



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

**MONDAY, JUNE 13, 2022**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Kate Harrison

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

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be 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/82262362092>. 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: **822 6236 2092**. 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: May 31, 2022**
- 2. Review and Approve Draft Agenda:**
  - a. 6/28/22 – 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**
- 9. Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies**

## **Unscheduled Items**

- 10. Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)**
- 11. Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**

## **Items for Future Agendas**

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

## Adjournment – Next Meeting Monday, June 27, 2022

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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 Thursday, June 9, 2022.



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**

**TUESDAY, MAY 31, 2022**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Kate Harrison

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

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To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **898 0925 4894**. 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.

**Roll Call:** 2:34 p.m. All present.

**Public Comment** – 3 speakers

## **Review of Agendas**

1. **Approval of Minutes: May 16, 2022**  
**Action:** M/S/C (Wengraf/Hahn) to approve the minutes of 5/16/22.  
**Vote:** All Ayes.
2. **Review and Approve Draft Agenda:**
  - a. 6/14/22 – 6:00 p.m. Regular City Council Meeting  
**Action:** M/S/C (Arreguin/Hahn) to approve the agenda of 6/14/22 with the changes noted below.
    - *Item Added: Measure GG Tax Rate (City Manager) – consent calendar*
    - *Item Added: Library Services Tax Rate (City Manager) – consent calendar*
    - *Item Added: City Website (Hahn) – consent calendar*
    - *Item Added: Ballot Measure (Harrison) – action calendar*
    - *Item Added: Budget Referral (Harrison) – action calendar*
    - *Item 24 SB 1389 (Robinson) – Mayor Arreguin added as a co-sponsor*
    - *Item 28 Sugar-Sweetened Beverages (Commission) – Moved to Consent Calendar***Vote:** All Ayes.
3. **Selection of Item for the Berkeley Considers Online Engagement Portal**  
- None Selected
4. **Adjournments In Memory** – None

## **Scheduling**

5. **Council Worksessions Schedule** – received and filed
6. **Council Referrals to Agenda Committee for Scheduling** – received and filed
7. **Land Use Calendar** – received and filed

## **Referred Items for Review**

8. **Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**  
**Action:** 2 speakers. No action taken.

**9. Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies**

**Action:** 1 speaker. Discussion of hybrid meetings and current health impacts based on high rate of COVID-19 transmission. M/S/C (Arreguin/Wengraf) to recommend that hybrid City Council meetings be suspended until the Agenda & Rules Committee and the City Manager determine it is safe and appropriate to resume.

**Vote:** All Ayes.

**Unscheduled Items**

**10. Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)**

**11. Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**

**Items for Future Agendas**

- None

**Adjournment**

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

**Vote:** All Ayes.

Adjourned at 3:47 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on May 31, 2022.

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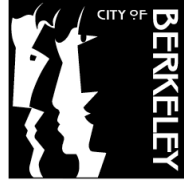
Mark Numainville, City Clerk

**Communications**

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**DRAFT AGENDA**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, June 28, 2022**  
**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

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

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*Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244).*

*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.*

*Please be mindful that the meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating by teleconference or videoconference.*

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

*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. Ashby and North Berkeley BART Station Areas: Proposed Zoning and General Plan Amendments, City and BART Joint Vision and Priorities, Associated Environmental Review Documents and City and BART Memorandum of Agreement**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No.7,815-N.S. to amend the Berkeley Municipal Code to create the Residential-BART Mixed-Use District Residential Zone District (Chapter 23.202.150) and additional conforming amendments to other sections of the Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into the Berkeley Zoning Ordinance.  
**First Reading Vote:** All Ayes  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 2. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, and May 10, 2022.  
**Financial Implications:** To be determined  
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 3. Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference**  
**From: City Manager**  
**Recommendation:** Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, March 8, 2022, March 22, 2022, April 12, 2022, May 10, 2022, and May 31, 2022.  
**Financial Implications:** To be determined  
Contact: Farimah Brown, City Attorney, (510) 981-6950

## Consent Calendar

- 4. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the Council meetings of May 5 (closed and special), May 10 (regular), May 17 (closed), May 24 (regular) and May 31 (regular).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on June 28, 2022**  
**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:** \$4,856,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 6. FY 2023 Revision to the Investment Policy and Designation of Investment Authority**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting the changes to the Investment Policy and to confirm the delegation of investment authority to the Director of Finance to make investments for FY 2023.  
**Financial Implications:** None  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 7. Appropriations Limit for FY 2023**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution establishing the appropriations limit at \$328,834,462 for FY 2023 pursuant to Article XIII B of the Constitution of the State of California based on the calculations for the appropriations limit.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 8. Revenue Grant Agreement: Medi-Cal Administrative Activities Funding from State of California to Conduct Health Promotion Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to submit grant agreements to the State of California, to accept the grants, and to execute any resultant revenue agreements and amendments to conduct health promotion for the Medi-Cal Administrative Activities (MAA) program for an amount not to exceed \$4,200,000 for the period of the agreement, Fiscal Years 2023 through 2025.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

- 9. Amending Contract No. 32100184 with O.C. Jones & Sons, Inc. for the Berkeley Marina Roadway Improvements Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution amending contract no. 32100184 with O.C. Jones & Sons, Inc. for the Berkeley Marina Roadway Improvements Project by adding \$200,000 for a total not-to-exceed contract amount of \$6,375,185.82.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 10. Vision Zero Annual Report**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution 1) accepting the City of Berkeley Vision Zero Annual Report for 2021-2022; 2) affirming the actions and priorities as stated in the 2020 Berkeley Vision Zero Action Plan; and 3) directing the City Manager to form a Vision Zero Coordinating Committee for guiding the implementation of the 2020 Vision Zero Action Plan, including coordinating with the ongoing Berkeley Department of Transportation (BerKDOT) referral response and the Reimagining Public Safety Task Force, with the goal of developing a Vision Zero Traffic Enforcement policy before proceeding with the “Safer Streets by Everyone: Enforcement” actions described in the Vision Zero Action Plan.  
**Financial Implications:** Staff time  
Contact: Liam Garland, Public Works, (510) 981-6300
- 11. Purchase Order: PB Loader Corporation for Two Chipper Trucks**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcwell (formerly NJPA) Contract No. 080521-PBL bid procedures and authorizing the City Manager to execute a purchase order for two chipper trucks with PB Loader Corporation in an increased amount not to exceed \$400,000.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 12. Purchase Order: Sonsray Machinery for one CASE Tractor Loader**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcwell (formerly NJPA) Contract No. 03219-CNH bid procedures and authorizing the City Manager to execute a purchase order for one CASE Tractor Loader with Sonsray Machinery in an amount not to exceed \$165,000.  
**Financial Implications:** Equipment Replacement Fund - \$165,000.  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

- 13. Purchase Order Amendment: Diesel Direct West, Inc. for Fuel for City Vehicles and Equipment**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend the multi-year purchase orders with Diesel Direct West, Inc. for fuel for City vehicles and equipment, increasing the combined amount by \$1,900,000 for a total amount not to exceed \$10,744,000, and extending the term through December 31, 2023.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 14. Contract: Sposeto Engineering Inc. for FY 2022 Sidewalk Repair Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the FY 2022 Sidewalk Repair Project; accepting the bid of Sposeto Engineering Inc. as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project, in accordance with the approved plans and specifications in an amount not to exceed \$2,512,152.  
**Financial Implications:** Various Measures - \$2,512,152  
Contact: Liam Garland, Public Works, (510) 981-6300
- 15. Contract No. 102354-1 Amendment: Direct Line Tele Response for Citywide After-Hours Answering Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment for up to \$200,000 to Contract No. 102354-1 with Direct Line Tele Response to provide continued customer service support after normal business hours, on weekends and holidays, for a total contract amount not to exceed \$632,750, and extending the contract term through December 31, 2024.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 16. Contract No. 10458 Amendment: Alta Planning and Design, Inc. for On-Call Transportation Planning Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10458 with Alta Planning and Design for On-Call Transportation Planning Services, increasing the contract by \$150,000, for a total amount not to exceed \$750,000.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

- 17. Contract No. 10516 Amendment: Community Design and Architecture for On-Call Transportation Planning Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10516 with Community Design and Architecture for On-Call Transportation Planning Services, increasing the contract by \$150,000, for a total amount not to exceed \$650,000.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 18. Contract No. 117563-1 Amendment: Clean Harbors, Inc. for Hazardous Waste Management Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment with Clean Harbors, Inc. for hazardous waste management, removal, and disposal services for the City of Berkeley increasing the contract amount by \$200,000 for a new not to exceed amount of \$650,000 and extend the contract term through June 30, 2024.  
**Financial Implications:** Various Funds - \$135,500  
Contact: Liam Garland, Public Works, (510) 981-6300
- 19. Contract No. 108007-1 Amendment: Don's Tire Service, Inc. for Tire Repair Services for City Fleet Vehicles**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 108007-1 with Don's Tire Services, Inc. for repair and replacement services for automobile and truck tires for City of Berkeley fleet vehicles for an additional \$150,000, for a new total not to exceed \$423,534, and extend the authorized term through June 30, 2024.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 20. Contract Amendment: East Bay Municipal Utilities District (EBMUD) for Sanitary Sewer Charge and Billing Collection**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend the agreement (Contract 9735) with East Bay Municipal Utility District (EBMUD) to administer a Customer Assistance Program (CAP) which is an expanded discount program for qualifying City of Berkeley sanitary sewer customers. Eligible customers under the CAP program will receive a 35% discount on their sewer charges.  
**Financial Implications:** See Report  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

- 21. Appointment of Mary-Lee Smith and Glenn Turner to Mental Health Commission for the City of Berkeley**  
**From: Mental Health Commission**  
**Recommendation:** Adopt a Resolution appointing: Mary-Lee Smith as a representative of the Special Public Interest Category (consumer), to complete her first 3- year term beginning June 29, 2022 and ending June 28, 2025; and Glenn Turner as a representative of the Special Public Interest Category (family member), to complete her first 3-year term beginning June 29, 2022 and ending June 28, 2025.  
**Financial Implications:** None  
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

## Council Consent Items

- 22. Support for AB 2156 – Firearms: manufacturers**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Send a letter to Assemblymember Buffy Wicks and the state legislature in support of Assembly Bill 2156, which would prohibit the manufacture of unlicensed firearms and precursor parts, commonly known as “ghost guns.”  
**Financial Implications:** Staff time  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 23. Support for AB-256 (Racial Justice Act for All)**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Send a letter to Assemblymember Ash Kalra (D-San Jose) and the state legislature in support of Assembly Bill 256, the Racial Justice Act for All, which would apply Kalra’s previous bill, AB 2542 (2020) retroactively to enable appeals of past convictions and sentences made with racial bias.  
**Financial Implications:** Staff time  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 24. Holding Social Media Companies Accountable for Impacts on Children: Supporting AB 2408 and AB 2273 (Wicks/Cunningham)**  
**From: Councilmember Hahn (Author)**  
**Recommendation:** Send a letter in support of AB 2408 “Child users: addiction” and AB 2273 “The California Age-Appropriate Design Code Act” (Wicks/Cunningham) to forward to appropriate colleagues, expressing the City of Berkeley’s support for these bills, which would allow parents to sue social media platforms if their children become addicted and require tech firms to create child-safe producing by creating age-appropriate design code for websites and apps likely to be accessed by children.  
**Financial Implications:** Staff time  
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150



## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

*Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.*

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

### 25. **Approval and Levy of 2018 Clean Stormwater Fee in FY 2023**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion adopt a Resolution approving the proposed adjusted fees for the 2018 Clean Stormwater Fee and ordering the levy of the fees in Fiscal Year 2023.

