FEDERALLY FUNDED BUSES AND ADDITIONAL STAFF FOR THE 230 INCOMING PUPILS. HOWEVER THIS WAS ONLY A "TOKEN" EFFORT. VOLUNTARY REVERSE BUSING AND A TIMETABLE FOR COMPLETE DESEGREGATION HAVE BEEN RECOMMENDED. IT IS FELT THAT THE REQUISITES FOR SUCCESSFUL SCHOOL DESEGREGATION ARE FULL COMMITMENT BY THE SCHOOL ADMINISTRATION AND THE BOARD, COMMUNITY INVOLVEMENT WITH AND FAITH IN THE BOARD AND ADMINISTRATION, AND THE DEVELOPMENT OF "WORKABLE" PLANS. THIS PAPER WAS PREPARED FOR THE NATIONAL CONFERENCE ON EQUAL EDUCATIONAL OPPORTUNITY IN AMERICA'S CITIES, SPONSORED BY THE U.S. COMMISSION ON CIVIL RIGHTS, WASHINGTON, D.C., NOVEMBER 16-18, 1967. (NH)

04752

**SCHOOL DESEGREGATION IN BERKELEY:
THE SCHOOL SUPERINTENDENT REPORTS**

Prepared by
Neil V. Sullivan, Ed. D., Superintendent of Schools
Berkeley Unified School District-Berkeley, California
for the
National Conference on Equal Educational Opportunity
in America's Cities
sponsored by the
U.S. Commission on Civil Rights, Washington, D.C.
November 16-18, 1967

**U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION**

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In recent years Berkeley, California, has been fortunate to have a school district which recognizes its problems and works effectively toward their solution. The city schools already have completely desegregated the junior high schools, and have made a token start at the elementary level. The School Board has committed itself to completing the process in all schools by September 1968. When that goal is reached, Berkeley will be a rare example of a major city working out a solution to this problem without court orders, violence, boycotts, or compulsion, but only with the conviction of the Board of Education, the Administration, and the citizens that it was right.

This has not been achieved overnight. To place the present achievements in their proper context it is necessary to trace the development of events in the recent past.

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PRE-1964

The Liberal Renaissance - Prior to the mid-1950's Berkeley's local government -- including the Board of Education -- was typical of those found in most middle-size, middle-class communities. The orientation was pro-business, with a heavy emphasis on keeping the tax rate down. This condition was so pronounced that teachers, in order to obtain a much needed and earned salary increase, were forced to use an initiative petition to get school revenues raised; the Board had refused to do so.

There are many different versions concerning the beginning of the liberal renaissance. There is general agreement that the first concrete step was the election of one liberal to the Board in 1957, followed by another in 1959, and two more in 1961. With the 1961 election the liberals assumed control of both the Board of Education and the City Council. However, even with only one "liberal" Board member in the late 1950's, the Board began to give attention to the problems of race relations in a multi-racial city.

Preliminary Steps - A citizens committee (named the Staats Committee after its chairman) was organized to study race relations within schools. This committee did not come to grips with the question of de facto segregation but sought to deal otherwise with improving educational opportunities for minority youngsters and improving race relations in the schools. For the late 1950's this report was a forward-looking document. It led to two particularly noteworthy developments.

First, the hiring practices for minority teachers were greatly improved. The number of Negro teachers increased from 36 in 1958 to 75 in 1962. Negroes also were advanced to principalships and other high positions in the District's administrative hierarchy. And by 1962 there were about 30 Orientals on the certificated staff.*

Second was the Intergroup Education Project (IEP). This project was designed to help teachers appreciate cultural diversities and better understand youngsters from other than middle-class backgrounds. It conducted seminars for teachers, mass community meetings, and weekend conferences for this purpose. The IEP helped prepare the ground for the high staff support for later integration efforts.

Junior High School Desegregation - In 1962 a delegation from the Congress on Racial Equality visited the Superintendent of Schools -- and later the Board of Education. Complimenting the School District for progress already made, the CORE delegation suggested that it was time to get on with the task of desegregating the schools. CORE asked that a citizens committee be appointed to study this problem.

The report included a recommendation for desegregating the junior high schools by assigning some students from the predominantly Caucasian "hill" area to Burbank, the Negro junior high school; students from predominantly Negro west Berkeley would be assigned partly

* The distribution of minority teachers among the various schools did not keep pace with progress in hiring. Most of these recruits were assigned to predominantly Negro schools. In more recent years we have made a concerted effort to achieve a better racial balance on all faculties. It is important, especially to combat stereotypes, to the education of all children to see members of all races working together in such respected vocations as teaching.

to Garfield, the Caucasian junior high school. Since the third junior high school already was racially balanced, this recommendation would have eliminated de facto segregation at the junior high school level.

The report struck the community like a bombshell. Although the community was aware that the committee was functioning, most people had not taken seriously the possibility that such a concrete recommendation would be made. The reaction was intense. During the remainder of 1963 and through January of 1964 there was extensive community discussion of the proposal. Two hearings were held -- one attracting 1200 people and other drawing over 2000. PTA's and other groups set up study committees on this problem; never before had such crowds attended PTA meetings!

In the hill area affected by the recommendation many liberals faced a dilemma. Some asked: "How do we express our opposition to this particular proposal without sounding like bigots?" Our response was to ask them to develop a better plan. Many sincere critics of the citizens committee proposal set out to do just that.

One of these alternative proposals was named the "Ramsey Plan" after the junior high school English teacher who suggested it. This plan proposed desegregation of Berkeley's three junior high schools by making the predominantly Negro school into a 9th grade school and dividing the 7th and 8th graders between the two remaining junior high schools.

In February 1964 a five-member staff committee was asked to study the reactions of the Berkeley school staff to the citizens committee proposal and to other ideas that had been offered. Every school faculty was asked to consider the matter.

In March the 5-member staff committee reported to the Board that the staff as a whole was favorable toward integration, and preferred the Ramsey Plan to the original citizens committee proposal. The Board instructed the Superintendent to consider the educational pros and cons of the Ramsey Plan, and its feasibility for September 1964 implementation.

The results of this study were presented to the Board and the community on May 19, 1964, a landmark date in the history of Berkeley schools. Again there were over 2000 people in the audience. The opposition, which had formed the "Parents Association for Neighborhood Schools" (PANS) solemnly warned that if the Ramsey Plan or any such desegregation proposal were adopted, the Board would face a recall election. The Board members did vote for the Ramsey Plan -- and they did face recall.

The Recall - Through the summer months the opponents of the Board collected signatures on recall petitions. A rival group was formed to defend the Board (Berkeley Friends of Better Schools). By late July the PANS group had enough signatures to force a recall election.

There followed a series of procedural skirmishes before the City Council and the state courts. Finally, an election was called for October 6, and after an intensive and heated campaign it was held. It was a stunning triumph for the courageous incumbent Board members. This election was another landmark for Berkeley education and for the cause of desegregation across the nation. There was more at stake than indi-

vidual Board members continuing in office. The basic issue was the survival of a Board of Education which voluntarily took effective action to desegregate schools -- not because of court order or other compulsion, but simply because the Board believed desegregation was right. If such a board of Education could not be sustained the lesson would not be lost on boards of education in other cities facing the same problem. Thus, it was extremely significant that in this election the Board was vindicated by the Berkeley community.

SULLIVAN ADMINISTRATION

The New Administration - On September 1, 1964, five weeks prior to the recall election, I took office as Berkeley's Superintendent of Schools in the midst of a climate of change and uncertainty. Of the five-member Board of Education which had unanimously invited me to come to Berkeley, only two remained in office. One had resigned because his business interests led him to move from the city. Another was transferred to become minister of one of the largest churches of his denomination in New York City, and a third was appointed by the Governor to be a Superior Court judge. The two who remained were facing a recall election.

There also was a sweeping change in the school administration. Virtually every top ranking member of the central administration was either new to the District or new in his position. Over one-third of our schools had new principals.

Making the New Plan Work - The decision to desegregate the junior high schools had been made before I arrived. The role of the

new administration was to make it work.

School opened as usual and the new system was put into effect with no marked difficulties. In fact, the orderliness of the transition was an important contribution to the defeat of the recall attempt. It demonstrated clearly that desegregation could be achieved without the dire consequences that had been forecast.

Developing Community Support - Defeat of the recall election meant that courageous Board members would remain in office, and the junior high school desegregation plan would continue. My next task as Superintendent was to attempt to reunite a badly split community, to develop a sense of community understanding, and to provide a basis for school support.

I approached this problem by creating a climate of openness with the public. We immediately established the practice of recognizing and admitting our problems and inviting the community's help in seeking solutions. As a new superintendent, I was besieged by invitations to speak publicly. I accepted as many as I could and during the 1964-65 school year scheduled over 100 speaking engagements.

I issued an open invitation to citizens to visit my office and discuss their school concerns, to share their ideas and suggestions. In addition I telephoned or wrote to dozens of people who had been recommended to me as community leaders deeply interested in schools. For several months I met almost continually, often a few times a day, with citizens individually and in groups. These meetings made me familiar with the Berkeley community and established a climate that encouraged exchange of ideas.

I established a liaison channel between my office and the area-wide PTA Council. I made it a practice to convene three or four briefing sessions a year with the unit presidents and council officers of that organization, and included other groups such as the League of Women Voters. At these sessions problems and issues facing the schools, as well as hopes and plans for improvement were discussed.

The day after the recall election I recommended the formation of a broadly-based School Master Plan Committee, to examine all facets of the School District's operation and to develop guidelines for the future. I urged participation of all elements of the community, making it clear that we wanted cooperation, regardless of positions in the recall election. The response was heartwarming; over 200 highly qualified citizens were nominated or volunteered their services. The Board of Education selected 91 people from this list to serve on the committee. Also named were 47 staff members. The committee has been hard at work for two years, and presented its report in the fall of 1967.

During my first year in Berkeley, I was invited by the local newspaper to write a weekly column on local and national education matters. This column has been a valuable means of keeping the community informed and introducing some new ideas. During the past year I accepted the invitation from a local radio station to conduct a weekly program of fifteen minute sessions dealing with events in the school system and issues facing public education. Each month the final week's program is extended to one hour, and features a direct phone-in from the radio audience.

In addition to developing relationships with the general public, we have worked to maintain good liaison with the staff. We have frequent breakfast conferences with the leaders of both teacher organizations, and meet regularly with the Superintendent's Teacher Advisory Council, made up of teacher representatives chosen by each faculty.

The purpose of these communication efforts has been three-fold. First, extensive dialogue with staff and community helps to identify and define problems needing attention. Second, it serves as an excellent source of new ideas and suggestions. Third, it helps interpret our problems, goals, and programs to the community.

Our efforts have been, in short, to "mold consensus" in the community behind the school system. Although we have not achieved unanimity on any single subject (that would be impossible in Berkeley!) there have been good indications during the past three years. It seems that we have succeeded in molding community support for the schools, and in developing sufficient consensus to resolve some of the crucial problems facing urban schools today.

A START TOWARD ELEMENTARY INTEGRATION

Segregation in the Elementary Schools - The Board's adoption of the Ramsey Plan, followed by the defeat of recall election, insured desegregation at the junior high school level. Since there is only one regular senior high school, our entire secondary school program, beginning with grade 7, was desegregated. However, we still face de facto segregated elementary schools. The four elementary schools in south and west Berkeley are overwhelmingly Negro. The seven schools located in

the northern and eastern hill areas of the city are overwhelmingly Caucasian. In between, in a strip running through the middle of Berkeley, are three desegregated schools. Since the racially imbalanced Negro and Caucasian schools are on opposite sides of the city, separated by the integrated schools, boundary adjustments will not solve the problem.

When the Ramsey Plan was adopted the Board tabled a companion recommendation that would have desegregated the elementary schools by dividing the city into four east-to-west strips, each containing three or four schools. The schools within each of these strips would have been assigned students on a Princeton principle, i.e., 1-3 in some schools, grades 4-6 in others.

Educational Considerations - It is not the function of this paper to develop fully the case for school desegregation. However, the basic motivation underlying our progress in Berkeley can be stated concisely.

Many studies, in Berkeley and elsewhere, have documented the fact that segregation hurts the achievement of disadvantaged youngsters. Schools with a preponderance of these boys and girls have low prestige and generally lack an atmosphere conducive to serious study.

The emotional and psychological harm done to children through this type of isolation also has been demonstrated. Regardless of cause, racial segregation carries with it the symbol of society's traditional rejection of Negroes.

The benefit of integration extends to children of all races. We are all sharing this society, and if it is to be successful we must learn to respect each other and get along with one another. This will not happen if segregation remains.

These considerations have been taken seriously in Berkeley as we move toward total school integration.

ESEA Busing Program - The Elementary and Secondary Education Act of 1965 allowed the schools to make a beginning on the problem of elementary school segregation. Berkeley's share under Title I of that Act was approximately a half-million dollars. A major share of these funds was used to reduce pupil-teacher ratios in our four target area (Negro) schools and to provide extra specialists and services for students attending them. The reduction of pupil-teacher ratios left a surplus of 235 children. The seven predominantly Caucasian hill-area schools had spaces for these youngsters. Our proposal for the first year's use of Title I funds, then, included improved services and reduced pupil-teacher ratio in the target area schools and the purchase of buses to transport the 235 "surplus" youngsters to the hill area schools.

In the preparation of this project we again employed our principle of mass community involvement. Each school faculty was invited to submit suggestions. Their response was gratifying. These suggestions, when piled together, produced a stack of paper several inches high. When they had been sifted and evaluated, and a project developed, we submitted it to the Board. Copies were made available to the school faculties and the public for their reactions. Two major public meetings were held in different sections of the city, and the Board of Education held a workshop session at which teachers could react. Many valuable suggestions and constructive criticisms resulted and were incorporated into the final proposal.

As might have been predicted, most of the public attention was centered on the busing proposal, although it involved a relatively minor share of the funds. This time the opposition, though by no means silent, was much less severe.

Since the children in the hill area schools were not being asked to go anywhere else -- the hill schools were simply going to receive youngsters from the other areas of the city -- this provided no focal point for the development of opposition. And the proposal included employing eleven extra teachers, paid with local money, and placing them in the receiving schools to maintain the pupil-teacher ratio there. A few scattered voices were raised against the proposal, but the preponderance of community opinion was favorable. Both teacher organizations endorsed the project, and on November 30, 1965, the Board adopted the program for implementation the spring semester.

The proposal went to the State Board of Education and became one of the first fourteen ESEA projects approved in the State of California. We had approximately two months to prepare for its implementation -- the selection of youngsters (this was voluntary on the part of the parents), the employment of teachers, arrangement of transportation, and other administrative details. Parent groups in the receiving schools helped by establishing contact with the parents of the transferring students. The students in the receiving schools likewise participated, and some wrote letters of welcome to the newcomers. Dry runs were conducted with the buses so that by the time the program was implemented in February 1966, the necessary advance preparation had been accomplished.

Results to Date - Although the program has not been in effect long enough for an extensive objective evaluation, early indications are that it has been extremely successful. The children have adjusted well in their new school environment and, by their performance, have made friends for integration. One evaluation, made by an outside consultant employed by the District, found that receiving school parents whose children were in class with Negroes were more favorable to integration than parents whose children were not in class with Negroes. And parents of the bused students were so pleased with the results that many requested that their other children be included.

This limited program provided an integrated experience for the 230 youngsters being transferred, less than 10 percent of the sending schools' enrollment. It also provided token integration for the receiving schools. However, it left the four southwest Berkeley schools just as segregated as they were before, although with a somewhat improved program due to the reduced pupil-teacher ratio and added services.

COMMITMENT TO TOTAL INTEGRATION

The Problem - Although the ESEA program has provided a start in the direction of elementary school desegregation, we never regarded the busing of only 235 youngsters as the solution to the segregation problem. The problem will not be solved as long as our four south and west Berkeley schools remain overwhelmingly Negro, and the schools in the north and east overwhelmingly Caucasian. The segregation problem must be solved if minority youngsters are ever to close the achievement gap and if all youngsters, regardless of race, are to be adequately prepared for life in a multi-racial world.

Although we have integrated the schools down to the 7th grade, we strongly believe that integration must begin earlier. In too many cases attitudes already are hardened and stereotypes developed by the time the youngsters reach the 7th grade. It is, of course, politically and logistically easier to desegregate the secondary schools. In fact, a bi-racial city that has not desegregated its secondary schools is by definition not committed to integration. The problem is much more difficult at the elementary level. Buildings and attendance areas are smaller, children are younger, and community emotions are more intense. Yet, the problem must be solved at the elementary level. It is ironic that solutions come more easily at one level, but more good can be accomplished at the other.

The Commitment - The commitment of the Board of Education to desegregation of all elementary schools in Berkeley came in the spring of 1967. In early April a delegation from west Berkeley made a resen- tation to the Board, stating that it was time to get on with the job of total desegregation. The delegation had many other recommendations specifically relating to the south and west Berkeley schools and the programs available to minority youngsters. At this meeting I recommended that the Board authorize the Administration to develop a program of voluntary reverse busing from Caucasian areas to south and west Berkeley. I let it be known that this was to be regarded only as a stop-gap measure to demonstrate good faith and did not represent a solution to the desegregation problem.

At the next meeting, however, before we could develop a reverse busing plan, the issue moved ahead. Both of our certificated staff organizations made appeals to the Board for action either to erase de facto

segregation completely or at least to make a significant step in that direction. Officials of the local NAACP and other members of the audience supported these appeals. A motion was presented to the Board calling for desegregation of all Berkeley schools. The Board concurred and established September 1968 as the target date for desegregating the schools.

The next two or three Board meetings, including one workshop or "open hearing", drew crowds of several hundred spectators and many speakers. Most of the speakers and most of the crowds were supportive of the Board's action; there was a minority who disagreed with the Board's position -- some opposed desegregation altogether, and others felt that 1968 was too long to wait.

On May 16 the Board adopted a formal resolution reaffirming the September 1968 commitment and adding an interim calendar of deadlines for the various steps required to achieve desegregation. The Administration was instructed to develop plans for total integration. We were instructed to make our report by the first Board meeting in October, 1967. The timetable calls for the Board to adopt a particular program by January or February 1968. Seven or eight months would then remain for implementing the program in time for the opening of school in September 1968. This is the calendar on which we now are operating.

The Board included in its Resolution on Integration two other features: first, the assumption that desegregation is to be accomplished in the context of continued quality education, and second, that massive community involvement was to be sought in development and selection of the program. Both of these features I heartily support.

Developing the Plan - We went to work immediately. The Administration compiled information on enrollment and racial makeup of each school, school capacities and financial data. This information was distributed to each faculty. We then called a meeting of all elementary school teachers; I relayed our charge from the Board and asked each faculty to meet separately and develop suggestions. We also sent information packets to over sixty community groups and invited them to contribute their ideas. By the end of June we had received many suggestions, both from staff members and lay citizens.

Meanwhile both local and national endorsements were pouring in. The Berkeley City Council passed a resolution commending the Board on its commitment to integration. Other local organizations and individuals did the same.

During the summer months two task groups were assigned to work on the problem. One was concerned with the logistics of achieving desegregation and the other was concerned with the instructional program under the new arrangement. The Board appointed a seven-member lay citizens group to advise the Administration in development of its recommendations. Even after the Administration's recommendation has been given to the Board, this group will continue to function as an advisory body to the Board. Upon receiving the Administration's recommendation, the Board plans a series of workshop sessions to provide every opportunity for community reaction and suggestion.

As this paper is written (mid-September) we are making excellent progress toward meeting our deadline. Soon after the opening of school, a report from the Summer Task Group outlining four or five

of the most promising plans was sent to each school faculty and to each group or individual who submitted a plan during the summer. These proposals are being made available to the community as well, along with the many suggestions received earlier from staff and lay citizens. School faculties and the community-at-large are invited to react to these proposals and to make suggestions to the Administration. Procedures have been organized to facilitate a response from school and community groups. Each faculty has been asked to meet at least twice. On one afternoon, schools will be dismissed early and the district-wide staff divided into cross sectional "buzz" groups. Each of these groups will submit ideas. Following these steps we will use the task group proposals, along with the reactions and suggestions that come from the staff and community, in developing our recommendation to the Board. This recommendation will be presented to the Board on schedule, at the first meeting in October. From that point on the matter will be in the hands of the Board, which is to make its decision by January or February 1968.

As our plans develop, we have received invitations to appear before many groups, large and small. Some have been hostile at first. However, meeting with them has made possible an excellent exchange of views and an opportunity for explaining our program to people who had not been reached earlier. We anticipate that the fall months will be crowded with such speaking assignments. It is our firm commitment, and that of the Board of Education, to inform the citizens of Berkeley thoroughly about the issue and about prospective plans prior to the Board's adoption of a program in January or February.

LESSONS LEARNED

While working toward integration in the Berkeley schools over the past several years, we have learned some lessons:

1. Support by the Administration and the Board of Education for the concept of school integration is absolutely essential. The Board must give its consent before any plan of desegregation can occur. The support of the Superintendent and his administrative team is vital in helping to obtain Board support and in making a success of any program adopted. While the Board nor the Administration need broad community support, their leadership role is vital.

2. Integration has the best chance of success when a climate of openness has been established in the community. Lines of communication with Board, Administration, teachers, and the community-at-large must be kept open through frequent use. Anyone who thinks a solution to the problem of integration can be developed in a "smoke-filled room" and then rammed through to adoption while the community is kept in ignorance is simply wrong.

Our citizens are vitally interested; they are going to form opinions and express them, whether we like it or not. It is in our interest to see that these opinions are formed on the basis of correct information. Furthermore, the success of integration, once adopted, depends upon broad community support and understanding between the lay community and the schools. This can be created only through a climate of openness.

3. It can be done! A school district can move voluntarily to desegregate without a court order and without the compulsion of violence or boycotts. Berkeley has demonstrated that a school community can marshal its resources, come to grips with the issue of segregation, and develop a workable solution.

Furthermore, if the new arrangement is well planned and executed, it will gain acceptance on the part of many who opposed it at first.

Many fears and threats which arose in Berkeley were not realized. The Board was not recalled. Our teachers did not quit in droves. In fact, the reverse happened; our teacher turnover rate has been drastically reduced during the last two or three years. Integration did not lead to the kind of mass white exodus being experienced in other cities (which, interestingly enough, have not moved toward integration). In fact, last year for the first time in many years the long-standing trend toward a declining white enrollment in the Berkeley schools was reversed.

The not-so-subtle hints that direct action for integration would lead to loss of tax measures at the ballot box proved to be unfounded. In June 1966 we asked the voters for a \$1.50 increase in the ceiling of our basic school tax rate. Much smaller increase proposals were being shot down in neighboring districts and across the nation. In Berkeley we won the tax increase with over a 60 percent majority.

4. A community can grow. Berkeley did! When the citizens committee report came out in the fall of 1963 with an actual plan for desegregation of the junior high schools, the community suddenly awoke to the fact that desegregation was a real possibility. The furor that

resulted could be predicted in any city. However, as large public hearings and countless smaller meetings were held by dozens of groups, support for integration began to grow and opposition diminish. One area of the city that reacted emotionally at first later provided some of our strongest supporters.

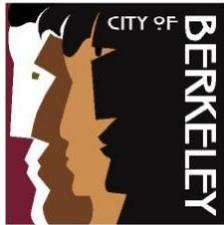
An example in a different but related field can illustrate this point. Berkeley held a referendum election on a Fair Housing Proposal early in 1963, before the citizens committee report, and the measure was defeated by a narrow margin. A year and a half later the community, together with the rest of California, voted on the same issue -- Proposition 14. Although the statewide vote on that issue was a resounding defeat for Fair Housing, the City of Berkeley voted the direct opposite by almost a two-to-one margin. The Proposition 14 election was held only a month after the recall election, after almost a full year of intensive community involvement with the school desegregation issue. In other words, a city that voted down its own Fair Housing proposal, later voted two-to-one for Fair Housing in a statewide election. Many of us feel that this change of direction was substantially influenced by the extensive community involvement in the school integration question between the two elections. The community grew in understanding as it studied the issues.

5. Community confidence in the good faith of its school administration and school board must be maintained. Berkeley has been successful in doing this. The good faith of our Board and Administration has been demonstrated. There have been no court orders, no pickets, no boycotts, no violence. Each advance has been made, after extensive

study and community deliberation, because the staff, the Board and the community thought it was right. By moving in concert with the community we have avoided being placed in polarized positions of antagonism. The climate thus produced has enabled us, as we move step by step, to work with rather than against important segments of the community in seeking solutions. If this climate of good faith is missing, even the good deeds of school officials are suspect.

CONCLUSION

There is no greater problem facing the schools of America today than breaking down the walls of segregation. If our society is to function effectively its members must learn to live together. Schools have a vital role to play in preparing citizens for life in a multi-racial society. The Berkeley experience offers hope that integration can be successfully achieved in a good-sized city. This success can be achieved if the Board of Education, the school staff, and the citizens of the community are determined to solve the problem and work together toward this end.



Office of the Mayor

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: July 14, 2020

Item Number: #18a-e

Supplemental/Revision Submitted By: Mayor Arreguin

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

The City Council has before it tonight five different proposals to initiate a robust community process to reimagine policing, and also specific proposals to conduct analyses and initiate new approaches to public safety.

The Mayor is proposing an omnibus motion that adopts elements of every one of the five proposals with some modifications.

Given that the Council is discussing various proposals relating to public safety tonight, and there is strong community interest in Berkeley initiating reforms in light of the murder of George Floyd and the nationwide movement for racial justice, the Good of the City outweighs the lack of time for prior citizen review or evaluation by the Council.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.