**Financial Implications:** See report

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

### 26. **Levy and Collection of Fiscal Year 2023 Street Lighting Assessments**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion adopt Resolutions confirming the assessments for the Berkeley Street Lighting Assessment District No. 1982-1 and the Street Lighting Assessment District 2018, approving the Engineer's Reports, and authorizing the levying and collection of assessments in the Fiscal Year 2023.

**Financial Implications:** See report

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

## Action Calendar – Public Hearings

### 27. Transfer Station Rates for FY 2023

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon its conclusion adopt a City Council Resolution authorizing the City Manager to:

1. Approve the proposed Transfer Station rates, environmental compliance fee and special material handling charges to be effective August 1, 2022; and
2. Annually review the Transfer Station rates, environmental compliance fee, and special material handling charges, and increase them by a percentage equal to the percentage change in the Consumer Price Index statistics published by the United States Bureau of Labor, as needed; and
3. Rescind the rates and special handling fees approved by City Council Resolution No. 64,575-N.S., adopted July 14, 2009, and as amended by Resolution No. 64,712-N.S., adopted December 6, 2009.

**Financial Implications:** See report

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

### 28. goBerkeley SmartSpace Pilot Program Implementation Recommendations

**From: City Manager**

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

1. Adopt an Ordinance repealing and reenacting Berkeley Municipal Code Chapter 14.52 Parking Meters to enable demand-responsive paid parking for non-RPP permit holders in the 2700 blocks of Durant Avenue, Channing Way, and Haste Street and the 2300-2400 blocks of Piedmont Avenue (a portion of Residential Preferential Parking Program Area I) for the duration of the grant-funded goBerkeley SmartSpace pilot program, and allow payment via license plate entry pay stations (“pay-by-plate”) to improve convenience and enforcement; and
2. Adopt a Resolution approving the pilot proposals to be implemented and evaluated as part of the goBerkeley SmartSpace pilot program.

**Financial Implications:** See report

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

## Action Calendar – New Business

### 29. FY 2023 & FY 2024 Biennial Budget Adoption

**From: City Manager**

**Recommendation:** Adopt a Resolution:

1. Adopting the FY 2023 & FY 2024 Biennial Budget as contained in the City Manager’s FY 2023 & FY 2024 Proposed Biennial Budget that includes the Proposed Capital Budget, presented to Council on June 14, 2022, and as amended by subsequent Council action.
2. Authorizing the City Manager to provide applicable advances to selected community agencies receiving City funds in FY 2023, as reflected in Attachment 2, and as amended by subsequent Council action.

**Financial Implications:** See report

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

## Action Calendar – New Business

### 30. FY 2023 Annual Appropriations Ordinance

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance adopting the FY 2023 Annual Appropriations Ordinance (AAO) in the amount of \$737,068,276 (gross appropriations) and \$620,623,866 (net appropriations).

**Financial Implications:** See report

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

### 31. Borrowing of Funds and the Sale and Issuance of FY 2022-23 Tax and Revenue Anticipation Notes

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the borrowing of \$28,000,000 and the sale and issuance of Fiscal Year 2022-23 Tax and Revenue Anticipation Notes.

**Financial Implications:** See report

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

### 32a. Request for Timely Fiscal Information on Measures FF and GG

**From: Disaster and Fire Safety Commission**

**Recommendation:** The Disaster and Fire Safety Commission (“Commission” or “DFSC”) respectfully recommends that Council direct the Fire Department and City Manager provide the Commission with the following fiscal information regarding Measures GG and FF:

1. Base budget documentation for the 22/23 FY (current year) that was approved by Council;
2. Quarterly, preferably monthly, expenditure reports, including a brief narrative describing each line item, with initial reports starting by March 30, 2022, with a published calendar for reporting and
3. The proposed budgets submitted to Council’s Budget and Finance Policy Committee in April, each subsequent revision presented to Council, and the budget that is adopted at the end of the budget process.

The Commission takes seriously the role it has been given by the voters and the City Council to provide oversight and advice to the City Council about the use of Measure GG and FF funds. DFSC commissioners intend to carry out this role but must rely on information from the City Manager and the Fire Department to do so.

**Financial Implications:** See report

Contact: Keith May, Commission Secretary, (510) 981-3473

## Action Calendar – New Business

### 32b. **Companion Report: Request for Timely Fiscal Information on Measures FF and GG**

**From: City Manager**

**Recommendation:** The City Manager acknowledges the need to provide accurate, timely, and relevant information to the Disaster and Fire Safety Commission (DFSC). Fire Department Staff has committed to providing the DFSC line item budgets on Measures GG and FF funding plans prior to the budget process cycle as much as feasible. The DFSC can take this opportunity to discuss potential recommendations or issues with Staff with regards to the future spending of the funds. The Fire Department will continue to provide biennial reports on Measure FF as outlined by City Council in accordance to the Adopted Council Resolution No. 69,575–N.S.

**Financial Implications:** See report

Contact: Abe Roman, Fire, (510) 981-3473

### 33. **Recommendation to Use Measure FF Funds as Intended by Voters for Firefighting, Emergency Medical Response, 9-1-1 Communications Services, Hazard Mitigation, and Wildfire Prevention and Preparedness; to Not Reduce General Fund Allocations Towards Fire Services; and to Support Effective Commission Oversight**

**From: Disaster and Fire Safety Commission**

**Recommendation:** The Disaster and Fire Safety Commission (DFSC) supports revenue generated by the voter-approved Fire, Emergency Services and Wildfire Prevention Tax (Measure FF) going towards services described in the Fire Department's 5-year implementation plan, including:

Wildfire Prevention and Response, Training and Development, EMS Operations, and Dispatch. The Commission has reviewed and provided input on expenditure plans described by the Fire Department and is engaged in the process of providing input and oversight prior to the budget being finalized. As these projects advance and line-item budgets continue to be developed in more detail, the Commission expects to follow up with more specific recommendations on funding allocations.

In order to provide effective oversight of Measure FF spending as resolved by City Council, the Commission needs to have the tools and information necessary to do so. This includes: 1. Thorough and detailed information about spending plans, including detailed line items and staffing numbers, before budgets are finalized and locked in place (as of December 2021, the commission has not been provided a measure FF budget); and 2. An accounting system that will clearly designate spending from the fund, including job codes that are specific to Measure FF, so that the Commission can easily determine staff time spent on Measure FF-funded activities.

Additionally, in allocating funds towards these critical safety improvements, it is imperative that the City ensures that Measure FF funds are used to supplement, rather than replace, general funding of Berkeley Fire Department costs.

**Financial Implications:** See report

Contact: Keith May, Commission Secretary, (510) 981-3473

## Action Calendar – Policy Committee Track Items

**34. Suspension of Sister City Relations with Dmitrov, Russia and Ulan-Ude, Russia  
From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution to suspend Sister City relations with the cities of Dmitrov, Russia and Ulan-Ude until Russian hostilities against Ukraine come to an end.

**Financial Implications:** Staff time

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

**35. Parking Minima for Mixed-Use Projects and Manufacturing Districts  
From: Councilmember Taplin (Author)**

**Recommendation:** Refer to the City Manager and Planning Commission to develop amendments to Berkeley Municipal Code Chapter 23 Section 322 and return an Ordinance to Council with such amendments to include the following:

(a) In BMC 23.322.030(B)(1), Table 23.322-2: remove “(residential use only)” from Mixed-Use Residential category; reduce “Live/Work” off-street parking requirements to, at most, 1 space per unit; reduce “Manufacturing” off-street parking requirements to, at most, 1 space per 1,500 gross square feet; reduce off-street parking requirements for “All non-residential uses except uses listed below” to, at most, 1 space per 1,000 square feet.

(b) In BMC 23.322.020(C)(2)(i): reduce district minimum parking requirements to 1 space per 1,000 square feet at most in Manufacturing Districts.

**Financial Implications:** Staff time

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

## Action Calendar – Policy Committee Track Items

- 36. Referral: Keep Innovation in Berkeley**  
**From: Councilmember Robinson (Author), Councilmember Taplin (Co-Sponsor), Mayor Arreguin (Co-Sponsor)**  
**Recommendation:** Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore:
1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C) and Downtown Berkeley (C-DMU) with a [Zoning Certificate/AUP].
  2. Updating the “District Purpose” sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.
  3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.
  4. Reviewing and considering repeal of Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D.
  5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.
- Financial Implications:** Staff time  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

## Information Reports

- 37. Voluntary Time Off Program for Fiscal Year 2023**  
**From: City Manager**  
Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000
- 38. Annual Update on Wells Fargo Bank’s Community Involvement and Investment in the City of Berkeley**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 39. FY 2022 Second Quarter Investment Report: Ended December 31, 2021**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 40. FY 2022 Third Quarter Investment Report: Ended March 31, 2022**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Information Reports

41. **HWCAC 2018-2023 Work Plan**  
**From: Human Welfare and Community Action Commission**  
Contact: Mary-Claire Katz, Commission Secretary, (510) 981-5400
42. **Annual Report on LPC Actions**  
**From: Landmarks Preservation Commission**  
Contact: Fatema Crane, Commission Secretary, (510) 981-7400
43. **Zero Waste Commission Fiscal Year 2022-23 Work Plan**  
**From: Zero Waste Commission**  
Contact: Heidi Obermeit, Commission Secretary, (510) 981-6300

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

Libraries: Main – 2090 Kittredge Street,

Claremont Branch – 2940 Benvenue, West Branch – 1125 University,  
North Branch – 1170 The Alameda, South Branch – 1901 Russell

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This meeting is being held in a wheelchair accessible location.

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

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



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

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Mental Health Commission

02a.21

CONSENT CALENDAR  
June 28, 2022

To: Honorable Mayor and Members of the City Council  
From: Mental Health Commission  
Submitted by: Dr. Margaret Fine, Mental Health Commission Chair  
Subject: Appointment of Mary-Lee Smith and Glenn Turner to Mental Health Commission for the City of Berkeley

RECOMMENDATION

Adopt a Resolution appointing: Mary-Lee Smith as a representative of the Special Public Interest Category (consumer), to complete her first 3- year term beginning June 29, 2022 and ending June 28, 2025; and Glenn Turner as a representative of the Special Public Interest Category (family member), to complete her first 3-year term beginning June 29, 2022 and ending June 28, 2025.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Mental Health Commission is authorized to be composed of thirteen members. However, there are presently seven vacancies on the Commission. The Mental Health Commission is actively seeking candidates with the ability to fulfill the state law duties for Commissioners, including reviewing and evaluating the community's needs, services, facilities and special problems. Approval of the recommended action will fill two vacancies and allow the Commission to move one step closer to having a full and diverse complement of commissioners.

BACKGROUND

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

The Mental Health Commission nominated Mary-Lee Smith as a special public interest consumer applicant for appointment to the Mental Health Commission for the City of Berkeley for a three-year term. Mary-Lee Smith has been a resident of Berkeley since 2001. She is a full-time mom, organizer, activist for racial justice, and has previously worked an attorney for Disability Rights Advocates. She began as a staff attorney, then progressed to managing attorney, and finally became Director of Litigation over more than 10 years. She is interested in community response to mental health issues based on her lived and advocacy experience.