Office of the Mayor

**Proposed Omnibus Motion on Public Safety Items (Items 18a-e)
July 14, 2020**

RECOMMENDATION

That the Berkeley City Council adopts the following motion:

1. To APPROVE item 18a “George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis” (Bartlett) as revised in Supplemental Packet 1 and further amended below:

- Reaffirming the Council’s prior action adopting Recommendation # 1 through its allocation of \$160,000 for an Auditor I position in the FY 2021 Budget to conduct a data-driven study that includes analysis of police calls and responses, as well as analysis of the Berkeley Police Department (BPD) budget and expenditures by call type, including FTE (full-time equivalent position), cost per FTE, overtime and special pay expenditures and supervisory structure. Recommended data points/areas of focus are included in pages 4-7 of the Bartlett item. The Auditor is encouraged to consult subject matter experts in developing the scope of work for this study and to consult with the community-based organization selected for community outreach (Item 18d) throughout her work.

- Approving Recommendation # 2 as revised below:

Refer to the City Manager and the public safety reimagining process in item 18d to evaluate initiatives and reforms that reduce the footprint of the Police Department and limit the Police’s scope of work primarily to violent and criminal matters.

- Allocate \$100,000 from the FY 2021 Unallocated General Fund Balance (of \$141,518 unallocated in the FY 2021 Adopted Budget) to analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit. This Specialized Care Unit (SCU) consisting of trained crisis-response workers would respond to 911 calls that the operator evaluated as non-criminal and that posed no imminent threat to the safety of first responders. The program would be designed by staff based on existing successful models and likely employ a combination of mental health professionals as well as EMTs and/or nurses, who would be unarmed. The program should be designed to reduce costs while enhancing outcomes in public safety, community health, mental health, social services, civil rights, and overall quality of life. Based on pilot results, a proposal to adjust and/or expand and continue the program, and related reductions in policing services, should be presented to the City Council for consideration in time for

inclusion in the FY 2022 budget. *(Council previously approved a study of the creation of a Specialized Care Unit pilot on June 16, 2020)*

2. To APPROVE the following recommendations based on Councilmember Davila's item 18b "Support Redistribution of City Resources and Operations from the Berkeley Police":

- As previously recommended in other areas of this motion by other Councilmembers, refer as part of the public safety reimagining process to evaluate functions currently served by Berkeley Police personnel which could be better served by trained non-sworn city staff or community partners and how those positions/responsibilities could be transferred out of the police department as soon as practicable. (Davila Recommendation 1 modified)
- Refer to the public safety reimagining process the goal of reducing the Berkeley Police Department budget by 50%, to be based on the results of requested studies and analysis and achieved through programs such as the Specialized Care Unit. Functions to consider shifting away from the Police Department include non-emergency calls that are evaluated to pose no danger to the safety of responders, such as calls related to enforcement of COVID-19 Shelter in Place orders, mental health calls (including wellness checks), calls related to quality of life crimes, calls related to homelessness, and any other calls that can be safely served by another new or existing city or community partner resource (Davila Recommendation 2 and 3 modified)
- Engage in a full and complete operational analysis, undertake meaningful community consultation and develop a transition plan. This reduction will enable a reallocation of public safety resources so that Police are focused on violent and criminal matters, and consider how to shift resources to, among others, non-sworn mental health, homeless outreach, and parking and traffic enforcement professionals. This will also enable the reallocation of existing police dollars for community programs and priorities to support communities of color, promote violence prevention and restorative justice and improve community health and safety. (Davila Recommendation 3 modified)
- Reducing the Berkeley Police Department budget will allow funding to be considered for these and other similar priorities: youth programs, or community groups and programs, violence prevention and restorative justice programs, domestic violence prevention, housing and homeless services, food security, mental health services including a specialized care unit, healthcare, new city jobs, expanded partnerships with community organizations, public health services, and the creation of a new Department of Transportation to administer parking regulations and traffic laws. (Davila Recommendation 4 modified)
- Refer to the City Manager and the public safety re-imagining process to identify the expertise needed for non-police responses to calls, taking into account comparable

approaches including CAHOOTS and other existing programs that might be expanded such as the Berkeley Free Clinic, Building Opportunities for Self Sustainability (BOSS), and the Women's Daytime Drop-in Center, Consider the Homeless and others. (Davila recommendation 6 modified)

- Create plans and protocols for emergency/911 dispatch to send calls to the preferred responding entity and consider placing dispatch in the Fire Department or elsewhere outside the Police Department. (Davila recommendation 7 modified)
- Request that the Berkeley Unified School District end programs that place police officers in schools. (Davila recommendation 8 modified)

(Councilmember Davila's suggested language encouraging BUSD to adopt policies to safeguard information from ICE is already adopted district policy. BUSD was one of the first districts in the country to adopt a sanctuary schools policy and should be commended for its forward-thinking leadership.)

- Refer to the City Manager and public safety reimagining process to explore the creation of a city policy to prohibit the expenditure of Police Department settlements from the General Fund. In the interim, it is recommended that the projected cost of settlements be included in the Police Department budget and the Department be responsible for requesting additional funding as needed. (Davila recommendation 9 modified)

3. To APPROVE the report and resolution in item 18d "Transform Community Safety and Initiate a Robust Community Engagement Process" (Mayor/Hahn/Bartlett/Harrison) with the following revisions below:

- Amend recommendation 3 to clarify that the City Manager would "collaborate with the Mayor and **all** Councilmembers to complete the work, to inform investments and reallocations to be incorporated into future Budget processes."
- Amend recommendation 3 to refer all of the recommendations from the Berkeley United for Community Safety coalition (see attached) to the City Manager and public safety reimagining process.
- Amend recommendations 3(a) (ii) to clarify that the analysis and initial recommendations on shifting police resources to alternate, non-police responses and toward alternative and restorative justice models will coincide with the November 2020 AAO#1 process and the **June 2021 budget process**.
- Amend recommendation 3(b) to add the following language proposed by Councilmember Wengraf in item 18c:

This work should include public, transparent community forums to listen, learn and receive people's ideas about how policing should be re-imagined and transformed so that communities of color can be safer within their neighborhoods, the City of Berkeley, and trust in the Berkeley Police Department can begin to be rebuilt.

- Amend recommendation 3(b)(1) to read:
Building on the work of the City Council, the Council Public Safety Policy Committee, the City Manager, the PRC, other City commissions and working groups (e.g. the Mayor's Fair and Impartial Policing Working Group) addressing community health and safety, the Community Safety Coalition and community process will engage relevant city commissions in this work on an ongoing basis.

4. To APPROVE Item 18e "BerkDOT: Reimagining Transportation for a Racially Just Future" (Robinson) as revised in Supplemental Packet 1:

Refer to the City Manager, the FY 2021-22 budget process, and the proposed community engagement process to reimagine public safety to:

- (1) Pursue the creation of a Berkeley Department of Transportation (*BerkDOT*) to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs, & infrastructure, and
- (2) Identify & implement approaches to reduce and/or eliminate the practice of pretextual stops based on minor traffic violations.



Berkeley United for Community Safety

June 27, 2020 / Event Recommendations (Partial List)

- Adopt best practices, one example Alameda County Connect: access screening, resources, mobile crisis team.
- Look for models that provide services that keep the community healthy and safe. Research the Oakland Model and the Oakland Power Project.
- We need an all new well-resourced, holistic and intersectional first responder team that responds to mental health, addiction issues, sexual harm, and homeless camp response. One that does not involve the police.
- We need more licensed and trained mental health professionals; culturally competent, compassionate, and aware. Diverse therapists also needed to relate to clients.
- We need to train professionals; “mental health clinicians” in both substance abuse and mental health issues. Outreach workers are needed who can de escalate and properly assist fellow community members in crisis.
- Fund a program with Community Care Workers on the street with proper training and resources to assist - leaving police to work on investigating and arresting criminals.
- Consider whether Berkeley Free Clinic can assist with developing a group of Community Care volunteers who assist in responding to crisis in homes and on the street that exhibit mental health, substance abuse when no crime is being committed.
- Create a City Department that focuses on Social Equity and Racial Justice.
- Make the city budget process MORE TRANSPARENT. Invest in Budget Town Halls that break down how the document works.
- Protect funding for youth programming including schools, Anticipated cuts to BUSD (2-6 million) due to COVID-19. Black and Brown Youth disproportionately affected by these cuts (fund and fast track African American Holistic Health Center)
- Divest funds from BPD into restorative justice programming run by the city or contracted to a community organization.
- Bolster nutrition programs that are at risk of being cut.
- Offer officer trainings that align with annual goals for the department. Professional development opportunities are to be made available only when these trainings support achievement of the annual goals for the department.



- BPD should not accept, request or seek to acquire military grade weapons or materials.
- BPD should receive a revised mission statement as a result of community discussions that redefines what is wanted from a "police force".
- Grant the community the ability to be autonomous.
- Have a specific public security priority to consolidate funding for all the communities' security efforts and needs. This will help create a system that will help further accountability in the police department.
- Create a stronger police accountability board.
- Ban rubber bullets as tear gas has been banned. Use less lethal tools.
- Council members need to fight for accountability and for what the community needs.



CONSENT CALENDAR
DATE: January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin

Subject: Urging the National Parks Service to Establish a National Parks Unit in the San Francisco Bay Area to Honor the Black Panther Party for Self Defense.

RECOMMENDATION

Adopt a resolution calling on the National Parks Service to conduct a Reconnaissance Survey to assess the suitability of lands in the San Francisco Bay Area to honor the Black Panther Party in Berkeley, Oakland, Richmond, and the surrounding Bay Area; send letter to the National Parks Service, and President[-elect] Joseph R. Biden, Jr with resolution.

BACKGROUND

The Huey P. Newton Foundation's President Frederika Newton, widow of Party founder Dr. Huey P. Newton, has requested that the City of Berkeley support national recognition of the Black Panther Party for Self Defense. Formally recognizing their struggle would also be a way of reaffirming the City Council's mandate as public servants.

In the late 1960s, the Nixon Administration embraced white supremacy with renewed vigor and began dismantling President Lyndon B. Johnson's Great Society and War on Poverty programs almost immediately upon inauguration, heralding a new era of targeted disinvestment and systematic discrimination of Black people, and violent repression of Black activist groups. But even during the preceding Democratic administration, sympathetic government officials made limited progress in a society that systematically excluded Black communities from access to capital, civic institutions, and basic necessities while enforcing geographic segregation. It was the policy of the U.S. government to condemn Black people to the poverty trap of urban ghettos and blame them for their own poverty.

The Black Panther Party for Self Defense was founded in 1966 in West Oakland, a historically Black working-class community literally being torn apart by urban renewal and the construction of BART, to organize in the revolutionary struggle for Black Power. White liberal society had failed to deliver on its promise of opening up the economy and civic institutions to Black people. The East Bay's African diaspora remained excluded

from most of the region's labor market, capital investment, and political representation, while bearing a disproportionate burden of police brutality and dispossession of property. The Black Panthers resisted hostile white institutions through what historian Robert Self described as "the political imagining of a nation within a nation."¹ Through its Community Survival Programs, the Black Panthers provided free breakfasts for children, medical clinics, self-defense trainings, emergency ambulance transportation, and education, among other services that the U.S. government regularly withheld from its Black constituents. In Berkeley, the Black Panther Party distributed free groceries at San Pablo Park, established Black Panther Office #3 at 3106 Shattuck Avenue, and held rallies at Sproul Plaza on the UC Berkeley campus.

Mired in violent reprisals, members of the Black Panther Party were routinely persecuted, imprisoned, and murdered by law enforcement agencies. Although the Party formally disbanded in 1982, they left an indelible mark on our body politic. Many of our civic leaders inherited their struggle for justice and Black power.

RATIONALE FOR RECOMMENDATION

The City of Berkeley is joining in a nationwide reckoning with persistent systemic racism as an economic, moral, and public health crisis. It is long past time for a National Monument to accompany this reckoning. We are in the process of developing new policies to redress racial inequities in public safety, education, housing and transportation. We join cities across the country in renaming schools originally named after slave owners. Our City Manager is partnering with civil rights groups to reimagine public safety. We must commit ourselves to building civic institutions that affirmatively include people of all backgrounds and actively redress historic injustices. To that end, the East Bay should honor the legacy of the Black Panther Party and the bravery of the Black Power movement—local residents who stepped up and took the wellbeing of their community in their own hands when the government failed them.

Many of our Black political leaders in the East Bay can trace the history of their activism directly to the unparalleled organizing feats of the Black Panther Party. Our city and nation should honor this heritage. While racism persists in our society, so, too, does the inspiration of those who fought back, fed their families, clothed their children, and healed the sick. Memorializing their struggle for freedom is one way we can ensure their unfinished work continues.

ENVIRONMENTAL IMPACTS

None—Contingent on National Park Service action.

FISCAL IMPACTS

None.

CONTACT

¹ Self, Robert O. *American Babylon: Race and the Struggle for Postwar Oakland*. (Politics and Society in Twentieth-Century America.) Princeton: Princeton University Press. 2004. p. 217.