Mary-Lee Smith is involved with Showing Up for Racial Justice (SURJ) Bay Area. She volunteers for Community Ready Corps Allies and Accomplices as well as the Anti-Police Terror Project that operates the M.H. FIRST community first response programs located in Oakland and Sacramento. Three important mental health issues to her are the lack of a non-police response, people with mental health who are unhoused, and the criminalization of these individuals with mental illness.

Glenn Turner has been a life-long resident of Berkeley since 1977. The Mental Health Commissioners nominated Glenn Turner for appointment to the Commission as a special interest family member for a three-year term. Her daughter, Hazel, struggled with schizoaffective disorder and substance use. In 2019, her daughter tragically died at age 49 from untreated heart disease resulting from refusal of medical care. Glenn also works with FASMI (Families Advocating for the Seriously Mentally Ill) at the county and state levels.

She is currently retired after serving the spiritual needs of Black, Brown, new age, and Queer people at her Berkeley retail business for more than 30 years. She brings legal, financial, operational, and other important skills to the Mental Health Commission. She is also a member of Berkeley Copwatch, Care Not Cops, Creative Action Theater, and has done planning and logistics for the Climate Emergency Task Force.

Glenn supports an alternative non-police response team like the SCU, additional crisis centers for people with SMI and SUD, additional psychiatric hospital beds and sub-acute facility beds for follow-up care, and a continuum of ongoing care for people.

The Mental Health Commission passed the following motions at the April 28, 2022 meeting:

M/S/C (Fine, Jones) Make a motion to nominate Mary-Lee Smith for the Mental Health Commission and send the nomination to the Berkeley City Council for approval as a Mental Health Commissioner. Ayes: Escarcega, Fine, Jones, Opton, Prichett; Noes: None; Abstentions: None; Absent: Taplin.

M/S/C (Fine, Prichett) Make a motion to nominate Glenn Turner for appointment to the Mental Health Commission and send the nomination to the Berkeley City Council for appointment. Ayes: Fine, Jones, Opton, Prichett; Noes: None; Abstentions: Escarcega; Absent: Taplin.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager takes no position

CONTACT PERSON

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

Attachments:

1: Resolution

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

APPOINTMENT OF MARY-LEE SMITH AND GLENN TURNER TO THE MENTAL  
HEALTH COMMISSION

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

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

WHEREAS, Ms. Mary-Lee Smith has an investment in the mental health community and has personal lived experience,

WHEREAS, Ms. Glenn Turner has volunteered within the community and is a family member of a person with lived experience,

WHEREAS, the Mental Health Commission at its April 28, 2022 meeting recommended appointments of Mary-Lee Smith and Glenn Turner.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council appoints Mary-Lee Smith as a representative of the Special Public Interest consumer category, to complete her first term ending June 28, 2025; and Glenn Turner as a representative of the Special Public Interest family category, to complete her first term ending June 28, 2025.



02a.22

CONSENT CALENDAR  
June 28, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Taplin (Author)  
Subject: Support for AB 2156 – Firearms: manufacturers

RECOMMENDATION

Send a letter to Assemblymember Buffy Wicks and the state legislature in support of Assembly Bill 2156, which would prohibit the manufacture of unlicensed firearms and precursor parts, commonly known as “ghost guns.”

FINANCIAL IMPLICATIONS

None.

BACKGROUND

Under existing law, federally licensed firearms manufacturers are prohibited from manufacturing or selling firearms in California without a state license if they manufacture more than 50 firearms in a calendar year. Assembly Bill 2156 would lower the state’s manufacturing threshold for requiring state licensure from 50 firearms per year to 4.

On October 12, 2021, the Berkeley City Council unanimously passed Ordinance 7789-N.S., adding Chapter 13.73 to the Berkeley Municipal Code to prohibit the sale, distribution and possession of nonserialized firearms and precursor parts (“ghost guns”). This law went into full effect on May 28, 2022, after a six-month grace period to enable sufficient notification of the policy change.

Ghost guns are an increasingly dangerous threat to public safety. According to the Berkeley Police Department’s 2021 Year-End Crime and Collision Data Report, 33 of the firearms that BPD seized in 2021 were ghost guns, compared to 6 in 2020 and 8 in 2019.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

The Honorable Buffy Wicks  
State Capitol  
Sacramento, CA 95814

CC:  
Senator Nancy Skinner  
Assembly Speaker Anthony Rendon

**RE: Support: AB-2156: Firearms: manufacturers**

Dear Assemblymember Wicks:

The City Council of the City of Berkeley is proud to write in support of your bill, AB-2156, which would lower the annual manufacturing threshold requiring state licensure for firearms manufacturers from 50 to 4. As gun violence and homicides have tragically increased across the country, increasing state oversight over gun manufacturers is an imperative for safeguarding public safety in California.

According to the Berkeley Police Department's 2021 Year-End Crime and Collision Data Report, our police officers recovered a total of 118 firearms in 2021, a 39% increase from the previous year. 33 of those firearms were unserialized "ghost guns," often manufactured from precursor parts that can be easily purchased without any of the responsible licensure that law-abiding gun owners observe. Tragically, gun violence has also increased in Berkeley over the past two years, with shootings already robbing two Berkeleyans of their lives this year.

On October 12, 2021, the Berkeley City Council unanimously passed Ordinance 7789-N.S., adding Chapter 13.73 to the Berkeley Municipal Code to prohibit the sale, distribution and possession of ghost guns. This law went into full effect on May 28, 2022, after a six-month grace period to enable sufficient notification of the policy change. The City of Berkeley has gone to great lengths to use all available powers under its jurisdiction to reduce the proliferation of firearms in our community. The state legislature of California must use its greater powers to enable even greater harm reduction. We are confident that your bill would provide stronger safeguards against the distribution of illegal firearms across California, and we welcome this much-needed change.

Thank you for your time and attention to this urgent matter.

Sincerely,

The Berkeley City Council  
2180 Milvia St  
Berkeley, CA 94709



02a.23

CONSENT CALENDAR  
June 28, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Taplin (Author)  
Subject: Support for AB-256 (Racial Justice Act for All)

RECOMMENDATION

Send a letter to Assemblymember Ash Kalra (D-San Jose) and the state legislature in support of Assembly Bill 256, the Racial Justice Act for All, which would apply Kalra's previous bill, AB 2542 (2020) retroactively to enable appeals of past convictions and sentences made with racial bias.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

In 2020, Governor Newsom signed Assembly Bill 2542 (Kalra, 2020) which allowed for people with convictions and sentences based on racial biases to challenge their case. However, the bill only applied to judgments made after January 1, 2021.

Assembly Bill 256 would apply the law retroactively to enable appeals for cases prior to that date. In 2021, the bill was held in the Senate Appropriations Committee and became a two-year bill.

The bill is sponsored by the American Civil Liberties Union (ACLU), American Friends Service Committee, California Coalition for Women Prisoners, Californians United for a Responsible Budget, Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), Initiate Justice, Ella Baker Center for Human Rights, the League of Women Voters of California, NextGen, and Silicon Valley De-Bug.

AB-2542 (2020) was introduced to address judicial precedent which greatly inhibited defendants' ability to appeal against racial discrimination in criminal cases. In 1987, the US Supreme Court ruled in *McCleskey v. Kemp* that statistical evidence of racial bias was insufficient to show a constitutional violation—in this case, a death penalty sentence for a Black defendant—requiring instead that a defendant show "exceptionally clear proof" of discrimination under the facts of his or her own case. This set up a virtually impossible evidentiary standard which is higher than the "disparate impact"

standard applicable in fair housing and employment laws. After his retirement, Justice Lewis Powell expressed regret for his vote for the majority in *McCleskey*.<sup>1</sup>

Nevertheless, the majority opinion in *McCleskey* held that state legislatures could address racial bias in state law. Prior to the passage of AB-2542, convictions and sentences were routinely upheld in California in the face of blatant racial bias, ranging from unrepresentative jury trials, racist statements by judges and prosecutors, or statistical evidence of systematic bias in sentencing.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

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<sup>1</sup> Liptak, A. (2008). New Look at Death Sentences and Race. *New York Times*. Retrieved from <https://www.nytimes.com/2008/04/29/us/29bar.html>



The Honorable Ash Kalra  
State Capitol  
Sacramento, CA 95814

CC:  
Assemblymember Buffy Wicks  
Senator Nancy Skinner  
Assembly Speaker Anthony Rendon

**RE: Support: AB-256 (Racial Justice for All Act)**

Dear Assemblymember Kalra:

The City Council of the City of Berkeley is proud to support of your bill, AB-256, which would enable appeals of convictions and sentences made with racial bias prior to January 1, 2021.

As you know, former US Supreme Court Justice Lewis Powell expressed regret after his retirement for his vote for the majority in *McCleskey v. Kemp* (1987). The *McCleskey* ruling placed an impossible evidentiary standard for defendants to appeal convictions or sentences with clear racial bias by requiring “exceptionally clear proof” of discrimination in their specific case. Other civil rights laws enable the evidentiary standard of “disparate impact” for finding racial bias, since racial biases are often unconsciously applied as a result of deeper systemic inequalities. Californians should be able to appeal their convictions and sentences without having to prove, somehow, that their case was decided with a specific bias in one instance rather than the result of systemic biases.

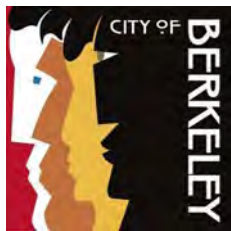
Your previous bill, AB-2543, was a step in the right direction. We urge the state legislature to pass AB-256 so that this important reform can be applied retroactively.

Thank you for your courageous leadership on restorative justice.

Sincerely,

The Berkeley City Council  
2180 Milvia St  
Berkeley, CA 94709





Councilmember Sophie Hahn  
City of Berkeley, District 5

02a.24

CONSENT CALENDAR  
June 28, 2022

**To:** Honorable Mayor and Members of the City Council  
**From:** Councilmember Sophie Hahn (Author)  
**Subject:** Holding Social Media Companies Accountable for Impacts on Children:  
Supporting AB 2408 and AB 2273 (Wicks/Cunningham)

RECOMMENDATION

Send a letter in support of AB 2408 “Child users: addiction” and AB 2273 “The California Age-Appropriate Design Code Act” (Wicks/Cunningham) to forward to appropriate colleagues, expressing the City of Berkeley’s support for these bills, which would allow parents to sue social media platforms if their children become addicted and require tech firms to create child-safe producing by creating age-appropriate design code for websites and apps likely to be accessed by children.

FISCAL IMPACTS OF RECOMMENDATION

N/A

CURRENT SITUATION AND ITS EFFECTS

If passed, AB 2408 and AB 2273 (Wicks/Cunningham) would create new rules for tech firms designing products used by children to ensure greater data protections and safety protocols, such as having the strictest privacy settings enabled by default, to ensure apps minimize dangers to children and risk of harm or addiction. These bills also create a private right of action to allow parents to sue social media companies if their children become addicted and experience harm as a result.

BACKGROUND

Efforts to create child safe spaces on the internet have largely failed at the federal level. As home to all of the major social media and technology companies, California has a special responsibility to lead on protecting our children from harm caused by social media.