Councilmember Terry Taplin, ttaplin@cityofberkeley.info

ATTACHMENTS/SUPPORTING MATERIALS

Attachment 1: Resolution

Attachment 2: Letter from Frederika Newton

CITY OF BERKELEY RESOLUTION URGING THE NATIONAL PARK SERVICE AND
PRESIDENT BIDEN TO ESTABLISH A NATIONAL PARK UNIT TO RECOGNIZE THE
HISTORY AND CONTRIBUTIONS OF THE BLACK PANTHER PARTY FOR SELF DEFENSE

WHEREAS, originally called the Black Panther Party for Self Defense, the party was founded in 1966 by Huey P. Newton and Bobby Seale in response to the wide-spread poverty, lack of economic and educational opportunities, and police oppression experienced by the African American community in Oakland, California; and

WHEREAS, pervasive and unrelenting police terrorism directed at communities of color during the 1960s made necessary the formation of the Black Panther Party for Self-Defense; and

WHEREAS, Numerous dedicated and courageous young people of African ancestry enlisted in the ranks of the Black Panther Party to monitor and deter police violence, and to staff community service programs called “survival programs” aimed at providing food, health care, legal assistance, transportation and other services to Black and other poor people living in poverty; and

WHEREAS, Promoting the idea of “All Power to the People”, the Panthers took action themselves to force change and bring about liberation from all forms of human exploitation and oppression; and

WHEREAS, 3106 Shattuck Avenue, San Pablo Park and Sproul Plaza in UC Berkeley was the location of numerous Black Panther Party activities including speeches, meetings, rallies, and free grocery giveaways; and

WHEREAS, As the Panther influence grew nationwide, J. Edgar Hoover, then-Director of the FBI, proclaimed that the Black Panther Party was “the greatest threat to the internal security’ of the United States in 1968; and

WHEREAS, The FBI commenced an illegal campaign of terror against the Black Panther Party that came to be known as “COINTELPRO’ (Counter Intelligence Program) to monitor, obstruct, undermine and neutralize the Party and its members; and

WHEREAS, Despite this opposition by the authorities, throughout the 1960’s and 1970’s the Panthers became a national force for social change, empowering a new generation of African Americans to seize political power, partnering with other disenfranchised communities around the country, and demonstrating that the legacy of slavery and racial oppression still prevented so many from experiencing the promise of prosperity and equality that is the foundation of the American dream; and

WHEREAS, The United States of America has yet to provide national recognition or a publicly accessible space for citizens and visitors to gain educational awareness about the history of the Panthers, one of the most influential groups of freedom fighter in recent history; and

WHEREAS, National recognition would also acknowledge the thousands of people that laid their lives on the lines to feed families in their communities, educate their children, provide free medical services, train a generation of organizers, academics and politicians, and fight for a freer world; and

WHEREAS, The public has demonstrated an interest in unbiased information and interpretation of the history of the Panthers which was illustrated by the overwhelming success of the “All Power to the People: Black Panthers at 50” exhibit at the Oakland Museum of California in 2016/2017; and

WHEREAS, The Party was founded in Oakland, California and had a significant presence with offices, activities and important sites throughout Berkeley and the San Francisco Bay area; and

BE IT RESOLVED, That the City Council for the City of Berkeley calls upon the National Park Service to initiate a Reconnaissance Survey to analyze the appropriateness of the establishment of a National Park or National Monument in Oakland, CA and throughout the Bay Area; and

BE IT FURTHER RESOLVED, That the City Council for the City of Berkeley urges President Joseph R. Biden to utilize the results of the Reconnaissance Survey to establish a Black Panther Party National Monument through the Antiquities Act (16. U.S.C. 431-433) in the appropriate locations in the San Francisco Bay Area and beyond.

December 8, 2020

Councilmember Terry Taplin
Berkeley City Council
2180 Milvia Street
5th Floor
Berkeley, CA 94704

Re: Local and National Recognition for the Black Panther Party in Richmond, San Francisco Bay Area and throughout the United States

On behalf of the [Huey P. Newton Foundation](#), the nation's largest repository of Black Panther Party-related material, I, Fredrika Newton, the widow of Dr. Huey P. Newton and President of the Huey P. Newton Foundation asks that the City of Berkeley support the national recognition of the Black Panther Party for Self-Defense (Black Panther Party). The Foundation urges the City of Berkeley to pass a resolution requesting the National Park Service to perform a Reconnaissance Survey to assess the suitability of establishing portions of the City of Oakland, Berkeley, Richmond, San Francisco and other San Francisco Bay Area locations as a unit of the National Park Service in recognition of the Black Panther Party. We believe that the result of the survey will clearly indicate the need to establish a National Park Service Historical Site or Monument. Despite the groundbreaking function of the Party, there is no national recognition for the thousands of men, women, and young people who served within the Black Panther Party or for the social programs that were created by the Party, many of which, such as the free school breakfast program, still exist today as governmental programs. The Foundation therefore seeks formal recognition as follows.

Specifically, the Foundation believes that sites such as, but not limited to, would showcase the Party's historic role in advancing African American civil rights in Berkeley and in the San Francisco Bay Area. Among these sites are: the Black Panther Party Office #3, 3106 Shattuck Avenue, location of numerous speeches and Black Panther Party activities, Sproul Plaza, UC Berkeley, location of free grocery giveaways and other Black Panther Party activities, San Pablo Park¹.

In addition, there are numerous locations in the nearby cities of Oakland, Richmond and San Francisco worthy of acknowledgment such as: the Black Panther Party Office #1 (currently the home of It's All Good Bakery) 5622 Martin Luther King Jr. Way; Black Panther Party Office #2, 4419 Martin Luther King Jr. Way; Black Panther Party Office #4, 1048 Peralta Street; De Fremery Park (aka Little Bobby Hutton Memorial Park), 1651 Adeline Street; the Alameda County Superior Court House, 12th and Fallon Street; St. Augustine's Episcopal Church (site of the Party's first free breakfast program, now St. Andrews Baptist Church), 2624 West Street; 5500 Market Street (the Party's 10 Point Program was written at this site in 1966); the traffic signal, corner of Market and 55th Street; Merritt Junior College, Martin Luther King Junior Way and 57th Street; and the site of Black Panther Party co-founder Huey P. Newton's Murder, 1456 Center Street; Free Breakfast Program, Fifth and Chesley St, Richmond, CA; Numerous locations in San Francisco, CA.

¹ <https://www.berkeleyside.com/2017/08/24/east-bay-food-justice-black-panther-party>

The Huey P. Newton Foundation also requests a reauthorization of the \$98,000 grant previously approved from the National Park Service to conduct the Black Panther Party Research, Interpretation & Memory Project². This grant was approved under the Obama administration and was subsequently withdrawn abruptly by the Trump administration³. This technical assistance intended to “memorialize a history that brought meaning to lives far beyond the San Francisco Bay Area,” and the overarching goal was to implement a National Park Service model for bringing diverse voices and communities together to understand their collective past and inspire a better future. Technical assistance will also provide interpretive functions, including preservation and display of artifacts and oral histories from former Party members.

While the City of Oakland is the birthplace of the Black Panther Party, the City of Berkeley played an important role in the establishment, growth and popularity of the Black Panther Party and there were countless Berkeleyans that were members of the Black Panther Party as well as allies. The Foundation believes the locations and resources listed above are worthy of National Park Service designation, interpretation and preservation. In order to be considered for a reconnaissance survey, resources shall meet the following National Park Service criteria. The Foundation has provided the necessary findings that we believe meet the criteria to begin the reconnaissance survey:

“It is an outstanding example of a particular type of resource.” The National Park Service currently operates several Historic Sites, Historical Parks, and Historic Monuments such as the Rosie the Riveter/World War II Home Front National Historical Park, Port Chicago Naval Magazine, Cesar Chavez National Monument, and the Martin Luther King Jr. Memorial, all of which acknowledge historic contributions to our nation. A Black Panther Party memorial site would similarly honor the historic contributions of a movement that advanced social change for African Americans everywhere.

1. **“It possesses exceptional value or quality illustrating or interpreting the natural or cultural themes of our Nation’s heritage.”** The Black Panther Party sites named above possess exceptional value in interpreting cultural themes of our Nation’s heritage in that history literally unfolded at each of these sites. Further, these sites are intact much as they were forty years ago and therefore offer a firsthand look at select locations that served as turning points in Civil Rights Movement history. In addition, De Fremery Park (aka Little Bobby Hutton Memorial Park) and the recreation center are owned and operated by the City of Oakland which would make a future transition to Federal ownership more feasible.
2. **“It offers superlative opportunities for recreation for public use and employment, or for scientific study.”** Since the majority of the sites are located within central and North Oakland, they offer perfect opportunities to create a walking and bicycling tour for public recreation and education, particularly for young adults who live in these same neighborhoods but may not be aware of the local history. These sites are currently being

2

<https://www.grants.gov/web/grants/search-grants.html?keywords=Black%20Panther%20Party%20Research%2C%20Interpretation%20%26%20Memory%20Project>

3

<https://www.dailycal.org/2017/10/29/backlash-national-parks-service-pulls-98k-grant-black-panther-party-research-project-uc-berkeley/>

promoted by numerous organizations such as Visit Oakland⁴, as locations for residents, visitors and tourists to experience historically significant sites.

3. **“It retains a high degree of integrity as a true, accurate, and relatively unspoiled example of the resource.”** As the Black Panther Party’s chief educational advocate, the Foundation attests to the accuracy of the Party’s history as enacted at each of these sites. Although in some instances new entities exist in old Party offices and worksites, the original buildings remain. In the case of De Fremery Park, the space is virtually unaltered since the 1960s when the Party first served the community through free social services. As such it, among other sites, is a **“living history” for Oakland.** The San Francisco Bay Area was the launching point for the Black Panther Party movement that eventually included as many as forty chapters around the world. Oakland is to the Black Liberation Movement what Montgomery, Alabama, is to the Civil Rights Movement, and the Foundation consequently requests formal recognition of that historic role. Only by understanding the Black Panthers’ historic roots can we adequately understand the impact of Black Liberation on Americans of all races.

Lastly, in 2016, the Foundation pursued the establishment of a National Park Service Monument by the outgoing Obama administration and received letters of support from numerous San Francisco Bay Area elected officials which are attached for your reference. In addition, the City of Oakland recently named 9th Street Dr. Huey P. Newton Way and Congresswoman Barbara Lee honored the 50th Anniversary of the Black Panther Party provided at the House of Representatives.

Thank you in advance for your consideration of this request. Please contact Fredrika Newton, Co-Founder and President of the Huey P. Newton Foundation at 1fredrika@gmail.com for further discussion. We look forward to working with the City of Berkeley and the National Park Service on this matter and welcome all queries.

Sincerely,



Fredrika Newton
Huey P. Newton Foundation, President

CC: Huey P. Newton Foundation Board
Berkeley Landmarks Commission

A: Draft Resolution

⁴ <https://www.visitoakland.com/blog/post/black-panther-party/>



CONSENT CALENDAR
DATE: January 19, 2021

To: Honorable Mayor and the City Council

From: Councilmember Terry Taplin

Subject: Guaranteeing COVID-19 Hazard Pay for Grocery Store Workers

RECOMMENDATION

Refer the City Manager and City Attorney to draft an emergency ordinance to guarantee hazard pay of an additional five dollars an hour for grocery store workers, effective upon adoption and until the City returns to the Yellow-Tier 4 rate of positivity for COVID-19.

BACKGROUND

While many workers in Berkeley have shifted to working from home amidst the COVID-19 pandemic, grocery store workers have continued to report to work and provide the City with a critical service while placing their own health and lives at risk. Grocery store workers interact indoors with large numbers of people on a daily basis and, despite the efforts of grocery stores to make precautions and keep customers and employees safe, there have nevertheless been outbreaks of COVID-19 among grocery store employees.¹ UFCW Local 5, the union representing grocery store workers, reports that over 600 grocery workers in their ranks have tested positive with COVID-19, and members of their union have been hospitalized or lost their life to the disease.

Many companies like Whole Foods' Amazon and Safeway's Albertsons implemented increased wages and one-time bonuses in the form of "Hero Pay" or "Appreciation Pay" in the early weeks of the shutdown, but ended those pay increases in the late spring despite no comparable decrease in the risks COVID-19 poses to grocery store employees. While the wages of many grocery workers have returned to their pre-pandemic levels, the risk of COVID-19 infection is at its worst level ever, both in Berkeley and throughout the United States. This threat is felt particularly hard by women and people of color, who are overrepresented among retail and grocery workers. Despite the unprecedented risk to employees and a lack of wages that match the

¹ Hahn, Sarah. "Multiple Berkeley Bowl employees test positive for COVID-19." *Berkeleyside*. July 9, 2020. <https://www.berkeleyside.com/2020/07/09/berkeley-bowl-grocery-store-berkeley-employees-test-positive-for-coronavirus>

hazards workers face every day, grocery retailers have for the most part seen a major jump in their profits this year.²

RATIONALE FOR RECOMMENDATION

The City of Berkeley must take action to ensure that the wages of its grocery store employees reflect the hazards that they face each time they report for their jobs. Even as the vaccine becomes more available, pay increase of five (5) dollars an hour while the threat of COVID-19 stays above the minimum level in the City are necessary to treat our grocery store workers as the heroes they are.

ENVIRONMENTAL IMPACTS

None.

FISCAL IMPACTS

None.