Last fall, a study leaked by a former employee of Facebook, which owns Instagram, documented a significant percentage of teen social media users experience negative

psychological impacts: 17% of girls said using social media makes eating disorders worse, and 13.5% of girls said it makes suicidal thoughts worse.<sup>1</sup>

Academic research continues to identify the impacts of social media usage on young people. A four year study of Montreal teens published in the Canadian Journal of Psychiatry in 2019 found that social media was "very robustly" related to increases in depressive symptoms.<sup>2</sup>

According to National Public Radio, "Researchers found similar patterns in teens after watching television, but the difference, they explained, is that in TV, viewers often see idealized versions of life that are different from their own. But with platforms like Instagram, they are consuming idealized versions of their peers and that can trigger a comparison loop that can blur the lines of reality for adolescents whose brains are still developing."<sup>3</sup>

In May, both bills passed the Assembly with bi-partisan support and they are now being considered in the State Senate. The Legislative Findings for both of these bills more fully outline the many known, measurable harms the bills seek to address, copies of which are attached hereto.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

N/A

#### RATIONALE FOR RECOMMENDATION

Protecting the mental health and wellbeing of students and children is a top priority for the City of Berkeley.

#### ALTERNATIVE ACTIONS CONSIDERED

N/A

#### CONTACT PERSON

Councilmember Sophie Hahn, (510) 981-7150

#### Attachments:

1: Letter of Support

2: Bill Text AB 2408 (Wicks/Cunningham):

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB2408](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2408)

3: Bill Text AB 2273 (Wicks/Cunningham):

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB2273The](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2273The)

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<sup>1</sup> <https://www.sfchronicle.com/politics/article/California-could-be-first-state-to-hold-social-17215641.php>

<sup>2</sup> <https://journals.sagepub.com/doi/full/10.1177/0706743719885486>

<sup>3</sup> <https://www.npr.org/2021/10/05/1043194385/whistleblowers-testimony-facebook-instagram>

Honorable Buffy Wicks and Honorable Jordan Cunningham  
Members of the Assembly  
Capitol Office  
1021 O Street  
Sacramento, CA 95814

Re: AB 2408 and AB 2273 – SUPPORT

The City of Berkeley strongly supports the passage of AB 2408 and AB 2273, which would enact crucially needed protections for our children as they use social media.

Academic studies document the negative impacts of social media on young people, including increased depression. The need for increased mental health services is evident in our community, in particular for young adults. In the wake of more than two difficult years sheltering in place to manage the COVID pandemic, students at Berkeley High School are lobbying the City Council for additional funds for mental health services. Recent tragedies have included the suicide of a High School Student, a shooting between High School students, and the arrest of a student who is alleged to have recruited friends and amassed weapons to perpetrate a mass shooting.

Big tech companies must be held accountable for the negative impacts of their products on youth; we cannot allow them to profit from creating and exacerbating mental health challenges. Berkeley strongly supports these measures to protect the mental health and well being of all children and teens.

The Berkeley City Council

Cc: Senator Nancy Skinner

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

ASSEMBLY BILL

NO. 2408

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Introduced by Assembly Members Cunningham and  
Wicks

February 17, 2022

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An act to add Section 1714.48 to the Civil Code, relating to social media  
platforms.

## LEGISLATIVE COUNSEL'S DIGEST

AB 2408, as amended, Cunningham. Child users: addiction.

Existing law, the California Consumer Privacy Act of 2018, prohibits a business from selling the personal information of a consumer if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of a consumer at least 13 years of age and less than 16 years of age, or the consumer's parent or guardian, in the case of a consumer who is less than 13 years of age, has affirmatively authorized the sale of the consumer's personal information.

This bill, the Social Media Platform Duty to Children Act, would impose on an operator of a social media platform a duty not to addict, as defined, child users and would, among other things, prohibit a social media platform from addicting a child user by ~~any~~ *either* of certain means, including the use or sale of a child user's personal data. The act would authorize a person authorized to assert the legal rights of a child user who suffers injury as a result of a violation of the act to bring an action against a violator to recover or obtain certain relief, including a civil penalty of up to \$25,000 ~~per violation per calendar year.~~ *violation.*

# DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

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## BILL TEXT

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

**SECTION 1.** This act shall be known as the Social Media Platform Duty to Children Act.

**SEC. 2.** The Legislature finds and declares all of the following:

(a) California should take reasonable, proportional, and effective steps to ensure that its children are not harmed by addictions of any kind.

(b) A broad diversity of psychologists and psychiatrists in the field of addiction, as well as scientists, doctors, and other researchers, acknowledge the existence of social media addiction.

(1) Research using the Bergen Social Media Addiction Scale, a widely used measure of social media platform addiction, has found that social media platform addiction has a prevalence across the general population of about 5 percent.

(2) In people who become addicted, the brain's reward system is more active when using social media than it is in the brains of people who are not addicted. The result, according to health experts and researchers, is compulsive and excessive social media use.

(c) There is growing evidence that social media platform addiction is a particular problem, particularly among adolescent children.

(1) The largest social media platform company in the world's own secret internal research validates both the existence of social media addiction in children and that social media addiction hurts children. As an example, in September 2021, The Wall Street Journal published a series of articles referred to as "The Facebook Files." Those articles, citing a trove of internal documents obtained from Frances Haugen, a whistleblower, demonstrated the extent to which Facebook knew that its platforms cause significant harm to users, especially children.

(2) More specifically, as revealed by Haugen's sworn testimony before Congress and the accompanying secret research she revealed to The Wall Street Journal, "Facebook has studied a pattern that they call problematic use, what we might more commonly call addiction. It has a very high bar for what it believes [problematic use] is. It [means] you self-identify that you don't have control over your usage and that it is materially harming your health, your schoolwork or your physical health." ... "Facebook's internal research is aware that there are a variety of problems facing children on Instagram, they know that severe harm is happening to children."

(3) During whistleblower Haugen's sworn testimony to Congress, she revealed that, when it comes to meeting the platform's addiction-like definition of "problematic use": "Five to six percent of 14 year olds have the self-awareness to admit both those questions" that qualify a child as having problematic use.

(4) Five to six percent of Instagram's child users is millions of children, certainly many thousands of which reside in California.

(d) Social media platform addiction is more acute in girls than boys.

(1) Girls experience a higher prevalence of social media addiction than boys.

(2) Girls who admit to excessive social media platform use are two to three times more likely to report being depressed than girls who use social media platforms lightly.

(3) A March 2020 presentation posted by Facebook researchers to Facebook's internal message board reported that "66% of teen girls on IG experience negative social comparison (compared to 40% of teen boys)" and that "[a]spects of Instagram exacerbate each other to create a perfect storm."

(e) The business models of some social media platform companies financially motivate them to deploy design features that increase the likelihood of addiction among all users, including children.

(1) Instead of charging to sign up, social media platforms earn "substantially all" of their revenue through advertising.

(2) The more time users engage with the platform, the more ads users see, and the more valuable the advertising becomes.

(3) In this regard, addicted consumers are particularly profitable because their consumption behavior goes beyond normal engagement levels.

(4) User engagement does not distinguish between engagement that increases because it is enjoyable and enhances health and well-being and engagement that



increases because of addiction. In fact, many users spend even more time on social media when engaging with content that makes them subjectively unhappy or objectively unhealthier.

(5) For these profit-driven reasons, social media platform companies intentionally invent, design, and deploy features that are intended to make it hard for users to stop using the platform, including deploying techniques used in gambling and techniques that mask or avoid cues that might prompt a user to stop using.

(f) Companies that market high-volume addictive products, including tobacco, have a special incentive to addict young, potentially ~~life-long~~, *lifelong*, consumers.

(g) Adolescent children are at far greater risk than adults to becoming addicted to social media platforms.

(1) Adolescent children exhibit higher levels of stress and an increased proclivity toward taking risks.

(2) During adolescence, children's reward systems develop much faster, while their self-control systems, which are not fully developed until 21 years of age, lag behind. For this reason, rates of behavioral addictions are elevated in adolescence as compared to adulthood.

(3) Social media platform companies can use the data they collect on children to determine which children are most likely to be vulnerable to a given ad, thereby exacerbating the risks of addiction.

(4) As compared to adults, children are more susceptible to the pressures and influence of advertisements, less likely to recognize paid-for content, and less likely to understand how data is used for these purposes.

(h) Because their brains are still developing, children are at far greater risk of being harmed by social media platform addiction than adults. Addiction adversely influences the development of judgment, attention, and memory in the brain.

(1) Higher daily rates of checking social media platforms have been linked to a reduction in the volume of brain tissue that controls memory, emotions, speech, decisionmaking, and self-control.

(2) For this reason, reduction in this kind of brain tissue is in turn correlated with higher impulsivity, something with which children and adolescents are already susceptible by dint of their youth.

(3) Several studies have found links between spending time on social media platforms and rates of suicide and depression among teens.

(4) Numerous studies show that reducing social media platform use results in mental health benefits.

(5) Social media platform addiction can create a vicious cycle for shy and lonely youth. Discomfort with real-life interactions leads to internet interactions, isolation from real-world interaction causes loneliness, loneliness combined with social phobia motivate additional engagement online.

(i) When social media platform companies create, design, implement, or maintain features for users, including child users, on their social media platforms that the company knows or should know are addictive to children, they should be held liable for the harms that result.

(j) Other addictions, including gambling addictions, have had a demonstrable negative effect on state economies.

(k) California has a compelling interest in protecting the mental health of its children from social media platform addiction for, at a minimum, all of the following reasons:

(1) To prevent needless suffering to California children and their families.

(2) To ensure the capacity of all its children to fulfill their potential and to reach normal goals for social and educational achievement to the benefit of all Californians.

(3) To prevent the costs of treating mental health harms to children from being incurred by and shifted to California families, businesses, insurers, schools, and mental health professionals.

**SEC. 3.** Section 1714.48 is added to the Civil Code, to read:

**1714.48.** (a) For purposes of this section:

(1) "Addict" means to knowingly or negligently cause or contribute to addiction through any act or omission or any combination of acts or omissions.

(2) "Addiction" means use of one or more social media platforms that does both of the following:

(A) Indicates preoccupation or obsession with, or withdrawal or difficulty to cease or reduce use of, a social media platform despite the user's desire to cease or reduce that use.

(B) Causes or contributes to physical, mental, emotional, developmental, or material harms to the user.

(3) "Child user" means a person who uses a social media platform and is ~~not older~~ *younger* than ~~17~~ 18 years of age.

(4) "Personal data" means information that identifies a natural person or is linked or linkable to an identifiable natural person.

(5) (A) "Social media platform" means an internet service that meets both of the following criteria:

(i) (I) The internet service is a means by which content is generated by a user of the service, or uploaded to or shared on the service by a user of the service, that may be encountered by another user, or other users, of the service.

(II) For purposes of this subparagraph:

(ia) "Content" means anything communicated by means of an internet service, whether publicly or privately, including written material or messages, oral communications, photographs, videos, or visual images.

(ib) "Content that may be encountered by another user, or other users, of a service" includes content that is capable of being shared with a user by operation of a functionality of the service that allows the sharing of content.

(ic) "Encounter" means to read, view, hear, or otherwise experience content.

(ii) The internet service is controlled by a business entity that generated at least one hundred million dollars (\$100,000,000) in gross revenue during the preceding calendar year.

(B) "Social media platform" does not include any of the following:

(i) An email service, if emails are the only user-generated content enabled by the service.

(ii) An SMS and MMS service, if SMS or MMS messages are the only user-generated content enabled by the service.

(iii) A service offering only one-to-one live aural communications.

(iv) An internal business service that is an internal resource or tool for a business or nonprofit organization in which the services is not available to children in the general public.

(v) A service, including a comment section on a digital news internet website or a consumer review of a product and service on an online commerce internet website, with functionalities that allow users to communicate only in any of the following ways:

(I) Posting comments or reviews relating to content produced and published by the provider of the service or by a person acting on behalf of the provider of the service.