CONTACT

Terry Taplin, Councilmember, District 2, (510) 981-7120

ATTACHMENTS/SUPPORTING MATERIALS

1. Resolution

² Kinder, Molly, Laura Stateler, and Julia Du. "Windfall profits and deadly risks: How the biggest retail companies are compensating essential workers during the COVID-19 pandemic." *Brookings*. November 2020. <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>

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

GUARANTEEING COVID-19 HAZARD PAY FOR GROCERY STORE WORKERS

WHEREAS, since the beginning of the COVID-19 pandemic, grocery workers in the City of Berkeley have continued to report to work and serve their communities, despite the ongoing hazards and danger of being exposed to the novel coronavirus. The pandemic is far from over and the health threats that grocery workers face are just as real now as they were when this crisis began.

WHEREAS, because of the work of these essential grocery workers, families throughout the City have had access to the food they need during this pandemic.

WHEREAS, given the nature of these jobs, grocery workers must be there to help countless customers who are stressed and fearful for their wellbeing. Moreover, they are staying inside with large crowds every day, with ventilation systems that could be spreading the novel coronavirus.

WHEREAS, these essential grocery workers cannot choose to work from home-- they must come to work to do their jobs, which involve substantial interaction with customers. Workers are wearing masks, social distancing, and constantly wiping down cash registers, food conveyor belts and shopping carts to protect the public health. Moreover, these workers are continuously working to restock items that households desperately need like toilet paper, cleaning supplies and other essentials.

WHEREAS, these essential grocery workers continue to live with the daily fear of not only contracting the virus but also bringing it home to their families.

WHEREAS, the number of COVID-19 clusters within the grocery industry in the City of Berkeley continues to rise significantly. The health threat that these grocery workers face cannot be overstated. UFCW Local 5, the Union that represents grocery workers, reports that over 600 grocery workers in their ranks have tested positive with COVID-19, and members of their union and been hospitalized or lost their life to the coronavirus. In addition there have been highly publicized outbreaks at local grocery stores in Berkeley. The health threat that these grocery workers face cannot be overstated.

WHEREAS, we are now in the height of the pandemic with a stay at home order in our region with ICU capacity below 15 percent. We are a long way from minimal risk where there would be 1 daily new case per 100,000 or less than 2 percent positivity

WHEREAS, the City recognizes that these workers must be justly compensated for the clear and present dangers of doing their jobs during the pandemic by requiring their employers to provide hazard pay at all times that the City is at a coronavirus risk level of moderate, substantial, or widespread under the State Health orders.

WHEREAS, the City already knows that wage raises result in more money being spent in our small businesses and also act as a stimulus for our local economy.

WHEREAS, the United States' top retail companies have earned record-breaking profits during the pandemic, this increase in profit has not transferred to workers, according to a Brookings Institution analysis.

WHEREAS, the City has previously adopted ordinances specific to grocery establishments both to address worker retention and recently to address COVID-19-related protections.

WHEREAS, the City has lawfully crafted wage ordinances specific to employment sectors in the past.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley refers the City Manager, City Attorney, and the Health, Life Enrichment, Equity & Community Committee to draft an emergency ordinance providing all employees of grocery stores an additional five (5) dollars an hour in wages for the period of the effective date of this Ordinance through until such time as the City returns to the Yellow-Tier 4 designation of COVID-19 infection rates under the State Health orders.

**SOPHIE HAHN**

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

CONSENT CALENDAR
 January 19, 2021

To: Honorable Members of the City Council
 From: Councilmember Sophie Hahn (Author)
 Subject: Relief for Child Care Providers

RECOMMENDATION

Adopt a resolution making child care providers, including all forms of early childhood education, eligible for grants and other assistance under the Berkeley Relief Fund.

BACKGROUND**Berkeley Relief Fund**

On March 17, 2020, the City Council allocated \$3 million to launch the Berkeley Relief Fund to assist businesses, arts organizations, and renters in Berkeley that have experienced financial hardship due to the COVID-19 pandemic.¹ Berkeley's residents, business community, and philanthropists have made generous contributions.²

On March 30, the City announced the first phase of the Berkeley Relief Fund program: the Berkeley Business Continuity Grants, an allocation of \$1 million to help mitigate COVID-19 related financial losses suffered by small businesses. Through this program, grants of up to \$10,000 were made available to Berkeley-based small businesses and nonprofits to enable continuity through and/or beyond the COVID-19 pandemic.

The Office of Economic Development (OED) received over 1000 applications to the Business Continuity Grant Program, testimony to the great number of needs in Berkeley. In the first phase of the grant program, the City issued 353 grants totaling \$968,499 to businesses and nonprofits.

¹ ["Berkeley COVID-19 Relief Fund and Expanding Flexible Housing Pool." Berkeley City Council, March 17, 2020 meeting, item 3](#)

² [Berkeley Relief Fund](#)

While the Fund continues to raise philanthropic donations, demonstrating the generous support of our community, and has provided vital assistance to hundreds of small businesses, it is clear that many local businesses impacted by COVID-19 have not received needed assistance.

Child Care Provider Need

Child care is critical to Berkeley's recovery from the COVID-19 health crisis and to our children's long-term development and success. However, the pandemic has placed severe strain on the child care system.

The situation child care providers are facing is dire. Without immediate relief, it is likely that many programs will be forced to close in the coming months, leaving children without access to high-quality care, and limiting the ability of low-income and frontline-worker parents to work.

To make ends meet, many childcare providers have been charging supplies to their personal credit cards, struggling to hang on through the pandemic. Most childcare providers are women, and often women of color, who under normal circumstances receive very low wages and are themselves eligible for public benefits. *Small amounts of support at this critical juncture could mean the difference between hanging on through the final months of shelter-in-place, or shutting down for good.*

As of last summer, approximately 130 child care programs were operating in Berkeley. Due to the COVID-19 health crisis, many of these providers have had to close temporarily or permanently due to increased costs, stress, and health concerns.

UC Berkeley's Center for the Study of Childcare Employment, working with the City's Economic Development Department, did a survey of childcare providers in Berkeley. When asked what it would take to reopen or maintain current services safely and sustainably throughout the duration of the pandemic, Berkeley providers consistently request funds to cover expenses such as payroll for staff, rent, utilities, and other expenses related to their operations, and survival.

Research shows that children are more successful in life if they are given a strong foundation when they are young. Infancy and toddlerhood are times of intense intellectual engagement.³ During this time, the brain undergoes its most dramatic development, as children acquire the ability to think, speak, learn, and reason. Babies and toddlers need positive early learning experiences to foster their intellectual, social, and emotional development and to lay the foundation for later success.⁴ In the long run, the benefits stemming from greater investments in children lead to an increasingly

³ Shonkoff, Jack and Phillips, Deborah. 2000. *From neurons to neighborhoods: The science of early childhood development*. Washington, DC: National Academy Press.

⁴ <https://www.zerotothree.org/resources/477-early-head-start-works>

productive workforce that will boost economic growth, save public dollars, and reduce involvement with the criminal justice system.⁵

Providing access to high-quality early care and education not only promotes healthy child development, but it also allows parents to participate in the labor force.⁶ Without reliable and affordable child care, parents often must choose between spending a large percentage of their budget on child care or cutting back work hours.⁷ Many parents -- often women -- are forced to leave the workforce altogether because of struggles to provide child care.⁸

This resolution makes child care providers, including those providing all forms of early childhood education, eligible for assistance under the Berkeley Relief Fund. It will help provide vital financial help to those in our community who care for our children and cannot pay for supplies and operating expenses through no fault of their own.

FISCAL IMPACTS

Allocations to be determined by the City Manager based on available funds in the Berkeley Relief Fund.

ENVIRONMENTAL SUSTAINABILITY

Will support the economic sustainability and child care needs of the Berkeley community as it recovers from the COVID19 pandemic.

CONTACT INFORMATION

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

ATTACHMENT

1. Resolution

⁵ <https://www.epi.org/publication/its-time-for-an-ambitious-national-investment-in-americas-children>

⁶ <https://www.americanprogress.org/issues/early-childhood/reports/2018/12/06/461643/americas-child-care-deserts-2018>

⁷ <https://www.americanprogress.org/issues/early-childhood/reports/2020/08/04/488642/costly-unavailable-america-lacks-sufficient-child-care-supply-infants-toddlers>

⁸ <https://www.americanprogress.org/issues/early-childhood/reports/2016/06/21/139731/calculating-the-hidden-cost-of-interrupting-a-career-for-child-care>

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

MAKING CHILD CARE PROVIDERS ELIGIBLE FOR ASSISTANCE FROM THE BERKELEY RELIEF FUND

WHEREAS, on March 17, 2020, the City Council allocated \$3 million to launch the Berkeley Relief Fund to assist businesses, arts organizations, and renters in Berkeley that have experienced financial hardship due to the COVID-19 pandemic; and

WHEREAS, thanks to the generous support of Berkeley's residents, business community, and philanthropists, the community was able to raise \$1.3 million for the Berkeley Relief Fund; and

WHEREAS, the Office of Economic Development (OED) received over 1000 applications to the Business Continuity Grant Program and issued 353 grants totaling \$968,499 to businesses and nonprofits in the first phase of the grant program; and

WHEREAS, further support is needed to help those financially impacted, as COVID-19 continues to worsen and restrictions tighten this winter; and

WHEREAS, many local businesses and organizations impacted by COVID-19, including child care providers and after-school enrichment programs, have not received needed assistance; and

WHEREAS, child care is critical to Berkeley's recovery from the COVID-19 health crisis and to our children's long-term development and success; and

WHEREAS, providing access to high-quality early care and education promotes healthy child development and allows parents to participate in the labor force; and

WHEREAS, the pandemic has placed severe strain on the child care system, causing many providers to close temporarily or permanently due to increased costs, stress, and health concerns; and

WHEREAS, without immediate relief, it is likely that additional child care programs will be forced to close in the coming months, leaving children without access to high-quality care, and limiting the ability of low-income and frontline-worker parents to work;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that child care providers, including all forms of early childhood education, are hereby made eligible for grants and other assistance under the Berkeley Relief Fund.

**SOPHIE HAHN**

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

CONSENT CALENDAR

January 19, 2021

To: Honorable Members of the City Council
 From: Councilmember Sophie Hahn (Author)
 Subject: Extending Time for Temporary Parklets and Sidewalk Seating
 Post-COVID-19

RECOMMENDATION

Adopt an ordinance revising BMC Chapter 16.18 *Right-of-Way Encroachments and Encroachment Permits* and BMC Section 14.48.150 *Sidewalk Seating, Benches, and Planters* to extend the period of time that Parklets and Sidewalk Seating established under the COVID-19 declared City emergency can remain in place to 365 days after the termination of the declared City emergency rather than the current 90 days.

BACKGROUND

On June 2, 2020, the City Council referred to the City Manager to explore and identify, on an expedited basis, potential public locations throughout Berkeley, including but not limited to wide sidewalks, street medians, building curtilages, parking bays and strips, streets and portions of streets, parking lots, and parks, for the temporary placement of tables and chairs to be used for open air dining to support restaurants, cafes, food shops, and other small businesses impacted by the COVID-19 emergency.¹

The item further directed the City Manager to facilitate and expedite potential use of both public and private property for outdoor dining and other retail activities by implementing or, where necessary, returning to Council for approval any and all required temporary or permanent changes to, or suspensions of, Berkeley Municipal Code sections, fees, permitting requirements/timelines, and other rules and regulations. To eliminate a financial burden on small businesses, the City Manager was requested to consider reducing or waiving permitting and other fees.

On June 16, the Council adopted an Urgency Ordinance taking actions to allow for increased outdoor dining and commerce in the public right-of-way, including to simplify

¹ "Berkeley Safe Open Air Dining and Commerce," Berkeley City Council, June 2, 2020, https://www.cityofberkeley.info/Clerk/City_Council/2020/06_June/Documents/2020-06-02_Supp_2_Reports_Item_11_Rev_Hahn_pdf.aspx.

the permitting process for parklets during a declared local emergency; and to expand the areas and scope of activities that may be permitted via a sidewalk seating permit during the term of a declared City emergency; and a Resolution authorizing the City Manager to waive permit fees for one year for temporary structures and activities permitted in the public right of way.²

City staff responded by expanding the range of allowed outdoor activities on both public and private property and streamlining permitting processes. The City offered options for permitting outdoor business activities during COVID-19, on private property or in the public right-of-way, including street closure permits, sidewalk seating, and parklets.

Since the adoption of the Berkeley Safe Open Air Dining and Commerce referral and subsequent Urgency Ordinance, dozens of businesses have utilized parklets and built facilities for outdoor seating, allowing patrons space to safely dine and shop in the open air while maintaining social distance. Overall, the program has been a tremendous success, affording local restaurants and other businesses the ability to survive and continue to pay staff during a difficult time.³

On December 15, the Council referred to the City Manager to develop a program, and if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status.⁴ Some businesses may follow this path to permanence, while others may choose to end outdoor dining and commerce when the COVID-19 emergency is terminated.

This item offers a third path by adopting an ordinance to extend the period of time that parklets and sidewalk seating established under the COVID-19 emergency order can remain in place to 365 days after the termination of the declared City emergency rather than the current 90 days.

Under this proposal, businesses that have made an investment in open air dining and commerce structures during the pandemic will have longer to recoup their costs and to decide whether to transition to a permanent facility. In addition, extending the period of time that sidewalk seating and parklets can remain in place will allow staff more time to work with those seeking to transition their temporary outdoor dining and commerce permits to permanent status.

FISCAL IMPACTS

²“ Urgency Ordinance: Outdoor Dining and Commerce in the Public Right-of-Way,” Berkeley City Council, June 16, 2020, <https://www.cityofberkeley.info/uploadedFiles/Clerk/Urgency%20Item%20Outdoor%20Commerce.pdf>

³ <https://www.berkeleyside.com/2020/12/05/december-outdoor-dining-ban-in-berkeley>

⁴“ Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration,” Berkeley City Council, Dec. 15, 2020, https://www.cityofberkeley.info/Clerk/City_Council/2020/12_Dec/Documents/2020-12-15_Item_39_Path_to_Permanence_for_Outdoor.aspx.

Potential impact on revenues that would have been generated by parking meters, fees, and citations.

CONTACT INFORMATION

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

ATTACHMENT

1. Ordinance 16.18.010 Right of Way Encroachments and Encroachment Permits and 14.48.150 Sidewalk Seating, Benches, and Planters

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

AMENDING CHAPTER 16.18 RIGHT-OF-WAY ENCROACHMENTS AND ENCROACHMENT PERMITS OF THE BERKELEY MUNICIPAL CODE AND AMENDING SECTION 14.48.150 SIDEWALK SEATING, BENCHES, AND PLANTERS

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

Section 1. That Berkeley Municipal Code Section 16.18.010 is amended to read as follows:

16.18.010 Definitions.

A. "Encroach" means constructing or placing permanent structures or improvements over, upon, under, or using any public right-of-way or watercourse in any manner other than its intended use.

B. "Encroachment" shall include any of the following acts:

1. Erecting or maintaining any flag, banner, decoration, post, sign, pole, fence, guard-rail, wall, loading platform, mailbox, pipe, conduit, wire, or other structure on, over, or under a public right-of-way;

2. Constructing, placing, or maintaining, on, over, under, or within the public right-of-way any subsurface drainage structure or facility, any pipe, conduit, wire or cable.

C. "Major encroachment" means any permanent improvement attached to a structure or constructed in place so that it projects into the public right-of-way such as basement vaults, earth retaining structures over three feet above grade, structure connected planter boxes, ramps, or fences over six feet above grade. Improvements identified in chapters 16.04, 16.24 and 17.16, and any items conforming to the Berkeley Building Code, shall not be considered Major encroachments. Projections over any part of the public right-of-way that are not permitted by or which are in excess of the limitations specified in the Berkeley Building Code shall also be classified as major encroachments, including theatre marquees, signs suspended above the sidewalk, oriel windows, balconies, cornices and other architectural projections.

D. "Minor encroachment" means encroachment into the public right-of-way resting on or projecting into the sidewalk area such as: subsurface tiebacks and soil nails; concrete stairs; disabled Access Ramps where more than six feet of sidewalk area is preserved; subsurface foundations extending less than 2 feet from the property line; level landings for garages; landscape features less than two feet in height; conduit for privately owned phone and data lines connecting buildings owned by the permittee; flower pots; permanent planter boxes; clocks; bus shelters; phone booths; bike racks; fences less than six feet above grade; earth retaining structures less than three feet above grade; benches; Parklets, as defined in Section 14.48.190; and curbs around planter areas. Any encroachment which is not a minor encroachment is a major encroachment. During a declared City emergency in response to a disease outbreak, a Parklet shall be considered a temporary structure not subject to the encroachment permit requirement and shall be permitted with an engineering permit. Upon termination of the declared City emergency, any Parklet present in the public right-of-way shall within 90 365 days of date of termination either obtain a valid encroachment permit or be removed from the public right-of-way.

E. "Assistant City Manager for Public Works" includes the Assistant City Manager for Public Works and their authorized delegate.

F. "Permittee" means any person(s), firm, company, corporation, association, public agency, public utility, or organization and the permittee's successors-in-interest which has been issued a permit for said encroachment by the Assistant City Manager for Public Works. All obligations, responsibilities, and other requirements of the permittee as herein described, shall be binding on successors-in-interest of the original permittee and subsequent owners of the property benefitted by the encroachment unless otherwise specified in the permit. (Ord. 7706-NS § 2, 2020; Ord. 7598-NS § 2, 2018; Ord. 7301-NS § 1, 2013; Ord. 6998-NS, 09/18/07; Ord. 5514-NS § 1, 1983)

Section 2. That Berkeley Municipal Code Section 14.48.150 is amended to read as follows:

14.48.150 Sidewalk seating, benches and planters.

A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Sidewalk Seating, Benches and/or Planters on sidewalks, parking lanes, street areas, and other public right of way locations as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any sidewalk area in front of a single parcel if there are any current violations of this Chapter in that sidewalk area.
2. A permit for Sidewalk Seating, Benches and/or Planters may not be issued unless the business for which the Sidewalk Seating, Benches and/or Planters is/are proposed is in full compliance with Title 23 and any Permit issued thereunder.

B. For purposes of this Chapter, the following terms shall be defined as follows:

1. "Bench" means a seat designed for two or more persons.
2. "Bus Bench" means a bench installed and maintained under an agreement between the City, A.C. Transit and Lamar Transit Advertising or another public or semi-public transit provider.
3. "Commercial Establishment" means, but is not limited to, a place where Business Activity is established. Business activity is defined as any activity subject to BMC Chapter 9.04 and any economic activity which generates receipts but is exempt from BMC Chapter 9.04 by state or federal law.
4. "District-wide Sidewalk Bench/Planter Area Plan" means a City-approved plan for a specific commercial district as defined in said plan, that establishes area-specific regulations for benches, planters and/or plant material, and establishes general regulations for the placement of benches and planters in the public right-of-way, for the designated district.

5. "District-wide Sidewalk Seating Area Plan" means a City-approved plan for a specific commercial district as defined in said plan, that establishes area-specific regulations for sidewalk cafe seating, and establishes general regulations for the placement of sidewalk cafe seating in the public right-of-way, for the designated district.
6. "Food Service Establishment" has the same meaning as set forth in BMC Chapter 23F.04.
7. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of sidewalk, parking lanes, street area, and other public right of way spaces.
8. "Planter" means a container that is designed or used for growing plants.
9. "Parking Lane" and "Street Area" are considered to be part of the Public right-of-way (PROW), known as, "any public street, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, owned, operated and/or controlled by the City or subject to an easement owned by City and any privately-owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City." as defined in BMC 23F.04.010.
10. "Sidewalk" has the same meaning as set forth in BMC 1.04.010(18).
11. "Sidewalk Seating" means tables and/or chairs (including benches) and umbrellas and other associated furniture with lawfully operating Food Service Establishments or other commercial establishments, in or on the sidewalk. During cases of a declared City emergency in response to a disease outbreak, "Sidewalk Seating" includes seating and associated furniture in the public right-of-way or resting on, or projecting into, the sidewalk, parking lane, or street area, or any combination thereof which are not physically or structurally attached to a building, retaining wall or fence. Such Sidewalk Seating shall be permitted in any area of the public right-of-way for the duration of the declared City emergency if Traffic Engineer makes a finding that the use of the right-of-

way for Sidewalk Seating purposes does not create a dangerous condition for customers, pedestrians, or bicycle or motor vehicle traffic. Upon termination of the declared City emergency, any Sidewalk Seating present in the public right-of-way and not on the sidewalk shall within ~~90~~ 365 days of date of termination either obtain a valid encroachment permit or be removed from the public right-of-way.

12. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.

13. "Window Box Planter" means a box, designed to hold soil for growing plants, attached at or on a windowsill.

C. Sidewalk Seating, Benches and Planters shall fully conform to the following requirements of this subdivision:

1. Any object permitted under this Section shall leave a minimum horizontal clear space of six feet for ADA-compliant path of travel, (or reduce to 5 feet at a single point of contact) or such greater (or smaller) amount of clear space as the Engineering Division finds necessary to protect and enhance pedestrian and vehicle traffic for public use in the sidewalk area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.

2. Objects permitted under this Section shall not:

a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;

b. Block or obstruct the view of necessary authorized traffic devices;

c. Unduly interfere with pedestrian traffic in the public ROW/sidewalk, pedestrian safety, access to public or private parking, traffic circulation, and/or vehicular safety;

d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will

accommodate, Sidewalk Seating, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate;

e. Be affixed to any City or utility company-owned poles or appurtenances;

3. All sidewalk seating shall be subject to the following additional standards and requirements:

a. All Sidewalk Seating configurations shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.

b. All Sidewalk Seating components shall be stored in a secure location on private property when not in use.

c. The permittee shall regularly inspect and clean the Sidewalk Seating and that portion of the public sidewalk adjacent to the establishment. A waste receptacle shall be provided.

4. All benches and planters shall be subject to the following additional standards and requirements:

a. All proposals shall comply to the greatest extent possible with any design requirements adopted by the City for benches, planters and/or plant material.

D. All permits issued under this Section shall be subject to the following conditions:

1. The permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the curb, parking lane, or street area.

2. The permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, and ensure compliance with all applicable laws, and the number of tables and chairs shall not be increased without prior approval of the Public Works or Public Health Department.

3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or their designee, be removed or relocated in such a way as to eliminate the conflict. Should the permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the permittee. Any such non-compliance shall also be a violation of this Section.

4. Permits issued under this Section shall be posted in plain view within the commercial establishment for which the permit has been issued along with any other relevant permits that support health and safety of patrons and the general public.

5. By accepting a permit under this Section, the permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the permittee's installation, operation, maintenance or removal of Sidewalk Seating, Furniture, Benches and/or Planters.

6. Prior to permit approval, the permittee shall demonstrate possession of liability insurance in the amount of \$1,000,000 for Benches and Planters, and related Sidewalk Seating furniture. Said insurance shall name the City of Berkeley as additionally insured and shall be in a form acceptable to the City Attorney.

7. The permittee shall monitor and control the use of the Sidewalk Seating so as to prevent disturbance of the surrounding neighborhood.

8. A food service establishment that proposes to serve alcoholic beverages within an outdoor dining area shall comply with the standards established by the State of California Department of Alcoholic Beverage Control. The dining area shall be:

a. Physically defined and clearly part of the restaurant it serves; and

b. Supervised by a restaurant employee to ensure compliance with laws regarding the on-site consumption of alcoholic beverages.

E. Permits under this Section are not transferable, and must be renewed annually.

F. Sidewalk Seating, Benches, Furniture, and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.

G. The City Council may by resolution establish or waive fees for the implementation and administration of this Section. (Ord. 7707-NS § 1, 2020; Ord. 7632-NS § 1 (part), 2018; Ord. 7468-NS § 1, 2016; Ord. 7401-NS § 1, 2015; Ord. 7203-NS § 2, 2011; Ord. 6281-NS § 5, 1995. Formerly 14.48.200)

14.48.160 Removal of obstructions on streets and sidewalks.

Anything placed or permitted to remain upon any sidewalk or roadway in violation of this Chapter, is declared to constitute a nuisance and the City is authorized and empowered to abate such nuisance by removing the same to the custodian of lost property in the Police Department or the Corporation Yard of the City, or other location designated by the City. (Ord. 7632-NS § 1 (part), 2018; Ord. 3262-NS § 12.2, 1952. Formerly 14.48.210)

14.48.170 Use of streets and sidewalks by vendors.

Any properly licensed vendor may use the public streets of the City in commercial or industrial zones for the sale of goods, wares, merchandise, or food when conducted under the conditions stated in this section.

A. Sidewalk vending is permitted as regulated by Chapter 9.48 of the Berkeley Municipal Code.

B. Other street vending is permitted from vehicles which are lawfully parked upon streets which are not regulated by parking meters or other posted parking time limits.

C. It is unlawful for any person to vend in violation of this section. (Ord. 7632-NS § 1 (part), 2018: Ord. 5483-NS § 1 (part), 1982: Ord. 4587-NS § 1, 1972: Ord. 4569-NS § 1, 1972: Ord. 3262-NS § 12.3, 1952. Formerly 14.48.220)

14.48.180 Trap doors in sidewalks.

A. Trap doors in sidewalks used to cover an opening for an elevator, stairway or chute must be kept in such a condition that they will not endanger persons or property, and it is unlawful for any person owning or being in charge or control of any such doors in sidewalks used for covering entrances to elevators, stairways or chutes, or other openings in the sidewalk leading to the basement, to allow said doors to remain open, except when such elevator, stairway or chute is being used and monitored for pedestrian safety while loading or unloading or transferring of merchandise or material.