(II) Sharing comments or reviews described in subclause (I) on a different internet service.

(III) Expressing a view on comments or reviews described in subclause (I), or on content mentioned in subparagraph (A), by means of any of the following:

(ia) Applying a "like" or "dislike" button or other button of that nature.

(ib) Applying an emoji or symbol of any kind.

(ic) Engaging in yes or no voting.

(id) Rating or scoring the content, or the comments or reviews, in any way.

(vi) An internet-based subscription streaming service offered to consumers for the exclusive purpose of transmitting licensed media, including audio or video files, in a continuous flow from the internet-based service to the end user.

(vii) A service that operates for the sole purpose of cloud storage or shared document or file collaboration.

(viii) A service that operates for the sole purpose of providing general or tailored internet search services.

(b) ~~An~~ *In accordance with Section 1714, an* operator of a social media platform has a duty not to addict child users. ~~A An operator of a social media platform's duty not to addict child users includes a duty not to addict child users by any platform shall be found to have violated their duty if the social media platform is found to have addicted a child user by either~~ of the following means:

(1) The use or sale of a child user's personal data.

~~(2) The child user's engagement in the platform's products or services, including through the use of notifications soliciting child users to access those products or services, or permissions or advertising related to those products or services.~~

~~(3)~~

(2) The development, design, implementation, or maintenance of a design, feature, or affordance.

(c) (1) A person authorized to assert the legal rights of a child user who suffers injury as a result of a violation of this section may bring an action against a violator to recover or obtain any of the following relief:

(A) (i) Actual damages.

(ii) In a class action, the amount of damages awarded pursuant to this subparagraph shall not be less than one thousand dollars (\$1,000) per member of the class.

(B) A civil penalty of up to twenty-five thousand dollars (\$25,000) per ~~violation per calendar year.~~ *violation.*

(C) Injunctive relief.

(D) Punitive damages.

(E) An award of litigation costs and no more than twice the amount of reasonable attorney's fees to a prevailing plaintiff.

(F) Any other relief that the court deems proper.

~~(2) In an action pursuant to this subdivision in which the plaintiff has shown, by a preponderance of the evidence, that the defendant addicted a child in violation of subdivision (b), the defendant shall have the burden of proving, by a preponderance of the evidence, that the extent of the injury or injuries alleged in the action were not, in whole or in part, caused or exacerbated by the defendant's violation.~~

~~(3)~~

(2) (A) A knowing or willful violation of this section shall subject the violator to an additional civil penalty not to exceed two hundred fifty thousand dollars (\$250,000) per ~~violation per calendar year.~~ *violation.*

(B) A civil penalty pursuant to this paragraph shall not be treated as an offset against an award of damages caused by the same knowing or willful violation in an action pursuant to this subdivision.

~~(4)~~

(3) (A) A social media platform that, before January 1, 2023, developed, designed, implemented, or maintained features that were known, or should have been known, by the platform to be addictive to child users shall be liable for all damages to child users that are, in whole or in part, caused by the platform's features, including, but not limited to, suicide, mental illness, eating disorders, emotional distress, and costs for medical care, including care provided by licensed mental health professionals.

*(B) A social media platform shall not be held liable for a violation under this paragraph if, by April 1, 2023, the platform ceases development, design, implementation, or maintenance of features that were known, or should have been known, by the platform to be addictive to child users.*

(d) An operator of a social media platform shall not be subject to a civil penalty pursuant to subdivision (c) ~~if, before engaging in a practice that led to that violation,~~ *if* the operator did both of the following:

(1) Instituted and maintained a program of at least quarterly audits of its practices, designs, features, and affordances to detect practices or features that have the potential to cause or contribute to the addiction of child users.

(2) Corrected, within 30 days of the completion of an audit described in paragraph (1), any practice, design, feature, or affordance discovered by the audit to present more than a de minimis risk of violating this section.

(e) The provisions of this section are cumulative to any other duties or obligations imposed under other law.

(f) This section shall not be construed to impose liability for a social media platform for content that is generated by a user of the service, or uploaded to or shared on the service by a user of the service, that may be encountered by another user, or other users, of the service.

(g) This section shall not be construed to negate or limit a cause of action that may have existed against an operator of a social media platform under the law as it existed before the effective date of this section.

(h) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(i) A waiver of this section is unenforceable as void against public policy.

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

ASSEMBLY BILL

NO. 2273

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Introduced by Assembly Members ~~Wicks and Cunningham~~  
*Wicks, Cunningham, and Petrie-Norris*

*(Coauthors: Senators Allen and Newman)*

February 16, 2022

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An act to add Title 1.81.46 (*commencing with Section 1798.99.28*) to Part 4 of Division 3 of the Civil Code, relating to consumer privacy.

## LEGISLATIVE COUNSEL'S DIGEST

AB 2273, as amended, Wicks. The California Age-Appropriate Design Code Act.

(1) Existing law, the California Privacy Rights Act of 2020, approved by the voters as Proposition 24 at the November 3, 2020, statewide general election, establishes the California Privacy Protection Agency. Existing law vests the agency with full administrative power, authority, and jurisdiction to implement and enforce the California Consumer Privacy Act of 2018, and requires the agency to be governed by a board. Existing law requires businesses to protect consumer privacy and information, make certain disclosures to consumers regarding a consumer's rights under the act in a specified manner, and disclose to consumers that a consumer has the right to request specific pieces of information, including the categories of information those businesses have collected about that consumer.

Existing law, the Parent's Accountability and Child Protection Act, requires a person or business that conducts business in California and that seeks to sell specified products or services to take reasonable steps to ensure that the purchaser is of legal age at the time of purchase or delivery, including verifying the age of the purchaser. Existing law prohibits a person or business that is required to comply with these

provisions from retaining, using, or disclosing any information it receives in an effort to verify age from a purchaser or recipient for any *other* purpose, except as specified, and subjects a business or person that violates these provisions to a civil penalty.

#### Commencing

*This bill would enact the California Age-Appropriate Design Code Act, which, commencing July 1, 2024, ~~this bill~~ would require a business that ~~creates goods, services, or product features~~ provides an online service, product, or feature likely to be accessed by ~~children~~ a child to comply with specified ~~standards, including considering the best interests of children likely to access that good, service, or product feature when designing, developing, and providing that good, service, or product feature,~~ requirements, including configuring all default privacy settings offered by the online service, product, or feature to the settings that offer a high level of privacy protection offered by the business, and providing privacy information, terms of service, policies, and community standards concisely, prominently, and using clear language suited to the age of children likely to access ~~that good, service, or product~~ that online service, product, or feature. The bill would prohibit a business that provides ~~a good, service, or product~~ an online service, product, or feature likely to be accessed by ~~children~~ a child from taking proscribed action, ~~such as collecting or using data it collects on consumers who are children.~~ including using the personal information of a child for any reason other than the reason or reasons for which the personal information was collected.*

This bill would require the ~~agency~~ California Privacy Protection Agency to establish and convene the California Children's Data Protection Taskforce to evaluate best practices for the implementation of these provisions, and to provide support to businesses, as specified. The bill would require the agency's board to appoint the members of the taskforce by April 1, 2023, and would require those members to have certain expertise, including in the areas of privacy and children's rights. The bill would require the taskforce to make prescribed recommendations on best practices, including identifying ~~goods, services, and product~~ online services, products, or features likely to be accessed by children. By April 1, 2024, the bill would require the agency, in consultation with the taskforce, to adopt ~~regulations and publish guidelines,~~ regulations, as necessary.

~~This bill would state the intent of the Legislature to subsequently create legislation to enforce this title.~~

(2) The California Privacy Rights Act of 2020 authorizes the Legislature to amend the act to further the purposes and intent of the act by a majority vote of both houses of the Legislature, as specified.

This bill would declare that its provisions further the purposes and intent of the California Privacy Rights Act of 2020.



# DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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## BILL TEXT

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

**SECTION 1.** (a) The Legislature hereby finds and declares all of the following:

(1) The United Nations Convention on the Rights of the Child recognizes that children need special safeguards and care in all aspects of their lives.

(2) As children spend more of their time interacting with the ~~digital~~ *online* world, the impact of the design of ~~digital~~ *online* products and services on children's well-being has become a focus of significant concern.

(3) There is bipartisan agreement at the international level, in both the United States and in the State of California, that more needs to be done to create a safer online space for children to learn, explore, and play.

(4) Lawmakers around the globe have taken steps to enhance privacy protections for children on the understanding that, in relation to data protection, greater privacy necessarily means greater security and well-being.

(5) Children should be afforded protections not only by ~~digital~~ *online* products and services specifically directed at them, but by all ~~digital~~ *online* products and services they are likely to access.

(6) In 2019, 81 percent of voters said they wanted to prohibit companies from collecting personal information about children without parental consent, and a 2018 poll of Californian parents and teens found that only 36 percent of teenagers and 32 percent of parents say that social networking internet websites do a good job explaining what they do with users' data.

(7) While it is clear that the same data protection regime may not be appropriate for children of all ages, children of all ages should nonetheless be afforded privacy and protection, and ~~digital~~ *online* products and services should adopt data protection

regimes appropriate for children of the ages likely to access those products and services.

(8) Products and services that are likely to be accessed by children should offer ~~high~~ *strong* privacy protections by design and by ~~default.~~ *default, including by disabling features that profile children using their previous behavior, browsing history, or assumptions of their similarity to other children, to offer detrimental material.*

(9) Ensuring robust privacy protections for children by design is consistent with the intent of the Legislature in passing the California Consumer Privacy Act of 2018, and with the intent of the people of the State of California in passing the California Privacy Rights Act of 2020, which finds and declares that children are particularly vulnerable from a negotiating perspective with respect to their privacy rights.

(b) Therefore, it is the intent of the Legislature to promote privacy protections for children pursuant to the California Age-Appropriate Design Code Act.

~~SEC. 2. Title 1.81.46 (commencing with Section 1798.99.30) is added to Part 4 of Division 3 of the Civil Code, immediately following Title 1.81.45, to read:~~

**SEC. 2.** *Title 1.81.46 (commencing with Section 1798.99.28) is added to Part 4 of Division 3 of the Civil Code, to read:*

#### **TITLE 1.81.46. The California Age-Appropriate Design Code Act**

**1798.99.28.** *This chapter shall be known, and may be cited, as the California Age-Appropriate Design Code Act.*

**1798.99.29.** *The Legislature declares that children should be afforded protections not only by online products and services specifically directed at them, but by all online products and services they are likely to access and makes the following findings:*

*(a) Companies that develop and provide online services, products, or features that children are likely to access should consider the best interests of children when designing, developing, and providing that service, product, or feature.*

*(b) If a conflict arises between commercial interests and the best interests of children, companies should prioritize the privacy, safety, and well-being of children over commercial interests.*

**1798.99.30.** ~~For~~ *(a) For purposes of this title, the definitions in Section 1798.140 shall apply unless otherwise specified in this title.*

*(b) For the purposes of this title, the following terms apply:*

~~(a)~~

(1) "Agency" means the California Privacy Protection Agency, as established by the California Privacy Rights Act of 2020, approved by the voters as Proposition 24 at the November 3, 2020, statewide general election.

~~(b)~~

(2) "Board" means the agency's board, as established in Section 1798.199.10.

~~(c)~~

(3) "Child" or "children," unless otherwise specified, mean a consumer or consumers who is under 18 years of age.