B. The requirements of this section shall be in addition to and not in lieu of any other ordinance of the City having to do with doors or other openings in sidewalks. (Ord. 7632-NS § 1 (part), 2018: Ord. 3262-NS § 12.6, 1952. Formerly 14.48.250)

14.48.190 Parklets.

A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Parklets, Benches and/or Planters in the public right-of-way (excluding Sidewalks alone, which are subject to and governed by Section 14.48.150) as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any right-of-way area in front of a single parcel if there are any current violations of this Chapter in that right-of-way area.
2. A permit for a Parklet may not be issued unless the parklet Host is in full compliance with all applicable requirements of Title 23 and any Permit issued thereunder.

3. A permit for a Parklet may only be issued adjacent to parcels in the following zoning districts: all Commercial (C-prefixed districts), Mixed-Use Light Industrial (MU-LI), Mixed-Use Residential (MU-R), and Mixed Manufacturing (MM).

B. For purposes of this Chapter, the following terms shall be defined as follows:

1. "Bench" means a seat designed for two or more persons.
2. "Bike Parking" means a location with bike racks intended for the secure parking of bicycles.
3. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of public space.
4. "Parklet" means a platform or similar level surface extending into the public right-of-way with amenities such as but not limited to tables and/or chairs (including Benches), Bike Parking, and umbrellas, designated as public space, located in or on the public right-of-way or resting on, or projecting into, the sidewalk and parking area, which are not physically or structurally attached to a building, retaining wall or fence.
5. "Planter" means a container that is designed or used for growing plants.
6. "Sidewalk" has the same meaning as set forth in Section 1.04.010(18).
7. "Sponsoring Business," "Host," "Permit Holder" or "Permittee" means, and is limited to, any establishment engaged in insuring and caring for the Parklet as set forth in the Parklet maintenance agreement.
8. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.

C. Parklets, Benches and Planters shall fully conform to the following requirements of this subdivision:

1. Any object permitted under this Section shall leave a minimum of clear space as the Engineering Division finds necessary to protect and enhance pedestrian or vehicle traffic for public use in and around the Parklet area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.
2. Parklets shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.
3. Objects permitted under this Section shall not:
 - a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;
 - b. Block or obstruct the view of necessary authorized traffic devices;
 - c. Unduly interfere with pedestrian traffic in the right-of-way, including the Sidewalk, pedestrian safety, traffic circulation, and/or vehicular safety;
 - d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate;
 - e. Be affixed to any City or utility company-owned poles or appurtenances;
 - f. The width of the Parklet must not extend beyond six feet from the curb line, except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a Parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate.
4. All Parklets shall be subject to the following additional standards and requirements:
 - a. Parklets must remain publicly accessible and must include signage posted on site to this effect;

- b. Parklet construction materials must be of high quality, durable, and suitable for public use;
 - c. A visible edge to the Parklet is required, which may consist of Planters, railing, or cabling. The edges should be visually permeable;
 - d. The Permittee shall regularly inspect and clean the Parklet and that portion of the public sidewalk adjacent to the Parklet;
 - e. Access panels must be included in order to maintain the gutter and area underneath the Parklet and the design must allow for drainage along the gutter to pass underneath the Parklet;
 - f. Safe hit posts and wheel stops, or approved equivalents, may be required. If Bike Parking is provided, the bike racks can be at street grade.
5. All Benches, Furniture, and Planters within the Parklet shall be subject to the following additional standards and requirements:
- a. All proposals shall comply with any design requirements adopted by the City for Benches, Planters and/or plant material;
 - b. All non-secured Parklet components shall be stored in a secure location on private property when not in use;
 - c. Any unsecured Furniture must be clearly different from the Furniture used by a Parklet Host in order to emphasize that the Parklet is public space, as determined by City staff.
- D. All permits issued under this Section shall be subject to the following conditions:
- 1. The Permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the right-of-way, including the Parklet area.

2. The Permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, ensure compliance with all applicable laws, and the number and configuration of Benches, Furniture and Planters and overall square footage of the Parklet shall not be modified without prior approval of the Public Works Department.
3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or their designee, be removed or relocated in such a way as to eliminate the conflict, at the sole expense of the Permittee. Should the Permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the Permittee. Any such non-compliance shall also be a violation of this Section.
4. Permits issued under this Section, when under review prior to issuance, shall be posted in plain view within the sponsoring establishment(s) for which the permit has been issued. Public notice, permitting, and appeal for Parklets are set forth in BMC Section 16.18.060 (Permit procedure for minor encroachment) of the Berkeley Municipal Code. Section D(4) is not applicable in cases of declared local emergency due to disease outbreak.
5. By accepting a permit under this Section, the Permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the Permittee's installation, operation, maintenance or removal of the Parklet, Benches and/or Planters.
6. Prior to permit approval, the Permittee shall demonstrate possession of liability insurance, in the amount not less than \$1,000,000, for the Parklet including any

associated Benches, Planters and Furniture. Said insurance shall name the City of Berkeley as an additional insured and shall be in a form acceptable to the City Attorney.

7. The City Manager or their designee may require a performance bond to ensure Parklet removal in the event of a permit cancellation.

8. The Permittee shall monitor and control the use of the Parklet to prevent disturbance of the surrounding neighborhood.

9. A Sponsoring Business or other business is not permitted to perform table service at a Parklet or otherwise incorporate a Parklet into its business operations. Section D(9) is not applicable in cases of declared local emergency due to disease outbreak.

10. Commercial signage, smoking, and advertising are prohibited at Parklets.

E. Parklets, Benches and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.

F. The City Council may by resolution establish or waive fees and guidelines for the implementation and administration of this Section. (Ord. 7706-NS § 1, 2020: Ord. 7632-NS § 1 (part), 2018: Ord. 7598-NS § 1, 2018. Formerly 14.48.300)



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
January 19, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf (Author), Vice Mayor Droste (Co-Sponsor) and Councilmembers Hahn and Taplin (Co-Sponsors)

Subject: Resolution Reaffirming the City of Berkeley's Commitment to Roe v. Wade

RECOMMENDATION

Adopt a Resolution reaffirming the City of Berkeley's commitment to Roe v. Wade and honoring the 48th anniversary of its passage.

FINANCIAL IMPLICATIONS

None

BACKGROUND

On January 22, 1973, the U.S. Supreme Court announced its decision in Roe v. Wade, a challenge to a Texas statute that made it a crime to perform an abortion unless a woman's life was at stake. The case had been filed by "Jane Roe," an unmarried woman who wanted to safely and legally end her pregnancy. Siding with Roe, the court struck down the Texas law. In a ruling, the court recognized for the first time that the constitutional right to privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy" (Roe v. Wade, 1973).

Roe has come to be known as the case that legalized abortion nationwide. At the time the decision was handed down, nearly all states outlawed abortion. Roe rendered these laws unconstitutional, making abortion services safer and more accessible to women throughout the country.

However, since coming to power, the Trump administration has tried to shut down Planned Parenthood in every way possible — in presidential budgets, health care reform bills, tax reform legislation, and federal resolutions and regulations, as well as by nominating anti-abortion judges. They have attempted to block access to care at Planned Parenthood health centers, which serve more than 2.4 million people each year — including many who have nowhere else to go for basic health services.

January 22, 2020 will be the 48th anniversary of the decision that effectively legalized abortion in the United States. The City has traditionally marked the anniversary with a proclamation recognizing the anniversary. The City has consistently passed resolutions denouncing the fraudulent media campaigns against Planned Parenthood and has

expressed continued support for access to all reproductive healthcare services and all reproductive healthcare providers. The City also adopted a resolution against proposed funding cuts to the Title X Family Planning program, the only federal program dedicated solely to providing low income women and men with comprehensive family planning and related preventive health services.

ENVIRONMENTAL SUSTAINABILITY

N/A

CONTACT PERSON

Councilmember Susan Wengraf, Council District 6, 510-981-7160

Attachments:

1: Resolution

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

REAFFIRMING THE CITY OF BERKELEY'S COMMITMENT TO ROE V. WADE

WHEREAS, January 21, 2020 marks the 48th anniversary of the historic Supreme Court decision, Roe v. Wade, which legalized abortion and recognized women's freedom of reproductive choice as essential to the lives, rights, health and equality of women; and

WHEREAS, Prior to 1973, the year when Roe v. Wade was enacted, women faced significant obstacles to safe reproductive health services, resulting in widespread loss of life and serious illness; and

WHEREAS, In 2020, 24 abortion restrictions were enacted and two abortion cases that would have significant implications for abortion access asked for Supreme Court review this fall: Dobbs v. Jackson Women's Health Organization and FDA v ACOG; and

WHEREAS, The right to safe, legal and accessible abortion continues to be undermined by federal initiatives, threatening the health and safety of women's lives, including the most marginalized women: low-income women, women of color, refugee and immigrant women; and

WHEREAS, Throughout the Bay Area, hundreds of health care workers have devoted their careers to ensuring that the women of the Bay Area have access to safe and legal reproductive health services, while often putting their own safety at great risk due to harassment and violent opposition; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF BERKELEY that we RECOGNIZE AND CELEBRATE THE 48th ANNIVERSARY OF ROE V. WADE and praise the perilous and self-sacrificing work of the healthcare providers who face threats and violence for providing safe and legal health services to women throughout the Bay Area.

NOW FURTHER BE IT RESOLVED that the City of Berkeley re-affirms its commitment to the human rights afforded to all women under Roe v. Wade, regardless of socioeconomic, ethnic, racial, cultural or religious background, age or sexual orientation and to opposing any laws or regulations that pose a threat to abortion, reproductive rights, sexual freedom and/or self-determination.

| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> | |
|---|---|
| Scheduled Dates | |
| 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 3. FY 2021 Mid-Year Report and the Unfunded Liabilities Report (tentative) |
| May 18 | <ol style="list-style-type: none"> 1. Bayer Development Agreement (tentative) 2. Affordable Housing Policy Reform (tentative) |

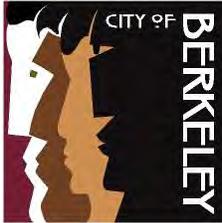
| Unscheduled Workshops |
|---|
| <ol style="list-style-type: none"> 1. Cannabis Health Considerations 2. Berkeley Police Department Hiring Practices (referred by the Public Safety Committee) |

| Unscheduled Presentations (City Manager) |
|--|
| <ol style="list-style-type: none"> 1. Ballot Measure Implementation Planning (scheduled for 1/19/2020 at 4:00 p.m.) 2. 2020 Pedestrian Plan 3. Update: Zero Waste Priorities 4. Civic Arts Grantmaking Process & Capital Grant Program |

| | 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>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> |
| 4. | <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 | | | | |
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| 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 |
| 1200-1214 San Pablo Ave (construct mixed-use building) | ZAB | | | 3/23/2021 |
| Remanded to ZAB or LPC | | | | |
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| Notes | | | | |
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12/30/2020



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

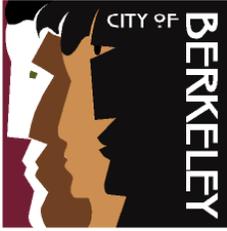
Meeting Date: November 10, 2020

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, 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.

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



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
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Support Affirming the Right to Boycott as a Tactic for Social and Political Change

RECOMMENDATION

Adopt a Resolution with the following actions:

1. Support Affirming the Right to Boycott as a Tactic for Social and Political Change, and celebrate the People of Berkeley for their commitment to Peace, Justice and Equity;
2. The City of Berkeley affirms the right of all people to participate in boycotts of any entity when they have conscientious concerns with the entity's policies or actions;
3. The City of Berkeley condemns attempts by governments to infringe upon the right to peaceful boycotts by criminalizing that participation, denying participants state contracts, or otherwise impeding the freedom of advocacy for all;
4. The City Council encourages City Commissions to recommend boycott policies to the City Council when appropriate, so that the City Council may be well informed in its oversight of City resources
5. Send a copy of this resolution to Governor Gavin Newsom, Attorney General Xavier Becerra, State Assemblymember Buffy Wicks, State Senator Nancy Skinner, United States Senators Bernie Sanders, Kamala Harris, Dianne Feinstein, and United States Congressional Representatives Barbara Lee, Ro Khanna, Alexandria Ocasio-Cortez, Ilhan Omar, Ayanna Pressley, Rashida Harbi Tlaib, and Pramila Jayapal.

BACKGROUND

Berkeley's municipal code defines "Peace and Justice" as "the goal of creating a world community in which the relations between people are based on equality, respect for human rights, and the abhorrence of exploitation and all forms of oppression" and the city has found that "the residents of Berkeley have continually demonstrated their concern for peace and justice based on equality among all peoples"¹.

Boycotts have been effectively used in the United States by advocates for equal rights since the Boston Tea Party and include boycotts led by civil rights activists during the 1950s and 1960s in order to advocate for racial equality, such as the Montgomery bus boycott², and promote workers' rights, such as the United Farm Workers-led boycott of table grapes.

¹ Ord. 5705-NS § 3, 1986

² Anne Brice, B., & Brice, A. (2020, February 18). The Montgomery bus boycott and the women who made it possible. Retrieved November 23, 2020, from <https://news.berkeley.edu/2020/02/11/podcast-montgomery-bus-boycott-womens-political-council/>

Berkeley has a long history of enacting and supporting boycotts on various issues of importance to the People of Berkeley, including boycotts against corporations including Motorola, Kaiser Aluminum, Shell, Honda, IBM, Coca-Cola, Hewlett-Packard, and others, sometimes targeting all companies doing business in a country or area (Burma, Occupied Tibet, Nigeria), or companies supplying weapons technology (a violation of the Nuclear-Free ordinance).