~~(d) "Dark pattern" has the same meaning as defined in subdivision (A) of Section 1798.140.~~

~~(e)~~

(4) "Data Protection Impact Assessment" means a systematic survey to assess and mitigate risks to children who are *reasonably* likely to access the ~~good, service, or product~~ *service, product, or* feature at issue that arises from the provision of that ~~good, service, or product~~ *service, product, or* feature in accordance with specifications promulgated by the California Children's Data Protection Taskforce established pursuant to Section 1798.99.32.

*(5) "Default" means a preselected option adopted by the business for the online service, product, or feature.*

~~(f)~~

(6) "Likely to be accessed by a child" means it is reasonable to expect, based on ~~the known audience,~~ the nature of the content, the associated marketing, ~~or~~ the online context, *or academic or internal research*, that the ~~good, service, or product feature is more likely than not to~~ *service, product, or feature would* be accessed by children.

~~(g) "Personal information" has the same meaning as defined in subdivision (v) of Section 1798.140.~~

~~(h) "Sensitive personal information" has the same meaning as defined in subdivision (ae) of Section 1798.140.~~

~~(i)~~

(7) "Taskforce" means the California Children's Data Protection Taskforce as established by Section 1798.99.32.

**1798.99.31.** (a) A business that provides ~~a good, service, or product~~ *an online service, product, or* feature likely to be accessed by a child shall comply with all of the following:

~~(1) Consider the best interests of children likely to access that good, service, or product feature when designing, developing, and providing that good, service, or~~

~~product feature, and, when in conflict with commercial interests, design, develop, and provide that good, service, or product feature in the manner that prioritizes the privacy, safety, and well-being of children.~~

~~(2)~~

~~(1) Undertake a Data Protection Impact Assessment for any good, service, or product online service, product, or feature likely to be accessed by a child and maintain documentation of this assessment as long as the good, service, or product online service, product, or feature is likely to be accessed by a child. A report of the assessment must be provided to the agency within 12 months of the implementation of this act and reviewed every 24 months or before any new features are offered to the public.~~

~~(3)~~

~~(2) Establish the age of consumers with a reasonable level of certainty appropriate to the risks that arise from the data management practices of the business, or apply the privacy and data protections afforded to children to all consumers.~~

~~(4) Maintain the highest level of privacy possible for children by default, including, but not limited to, disabling profiling, unless the business can demonstrate a compelling reason that a different default setting is in the best interests of children likely to access that good, service, or product feature.~~

~~(3) Configure all default privacy settings offered by the online service, product, or feature to the settings that offer a high level of privacy protection offered by the business.~~

~~(5)~~

~~(4) Provide any privacy information, terms of service, policies, and community standards concisely, prominently, and using clear language suited to the age of children likely to access that good, service, or product online service, product, or feature.~~

~~(6)~~

~~(5) If the good, service, or product online service, product, or feature allows the child's parent, guardian, or any other consumer to monitor the child's online activity or track their location, provide an obvious signal to the child when they are being monitored or tracked.~~

~~(7) Universally uphold~~

~~(6) Enforce published terms, policies, and community standards established by the business, including, but not limited to, privacy policies and those concerning children.~~

~~(8)~~

(7) Provide prominent, accessible, and responsive tools to help ~~children~~ *children, or where applicable their parent or guardian*, exercise their privacy rights and report concerns.

(b) A business that provides ~~a good, service, or product~~ *an online service, product, or* feature likely to be accessed by a child shall not take any of the following actions:

(1) Use the personal information of any child in a way that ~~is demonstrably harmful~~ *the business knows or has reason to know the online service, product, or feature more likely than not causes or contributes to a more than de minimis risk of harm* to the physical health, mental health, or well-being of a child.

*(2) Profile a child by default.*

~~(2) Collect and~~

*(3) Collect, sell, share, or* retain any personal information that is not necessary to provide ~~a good, service, or product~~ *a service, product, or* feature with which a child is actively and knowingly engaged.

~~(3)~~

*(4)* If a business does not have actual knowledge of the age of a consumer, it shall ~~neither collect nor~~ *not collect, share, sell, or* retain any personal information that is not necessary to provide a ~~good, service, or product~~ *service, product, or* feature with which a consumer is actively and knowingly engaged.

~~(4)~~

*(5)* Use the personal information of a child for any reason other than the reason or reasons for which that personal information was collected. If the business does not have actual knowledge of the age of the consumer, the business shall not use any personal information for any reason other than the reason or reasons for which that personal information was collected.

~~(5)~~

*(6)* Notwithstanding Section 1798.120, ~~disclose~~ *share or sell* the personal information of any child unless ~~the business can demonstrate a compelling reason that disclosure of that personal information is in the best interests of the child.~~ *the sharing or selling of that personal information is necessary to provide the online service, product, or feature as permitted by paragraphs (1) to (4), inclusive, of subdivision (a) of Section 1798.145.*

~~(6) Collect any precise geolocation information by default, unless the business can demonstrate a compelling reason that doing so would be in the best interests of the child.~~

*(7) Collect, sell, or share any precise geolocation information of children by default unless the collection of that precise geolocation information is necessary to provide the service, product, or feature requested and then only for the limited time that the collection of precise geolocation information is necessary to provide the service, product, or feature.*

~~(7) Collect~~

*(8) Collect, sell, or share any precise geolocation information without providing an obvious sign to the ~~consumer~~ child for the duration of that collection that precise geolocation information is being collected.*

~~(8) Collect any sensitive personal information by default, unless the business can demonstrate a compelling reason that the collection of sensitive personal information by default is in the best interests of a child.~~

*(9) Use dark patterns or other techniques to lead or encourage consumers to provide personal information beyond what is *reasonably expected for the service the child is accessing and* necessary to provide that ~~good, service, or product feature, service or product~~ to forego privacy protections, or to otherwise take any action that ~~is demonstrably harmful to the consumer's~~ *the business knows or has reason to know the online service or product more likely than not causes or contributes to a more than de minimis risk of harm to the child's* physical health, mental health, or well-being.*

*(10) Use any personal information collected or processed to establish age or age range for any other purpose, or retain that personal information longer than necessary to establish age. Age assurance shall be proportionate to the risks and data practice of a service, product, or feature.*

(c) This section shall become operative on July 1, 2024.

**1798.99.32.** (a) The agency shall establish and convene a taskforce, the California Children's Data Protection Taskforce, to evaluate best practices for the implementation of this title, and to provide support to businesses, with an emphasis on small and medium businesses, to comply with this title.

(b) By April 1, 2023, the board shall appoint members of the taskforce. Taskforce members shall consist of Californians with expertise in the areas of privacy, physical health, mental health, and well-being, technology, and children's rights.

(c) The taskforce shall make recommendations on best practices regarding, but not limited to, all of the following:

(1) Identifying ~~goods, services, and product~~ *online services, products, or* features likely to be accessed by children.

(2) Evaluating and prioritizing the best interests of children with respect to their privacy, health, and well-being, and issuing guidance to businesses on how ~~to incorporate those interests into~~ *those interests may be furthered by* the design, development, and implementation of ~~a good, service, or product~~ *an online service, product, or* feature.

~~(3) Determining the level of certainty with which it is necessary to establish the age of a consumer appropriate to the risks that arise from the data management practices of a business.~~

~~(4) Determining whether a reason is sufficiently compelling to warrant practices that are not consistent with the default setting, data collection, and data disclosure practices prescribed by this title.~~

*(3) Ensuring that age verification methods used by businesses that provide online services, products, or features likely to be accessed by children are proportionate to the risks that arise from the data management practices of the business, privacy protective, and minimally invasive.*

~~(5)~~

~~(4) Assessing and mitigating risks to children that arise from the use of~~ *a good, service, or product* *an online service, product, or* feature, including specific ~~items for the systematic survey necessary~~ *issues businesses must address* to perform a Data Protection Impact Assessment.

~~(6)~~

~~(5) Publishing privacy information, policies, and standards in concise, clear language suited for the age of children likely to access that~~ *good, service, or product feature.* *service or product.*

(d) By April 1, 2024, the agency, in consultation with the taskforce, shall adopt ~~regulations and publish guidelines,~~ *regulations,* as necessary, to effectuate the purposes of this ~~title in a manner consistent, and to the extent possible, with international frameworks for the protection of the privacy and well-being of children.~~ *title.*

~~1798.99.33. It is the intent of the Legislature to create subsequent legislation to enforce this title.~~

**SEC. 3.** The Legislature finds and declares that this act furthers the purposes and intent of the California Privacy Rights Act of 2020.







02a.32a

Disaster and Fire Safety Commission

ACTION CALENDAR  
June 28, 2022

To: Honorable Mayor and Members of the City Council  
From: Disaster and Fire Safety Commission  
Submitted by: Jose Luis Bedolla, Chairperson, Disaster and Fire Safety Commission  
Subject: Request for Timely Fiscal Information on Measures FF and GG

RECOMMENDATION

The Disaster and Fire Safety Commission (“Commission” or “DFSC”) respectfully recommends that Council direct the Fire Department and City Manager provide the Commission with the following fiscal information regarding Measures GG and FF:

1. Base budget documentation for the 22/23 FY (current year) that was approved by Council;
2. Quarterly, preferably monthly, expenditure reports, including a brief narrative describing each line item, with initial reports starting by March 30, 2022, with a published calendar for reporting and
3. The proposed budgets submitted to Council’s Budget and Finance Policy Committee in April, each subsequent revision presented to Council, and the budget that is adopted at the end of the budget process.

The Commission takes seriously the role it has been given by the voters and the City Council to provide oversight and advice to the City Council about the use of Measure GG and FF funds. DFSC commissioners intend to carry out this role but must rely on information from the City Manager and the Fire Department to do so.

FISCAL IMPACTS OF RECOMMENDATION

The Commission is supposed to receive formal written reports on a regular cadence to provide input and oversight. Proper oversight may lead to more efficient and/or effective use of taxpayer dollars. The cost of producing financial information for the Commission should be minimal, as most financial systems allow for project reporting. If not, the cost incurred would only be the set-up time, which is minimal.

CURRENT SITUATION AND ITS EFFECTS

Regarding Measure GG, the most recent budget information provided to the Commission was a December 2020 Year-End budget report dated December 2, 2020.

Regarding Measure FF, in January 2021, the Fire Department presented the Commission with a preliminary budget overview and presented an informal working group of the Commission a detailed, but still preliminary, version of the budget in February 2021. To date, the Commission has not been provided with the final FY 22 Measure GG or FF budget, as approved by Council in June 2021, despite requests by Chair Bedolla at nearly every DFSC meeting. In addition, at its September 22, 2021, meeting, the Commission informally requested that the Fire Department provide a Measure FF implementation plan; in response, the Department promised more information, however only ad hoc updates have since been provided.

The Commission appreciates the strain that the Covid pandemic has placed on staff, as well as the challenge of managing the new influx of funds from Measure FF, and has therefore been patient despite a lack of information that has prevented the Commission from fulfilling its duties for more than the past year. At this point, however, as we head into another budget cycle, we believe that it is reasonable to expect that the information begin to flow.

The City's Budget Manager has proposed to begin having department budget presentations to the Council's Budget and Finance Policy Committee in April. The Council will hold a public hearing on the FY 23 and FY 24 proposed budgets on May 10. To perform its oversight responsibilities, the Commission will need to receive this information in the same timeframes.