All forms of bigotry, including racism, classism, sexism, Islamophobia, anti-Semitism, homophobia, ableism, and all forms of hatred that target people based on their religion, ethnicity, nationality, disability, gender or sexual orientation, are unacceptable and inconsistent with Berkeley's commitment to equity and justice.

Criticism of the actions of corporations and nations is critical to healthy public discourse and must be protected in a democracy, and criticism of a nation, including by means of a non-violent citizens' boycott, does not constitute bigotry against the citizens of that nation. Rather, boycott is often a strategic and necessary means by which to encourage a government to abandon policies that are inconsistent with the ideals of peace and justice.

Boycotts and their importance are written into the Berkeley Municipal Code, including in the mandate of the Labor commission which reads "...encouraging support for officially sanctioned boycotts".

The right to boycott has repeatedly been reaffirmed as protected free speech by the first amendment of the United States' Constitution³, a protection that is of particular pride and importance to the City of Berkeley⁴, as the birthplace of the Free Speech Movement.

Despite its important history in social movements and its constitutional protections, governments and non-governmental organizations alike have sought to criminalize⁵, stigmatize, and delegitimize⁶ the use of boycotts in an attempt to stifle constitutionally protected political expression.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Protecting the community's right to boycott as a Tactic for Social and Political Change is an act of environmental sustainability.

³ The Supreme Court, in the 1966 case *Rosenblatt v. Baer*, held that the First Amendment to the Constitution ensures that "criticism of government is at the very center of the constitutionally protected area of free discussion". Then, in 1982, in *NAACP v. Claiborne Hardware* they held that "the right of the States to regulate economic activity could not justify a complete prohibition against a nonviolent, politically motivated boycott".

⁴ UC Berkeley Library. (n.d.). Retrieved November 23, 2020, from <https://www.lib.berkeley.edu/libraries/bancroft-library/oral-history-center/projects/fsm>

⁵ Greenwald, G., & Grim, R. (2017, July 19). U.S. Lawmakers Seek to Criminally Outlaw Support for Boycott Campaign Against Israel. Retrieved November 23, 2020, from <https://theintercept.com/2017/07/19/u-s-lawmakers-seek-to-criminally-outlaw-support-for-boycott-campaign-against-israel/>

⁶ Carol Morello, S. (2020, November 19). Pompeo sets off debate on boycott of Israel, calling it an anti-Semitic 'cancer'. Retrieved November 23, 2020, from https://www.washingtonpost.com/national-security/pompeo-israel-bds-movement-boycott/2020/11/19/79fe4cba-2a7d-11eb-b847-66c66ace1afb_story.html

CONTACT PERSONS

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA
SUPPORT AFFIRMING THE RIGHT TO BOYCOTT AS A TACTIC FOR SOCIAL AND
POLITICAL CHANGE

WHEREAS, Berkeley's municipal code defines "Peace and Justice" as "the goal of creating a world community in which the relations between people are based on equality, respect for human rights, and the abhorrence of exploitation and all forms of oppression" and the city has found that "the residents of Berkeley have continually demonstrated their concern for peace and justice based on equality among all peoples"⁷; and

WHEREAS, boycotts have been effectively used in the United States by advocates for equal rights since the Boston Tea Party and include boycotts led by civil rights activists during the 1950s and 1960s in order to advocate for racial equality, such as the Montgomery bus boycott⁸, and promote workers' rights, such as the United Farm Workers-led boycott of table grapes; and

WHEREAS, Berkeley has a long history of enacting and supporting boycotts on various issues of importance to the People of Berkeley, including boycotts against corporations including Motorola, Kaiser Aluminum, Shell, Honda, IBM, Coca-Cola, Hewlett-Packard, and others, sometimes targeting all companies doing business in a country or area (Burma, Occupied Tibet, Nigeria), or companies supplying weapons technology (a violation of the Nuclear-Free ordinance); and

WHEREAS, all forms of bigotry, including racism, sexism, Islamophobia, anti-Semitism, homophobia, ableism, and all forms of hatred that target people based on their religion, ethnicity, nationality, disability, gender or sexual orientation, are unacceptable and inconsistent with Berkeley's commitment to equity and justice; and

WHEREAS, criticism of the actions of corporations and nations is critical to healthy public discourse and must be protected in a democracy, and criticism of a nation, including by means of a non-violent citizens' boycott, does not constitute bigotry against the citizens of that nation. Rather, boycott is often a strategic and necessary means by which to encourage a government to abandon policies that are inconsistent with the ideals of peace and justice; and

WHEREAS, boycotts and their importance are written into the Berkeley Municipal Code, including in the mandate of the Labor commission which reads "...encouraging support for officially sanctioned boycotts"; and

WHEREAS, the right to boycott has repeatedly been reaffirmed as protected free speech by the first amendment of the United States' Constitution⁹, a protection that is of particular pride and importance to the City of Berkeley¹⁰, as the birthplace of the Free Speech Movement; and

⁷ Ord. 5705-NS § 3, 1986

⁸ Anne Brice, B., & Brice, A. (2020, February 18). The Montgomery bus boycott and the women who made it possible. Retrieved November 23, 2020, from <https://news.berkeley.edu/2020/02/11/podcast-montgomery-bus-boycott-womens-political-council/>

⁹ The Supreme Court, in the 1966 case *Rosenblatt v. Baer*, held that the First Amendment to the Constitution ensures that "criticism of government is at the very center of the constitutionally protected area of free discussion". Then, in 1982, in *NAACP v. Claiborne Hardware* they held that "the right of the States to regulate economic activity could not justify a complete prohibition against a nonviolent, politically motivated boycott".

¹⁰ UC Berkeley Library. (n.d.). Retrieved November 23, 2020, from <https://www.lib.berkeley.edu/libraries/bancroft-library/oral-history-center/projects/fsm>

WHEREAS, despite its important history in social movements and its constitutional protections, governments and non-governmental organizations alike have sought to criminalize¹¹, stigmatize, and delegitimize¹² the use of boycotts in an attempt to stifle constitutionally protected political expression.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley hereby support Affirming the Right to Boycott as a Tactic for Social and Political Change, and celebrate the People of Berkeley for their commitment to Peace, Justice and Equity; and

BE IT FURTHER RESOLVED, The City of Berkeley affirms the right of all people to participate in boycotts of any entity when they have conscientious concerns with the entity's policies or actions;

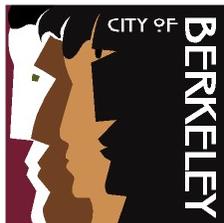
BE IT FURTHER RESOLVED, The City of Berkeley condemns attempts by governments to infringe upon the right to peaceful boycotts by criminalizing that participation, denying participants state contracts, or otherwise impeding the freedom of advocacy for all;

BE IT FURTHER RESOLVED, The City Council encourages City Commissions to recommend boycott policies to the City Council when appropriate, so that the City Council may be well informed in its oversight of City resources

BE IT FURTHER RESOLVED, Send a copy of this resolution to Governor Gavin Newsom, Attorney General Xavier Becerra, State Assemblymember Buffy Wicks, State Senator Nancy Skinner, United States Senators Bernie Sanders, Kamala Harris, Dianne Feinstein, and United States Congressional Representatives Barbara Lee, Ro Khanna, Alexandria Ocasio-Cortez, Ilhan Omar, Ayanna Pressley, Rashida Harbi Tlaib, and Pramila Jayapal.

¹¹ Greenwald, G., & Grim, R. (2017, July 19). U.S. Lawmakers Seek to Criminally Outlaw Support for Boycott Campaign Against Israel. Retrieved November 23, 2020, from <https://theintercept.com/2017/07/19/u-s-lawmakers-seek-to-criminally-outlaw-support-for-boycott-campaign-against-israel/>

¹² Carol Morello, S. (2020, November 19). Pompeo sets off debate on boycott of Israel, calling it an anti-Semitic 'cancer'. Retrieved November 23, 2020, from https://www.washingtonpost.com/national-security/pompeo-israel-bds-movement-boycott/2020/11/19/79fe4cba-2a7d-11eb-b847-66c66ace1afb_story.html



[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.

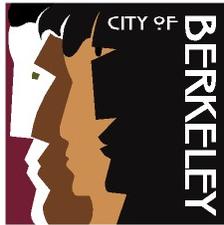
Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, 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 Counsel

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

BACKGROUND AND ISSUE

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

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

CONCLUSION

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

ANALYSIS

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

The BERA defines contribution, in part, as follows:

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

FCPC COMMISSIONERS
December 9, 1991
Page 2

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

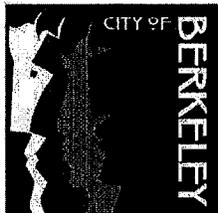
Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election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

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.^{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:

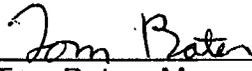
1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for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

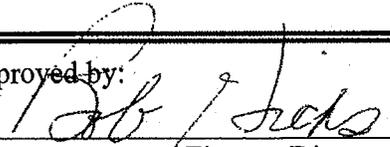
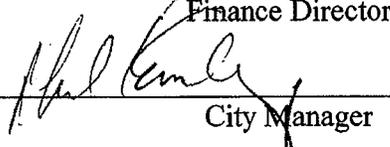
DEFINITIONS

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> |
|---|---|

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).

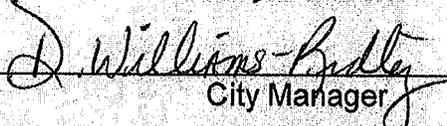
Payment Documentation: Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original receipts, 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:  Finance Director |
| TO BE REVIEWED/REVISED: Every year |  City Manager |

Attachment A

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

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

RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

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

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

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

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

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

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

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

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

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

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

II. Reimbursement of Actual and Necessary Expense of Office

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

A. Authorized Activities.

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

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

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

B. Unauthorized Expenses

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

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

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

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

C. Particular Types of Authorized Expenditures Defined

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

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

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

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

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

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

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

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

E. Expense Report Content and Submission Deadline

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

F. Audits of Expense Reports

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

G. Reports

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

H. Compliance with Laws

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

I. Violation of This Policy

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

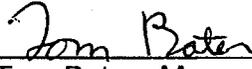
1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for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

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

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

Noes: None.

Absent: None.



Tom Bates, Mayor

Attest: 

Mark Numainville, CMC, City Clerk

Councilmember Office Budget Relinquishment and Grant Policy

Introduction – Limitations on the Expenditure of Public Funds

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

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

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

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

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

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

Criteria for Grants of City Funds from Councilmember Office Budgets

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

Table 1.

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

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

RESOLUTION NO. 63,413-N.S.

ESTABLISHING TRAVEL AND TRAINING REIMBURSEMENT POLICY FOR
BOARD AND COMMISSION MEMBERS

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

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

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

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

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

TRAVEL AND TRAINING REIMBURSEMENT FOR BOARDS/COMMISSIONS

A. Authorized Activities.

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

B. Unauthorized Expenses

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

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

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

C. Particular Types of Authorized Expenditures Defined

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

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

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

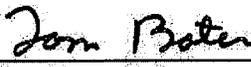
The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2006 by the following vote:

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

Noes: None.

Absent: None.

Attest: 
Sherry M. Kelly, City Clerk



Tom Bates, Mayor

CITY OF BERKELEY
ADMINISTRATIVE REGULATIONS

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

SUBJECT: FN-024 Voucher Processing

PURPOSE

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

POLICY

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

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

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

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

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

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

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

PROCEDURE

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

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

FN-024 Payments

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

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

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

A. Vendor Information

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

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

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

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

Payments for Refunds

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

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

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

C. Invoice Information

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

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

A. Vendor Information

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

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

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

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

C. Invoice Information

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

Additional Instructions for all FN-024 Payment Vouchers

A. Account Codes & Project Code

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

B. Authorized Signatures

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

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

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

Check Printing & Disbursement

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

EXCEPTIONS

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

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

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

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



Fair Campaign Practices Commission

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 FPCC guidelines.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

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

CITY MANAGER

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

CONTACT PERSON

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

Attachments:

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

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE
CHAPTER 2.12

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

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

BMC 2.12.157 Officeholder account

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

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

BMC 2.12.441 Officeholder account prohibited

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

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


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GOVERNMENT CODE - GOV

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

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

ARTICLE 3. Contribution Limitations [85300 - 85321]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 18531.62. Elected State Officeholder Bank Accounts.

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

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

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

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

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

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

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

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

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

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

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

(d) Prohibitions:

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

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

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

(e) Contributions to the Officeholder Account:

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

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

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

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

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

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

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

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

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

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

(f) Contributions Over the Limits:

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

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

(g) Terminating Officeholder Accounts and Committees.

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

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

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

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

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

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

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

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

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

HISTORY

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



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

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

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

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

CONCLUSION:

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

ANALYSIS:

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

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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.