#### BACKGROUND

The Commission's main duty is to serve as an oversight body for the expenditure of Measure GG and FF funds. On September 22, 2020, the City Council passed a resolution "Designating the DFSC as the Citizens' Oversight Committee for Expenditure of the Proceeds of the Fire, Emergency Services and Wildfire Prevention Tax (Measure FF)" which replicated the Commission's duties with respect to Measure GG. The resolution states that "Citizen input and oversight are crucial for transparency and accountability." It further states:

For this purpose, in addition to its other powers, the Commission may: 1) request detailed expenditure plans for tax proceeds annually, which shall be provided to it as early in the budget process as feasible; 2) make recommendations to the City Manager and the City Council as to the rate at which the tax should be set and how any tax proceeds should be spent; and 3) obtain a report on actual expenditures.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There is no direct environmental impact of this recommendation.

#### RATIONALE FOR RECOMMENDATION

The rationale is to ensure that the Commission and the City not only stay within the letter of the law but the spirit. This Citizen Commission is supposed to provide oversight. Without budget data and input into the budget, the City may not be in compliance with the two measures. Even with the currently proposed review cycles, middle of the year and end of the year, there is no ability to provide further input, modifications, nor address ad hoc requests from the community.

ALTERNATIVE ACTIONS CONSIDERED

Since most financial systems require set up of annual budgets and they can output results with minimal staff time, no other actions were considered.

CITY MANAGER

See Companion Report

CONTACT PERSON

Keith May, Secretary, Disaster and Fire Safety Commission, 510-981-5508





Disaster and Fire Safety Commission

02a.33

ACTION CALENDAR  
June 28, 2022

To: Honorable Mayor and Members of the City Council  
From: Disaster and Fire Safety Commission  
Submitted by: Jose Luis Bedolla, Chairperson, Disaster and Fire Safety Commission  
Subject: Recommendation to Use Measure FF Funds as Intended by Voters for Firefighting, Emergency Medical Response, 9-1-1 Communications Services, Hazard Mitigation, and Wildfire Prevention and Preparedness; to Not Reduce General Fund Allocations Towards Fire Services; and to Support Effective Commission Oversight

RECOMMENDATION

The Disaster and Fire Safety Commission (DFSC) supports revenue generated by the voter-approved *Fire, Emergency Services and Wildfire Prevention Tax* (Measure FF) going towards services described in the Fire Department's 5-year implementation plan, including:

- Wildfire Prevention and Response
- Training and Development
- EMS Operations
- Dispatch

The Commission has reviewed and provided input on expenditure plans described by the Fire Department and is engaged in the process of providing input and oversight prior to the budget being finalized. As these projects advance and line-item budgets continue to be developed in more detail, the Commission expects to follow up with more specific recommendations on funding allocations.

In order to provide effective oversight of Measure FF spending as resolved by City Council, the Commission needs to have the tools and information necessary to do so. This includes:

1. Thorough and detailed information about spending plans, including detailed line items and staffing numbers, before budgets are finalized and locked in place (as of December 2021, the commission has not been provided a measure FF budget).

2. An accounting system that will clearly designate spending from the fund, including job codes that are specific to Measure FF, so that the Commission can easily determine staff time spent on Measure FF-funded activities.

Additionally, in allocating funds towards these critical safety improvements, it is imperative that the City ensures that Measure FF funds are used to supplement, rather than replace, general funding of Berkeley Fire Department costs.

When the City's current fiscal emergency ends, the General Funds allocation to the Fire Department must be increased back to pre-COVID levels, rather than relying on Measure FF funds to fill the gap permanently. Post-crisis, the City must not decrease General Fund spending on Fire Department services while covering the difference using Measure FF funds.

Lastly, several areas of proposed Measure FF expenditures relate closely to the City's Re-Imagining Public Safety effort, including 911 dispatch and related emergency services and the Safe Passages initiative. Council should ensure that all of these related efforts are coordinated to ensure that our public safety dollars are being spent as efficiently and effectively as possible to facilitate maximum progress on all of the City's goals. To this end, the Commission recommends that the DFSC have the opportunity to provide input into the Re-Imagining Public Safety project where it relates to Measure FF-funded programs.

As the body that is charged with oversight of Measure FF spending, the DFSC will continue to work collaboratively with City staff to review and provide input on Measure FF spending plans, to monitor both budget planning and actual spending, and to object to any allocation or spending we believe is improper.

#### FISCAL IMPACTS OF RECOMMENDATION

Following this recommendation will allow Measure FF funds to be fully used to accomplish the safety goals described in the voter guide, while having no impact on General Funds.

If the City had an expectation that a temporary fiscal-emergency reduction in General Fund allocation to the Fire Department could be made permanent once Measure FF funding is available, then the fiscal impact of this recommendation is to eliminate that expectation.

By honoring the voters' intent that this special funding be fully used towards the services described in the 2020 Voter Guide, following this recommendation can maintain or increase the public trust in future similar tax measures, ultimately leading to more voter support for future tax measures.

#### CURRENT SITUATION AND ITS EFFECTS

Measure FF is expected to generate approximately \$8.5 Million in yearly revenue. The City is currently in the process of planning how to spend this money.

The DFSC has reviewed and provided input into the Fire Department's 5-year Measure FF expenditures plan, and the Commission believes that the Fire Department's planned Measure FF spending is broadly consistent with the intentions of Berkeley's voters. The Commission looks forward to continued engagement with staff on funding plans.

If funds are allocated and spent according to the ballot measure, it will accomplish improvements in several DFSC priorities, including but not limited to the following:

- More inspectors to provide increased inspections in the Fire Zones, reducing fire fuel such as dry, overgrown brush and dead timber. This will reduce fire ignitions, slow the spread of any fires that do ignite, and help keep pathways clear for emergency access and egress.
- Increased vegetation management activities, including funding an innovative program for youth jobs that is also a recruitment tool so that more of Berkeley's firefighters can be recruited from among Berkeley's youth.
- Installation and management of a citywide outdoor warning system that will provide reliable, universal emergency warnings and will reach all members of the community without relying on inconsistent and inequitable alerting systems.
- Improved public education related to wildfire evacuations, including evacuation drills that provide an opportunity for both community members and staff to practice and improve the evacuation process.
- Improved evacuation routes, with dedicated staff time to manage the Safe Passages program, to evaluate and document the problem of emergency access and egress in the City's Fire Zones and lead an interdepartmental program in addressing this problem through parking restrictions, increased enforcement, signage, and public education.
- Better planning and decision-making, with staff who can give focused attention to analysis, planning, policy, and protocols; can give the necessary time to researching options to make informed and data-driven decisions; and can interface more effectively with the public – including the Disaster and Fire Safety Commission - in both communications and collaborative planning.

Additional items not listed above include improvements to the 9-1-1 dispatch system, training facility improvements, and funding of new ambulances and technicians. The Fire Department's current five-year funding plan as described to the Disaster and Fire Safety Commission shows the following estimated allocations in each area:

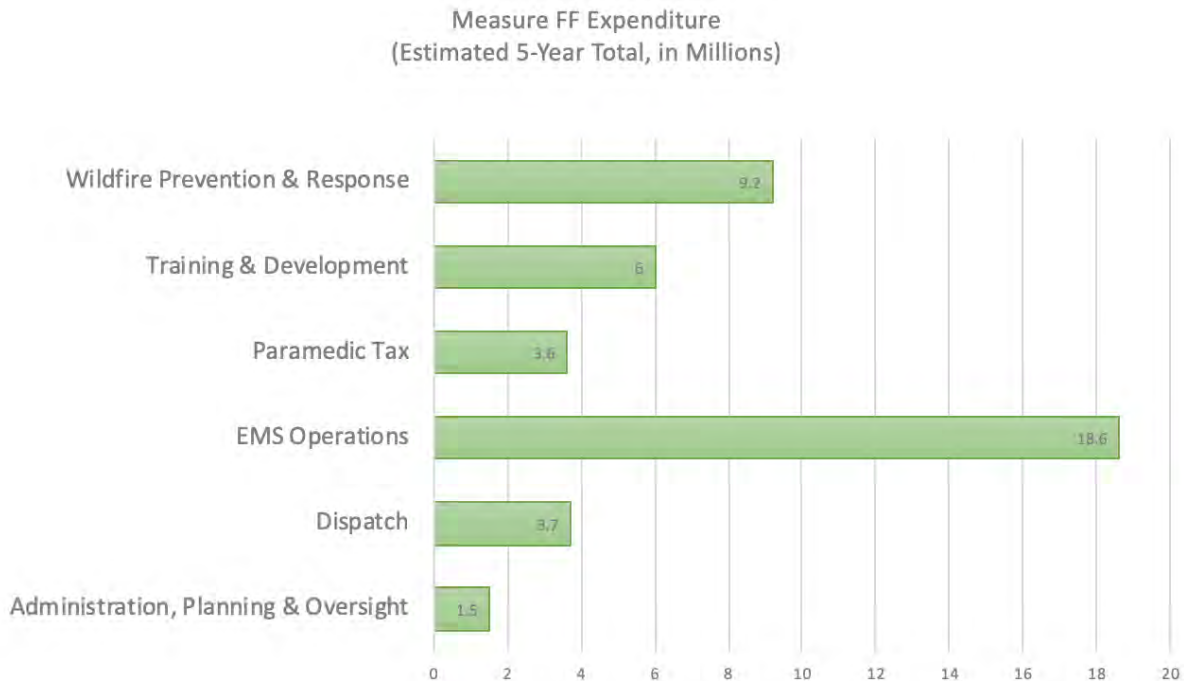


Chart: Measure FF Expenditure, Estimated 5-Year Totals Based on Berkeley Fire Department Presentation to DFSC 1/27/2021

**BACKGROUND**

On September 25, 2019 and October 23, 2019, The DFSC discussed a possible special assessment for wildfire prevention. Discussions focused on determining what the 1990s-era special assessment in the Berkeley Hills had been, what it had funded, and what funding would be needed today for improved vegetation management inspections in the City’s Fire Zones. The topic was also on the DFSC agenda on February 26, 2020, but was tabled.

On June 16, 2020, City Council adopted an ordinance declaring a Fiscal Emergency due to the significant loss of revenue attributable to the COVID-19 pandemic.

On July 6, 2020 The DFSC discussed the Measure FF ballot measure at a Special Session and members of the Commission provided input to Fire Department staff.

On July 14, 2020 City Council adopted an Omnibus Package including several items in the Re-Imagining Public Safety effort that may overlap with the scope of Measure FF budget items and programs. The Measure FF ballot measure language was drafted prior to this package’s adoption.



Recommendation to Use Measure FF Funds as Intended by Voters for Firefighting, ACTION CALENDAR  
Emergency Medical Response, 9-1-1 Communications Services, Hazard Mitigation, June 28, 2022  
and Wildfire Prevention and Preparedness

On September 22, 2020 Berkeley City Council passed a resolution Designating the DFSC as the Citizens' Oversight Committee for Expenditure of the Proceeds of the Fire, Emergency Services and Wildfire Prevention Tax (Measure FF)

In the 9/22/20 resolution, Council stated: *"Citizen input and oversight are crucial for transparency and accountability"* and *"For this purpose, in addition to its other powers, the Commission may: 1) request detailed expenditure plans for tax proceeds annually, which shall be provided to it as early in the budget process as feasible; 2) make recommendations to the City Manager and the City Council as to the rate at which the tax should be set and how any tax proceeds should be spent; and 3) obtain a report on actual expenditures."*

On November 3, 2020, Berkeley voters approved Measure FF, by a vote of 74.2% "Yes" vs. 25.8% "No."

The measure authorized a special parcel tax of \$0.1047 per square foot of improvements (i.e., buildings or structures erected or affixed to the land) for each parcel of real property in the City of Berkeley. This tax is estimated to generate \$8.5 million per year.

An impartial analysis by the City Attorney at that time read in part:

*"The tax is estimated to generate \$8.5 million annually. The proceeds shall be placed in a special fund to be used only for the following:*

- Local firefighter and emergency medical response including hiring and training personnel and upgrading safety equipment and facilities.*
- Upgrading and modernizing the 9-1-1 dispatch system to implement and maintain a system to provide emergency medical dispatching.*
- Wildfire prevention and preparedness activities including, but not limited to, vegetation management, hazard mitigation, public education, evacuation planning, and an emergency alert system.*

On January 27, 2021 The DFSC received a presentation, *"Department Redesign – Measure FF Implementation Plan,"* from Fire Department staff on a five-year plan for Measure FF expenditures. Individual members of the Commission provided follow up questions and input to Fire Department staff in the weeks following.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There is no direct environmental impact of this recommendation.

## RATIONALE FOR RECOMMENDATION

The DFSC is enthusiastic about the potential for Measure FF funding to accomplish important and urgent improvements to public safety, as intended by voters. The funding

can pay for numerous actions that have been recommended and supported by the DFSC over the years.

However, if the City's General Funding to the Fire Department is reduced in the coming years, this may have the effect of draining away funding and dedicated staff time from these important safety improvements.

Measure GG was a similar but smaller tax, approved by Berkeley voters in 2008. On August 1, 2018, the DFSC sent a memo to City Council objecting to the City using Measure GG funds to replace, rather than augment, general funding of Berkeley Fire Department overtime costs. See Attachment 1. It is because of this issue with Measure GG expenditures that the DFSC now makes this recommendation to avoid the same problem with Measure FF.

Additionally, effective Commission input and oversight throughout the budget planning process are necessary to ensure that Measure FF funds are put towards safety improvements as intended by voters. The Commission values the opportunity to provide input into budget decisions prior to the budget being finalized each year, as is required by Council's 9/22/20 resolution.

Because a large portion of the Fire Department's planned Measure FF expenditures are for staff time to advance crucial safety efforts, the Commission is also seeking the ability to track what staff time and activities are being charged to Measure FF.

Lastly, the City's Re-Imagining Public Safety effort is closely tied to several projects within the scope of Measure FF spending; it is important that the City coordinate the planning for these related activities, as well as other related activities in various City various departments. The omnibus package adopted by City Council includes the following items that should be coordinated with Measure FF budget items and programs as indicated:

- *Analyzing and developing a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit.* The Specialized Care Unit may relate to new basic ambulance services being proposed within Measure FF expenditures.
- *Creating plans and protocols for calls for service to be routed and assigned to alternative preferred responding entities and consider placing dispatch in the Fire Department or elsewhere outside the Police Department.* The proposed Measure FF expenditure plan includes improvements to the Fire Department's 9-1-1 dispatch system and dispatch training facility improvements.
- *Pursuing 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 and infrastructure, and identify and implement approaches to reduce and/or eliminate the practice of pretextual stops based on minor traffic violations.* The proposed Measure FF expenditure plan may not

include budget for increased parking enforcement needed to realize the City's goals for emergency evacuation under the Safe Passages program. The City should consider whether BerkDoT should address this need.

The Commission would like to have the opportunity to give input to Re-Imagining Public Safety plans where they relate to Measure FF-funded programs; we expect that a member of the DFSC will participate and follow the progress of the Re-Imagining Public Safety effort and the Commission will develop future recommendations on this topic.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

The City Manager and the Fire Department Administration will continue to work with the DFSC and share information on services described in the Fire Department's 5-year implementation plan.

The Fire Department will continue to provide quarterly/biennial reports on Measure FF as outlined by Adopted Council Resolution No. 69,575–N.S..

“BE IT FURTHER RESOLVED, in addition to its other powers, the Disaster and Fire Safety Commission may: 1) request detailed expenditure plans for tax proceeds annually, which shall be provided to it as early in the budget process as feasible; 2) make recommendations to the City Manager and the City Council on the expenditure of tax proceeds to enhance public safety consistent the approved purposes in Measure FF, BMC Section 7.83.010.D; and 3) obtain a report on actual expenditures. The City Manager shall cooperate with the Disaster and Fire Safety Commission in providing the information it requests.”

We note that the accounting system in place has limitations with regards to reporting, though each Measure FF programs are fully accountable and represented in the reporting system.

As the process for the City's Re-Imagining Public Safety effort continues to be developed, it is the intent of the City Manager and Fire Department Administration to ensure that all of these related efforts are coordinated to facilitate maximum progress on all of the City's goals.

The City Manager and Fire Department Administration agrees with the Disaster and Fire Safety Commission report to the level that is possible and in accordance to the Adopted Council Resolution No. 69,575–N.S.:

“BE IT FURTHER RESOLVED, in addition to its other powers, the Disaster and Fire Safety Commission may: 1) request detailed expenditure plans for tax proceeds annually, which shall be provided to it as early in the budget process as

Recommendation to Use Measure FF Funds as Intended by Voters for Firefighting, ACTION CALENDAR  
Emergency Medical Response, 9-1-1 Communications Services, Hazard Mitigation, June 28, 2022  
and Wildfire Prevention and Preparedness

feasible; 2) make recommendations to the City Manager and the City Council on the expenditure of tax proceeds to enhance public safety consistent with the approved purposes in Measure FF, BMC Section 7.83.010.D; and 3) obtain a report on actual expenditures. The City Manager shall cooperate with the Disaster and Fire Safety Commission in providing the information it requests.”

The Fire Department will continue to share direction, development, and information on the various programs funded through Measure FF. All Measure FF programs and expenditures will be tracked through the current City of Berkeley’s Financial Management System called ERMA.

CONTACT PERSON

Keith May, Secretary, Disaster and Fire Safety Commission, 510-981-5508

Attachments:

- 1: Disaster and Fire Safety Commission Recommendation, 8/1/2018: Objection to Use of Measure GG Funds to Replace, Rather Than Augment, General Funding of Berkeley Fire Department
- 2: Full text of Fire, Emergency Services and Wildfire Prevention Tax (Measure FF)



Disaster and Fire Safety Commission

Date: August 1, 2018  
To: Honorable Mayor and Members of the City Council  
From: Disaster and Fire Safety Commission  
Submitted by: Paul Degenkolb, Chairperson, Disaster and Fire Safety Commission  
Subject: Objection to Use of Measure GG Funds to Replace, Rather Than Augment, General Funding of Berkeley Fire Department

The Disaster and Fire Safety Commission objects to the City using Measure GG funds to replace, rather than augment, general funding of Berkeley Fire Department overtime costs.

At the 8/1 regular meeting of the Disaster and Fire Safety Commission, the commission approved a motion to submit this memo, Objection to the Use of Measure GG Funds to Replace, Rather Than Augment, General Funding of Berkeley Fire Department: Couzin Second: Stein Vote: 7 Ayes: Grimes, Flasher, Degenkolb, Couzin, Bailey, Stein; 1 No: Legg; 1 Absent: Golomb; 0 Abstain.

Measure GG authorizes a special tax for the purpose of funding fire protection and emergency response and preparedness. Each year, Berkeley taxpayers pay roughly \$5 million into this tax.

In the years since Measure GG was passed, the City has chosen to decrease General Fund spending on Fire Department overtime, and to cover the difference using Measure GG funds. As a result, some Measure GG funds are replacing General Fund spending on fire and emergency purposes, rather than augmenting it.

The Commission estimates that, in effect, this practice siphons \$500,000 to \$1 million per year in Measure GG funds away from fire protection and emergency preparedness uses, with a corresponding increase in General Fund monies available for other uses.

A legal review by City Attorney Farimah Brown dated 4/6/2018 found that Measure GG gives the City broad discretion, and that it is not illegal for the City to reduce General Funds that go toward fire protection and emergency preparedness purposes while making up for the lost funds with Measure GG funding.

Nevertheless, the Commission believes this practice is a disingenuous use of the special tax dollars authorized by Measure GG and does not follow the spirit of the law that was approved by Berkeley voters.

As the body that is charged with oversight of Measure GG spending, the Commission will continue to monitor this spending and object to allocation we believe is improper. We anticipate that improved accounting software will allow the Commission to revisit this question with a more rigorous audit in the next 1-2 years.

The following charts show the decrease in General Funding for Fire Department overtime since the enactment of Measure GG:

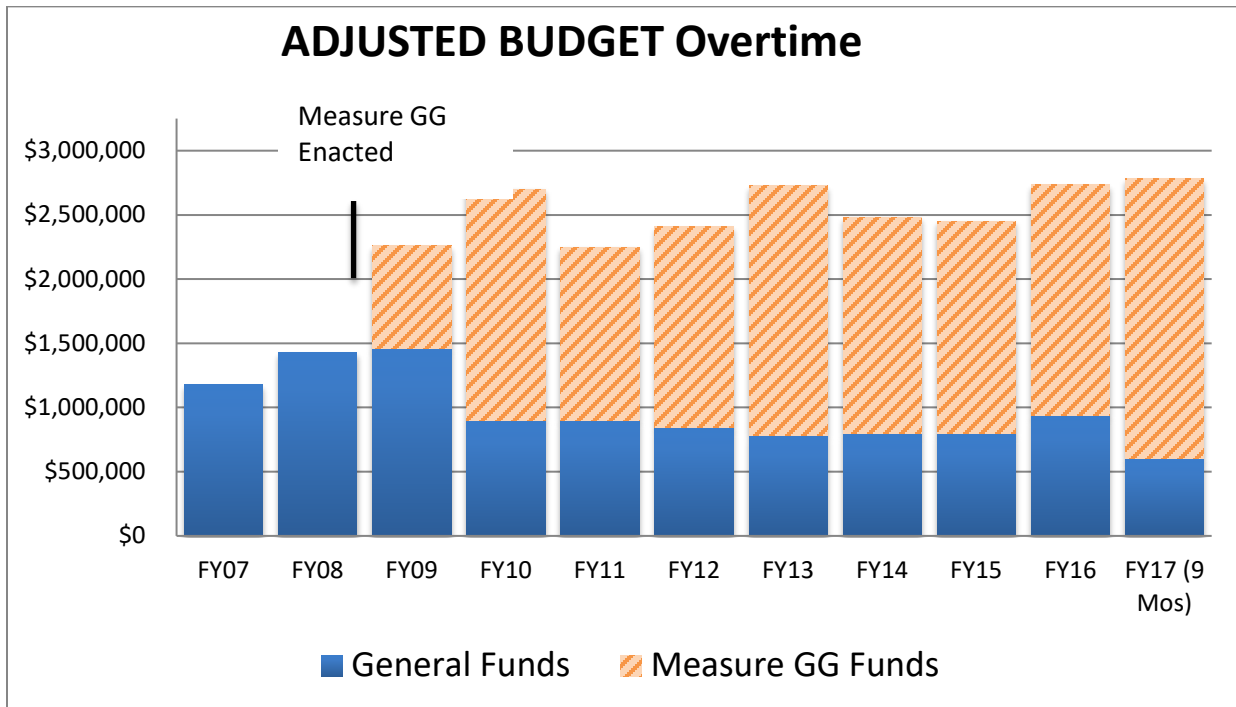


Figure 1: Berkeley Fire Department Overtime – Adjusted Budget  
 Data from City of Berkeley’s FUND\$ system

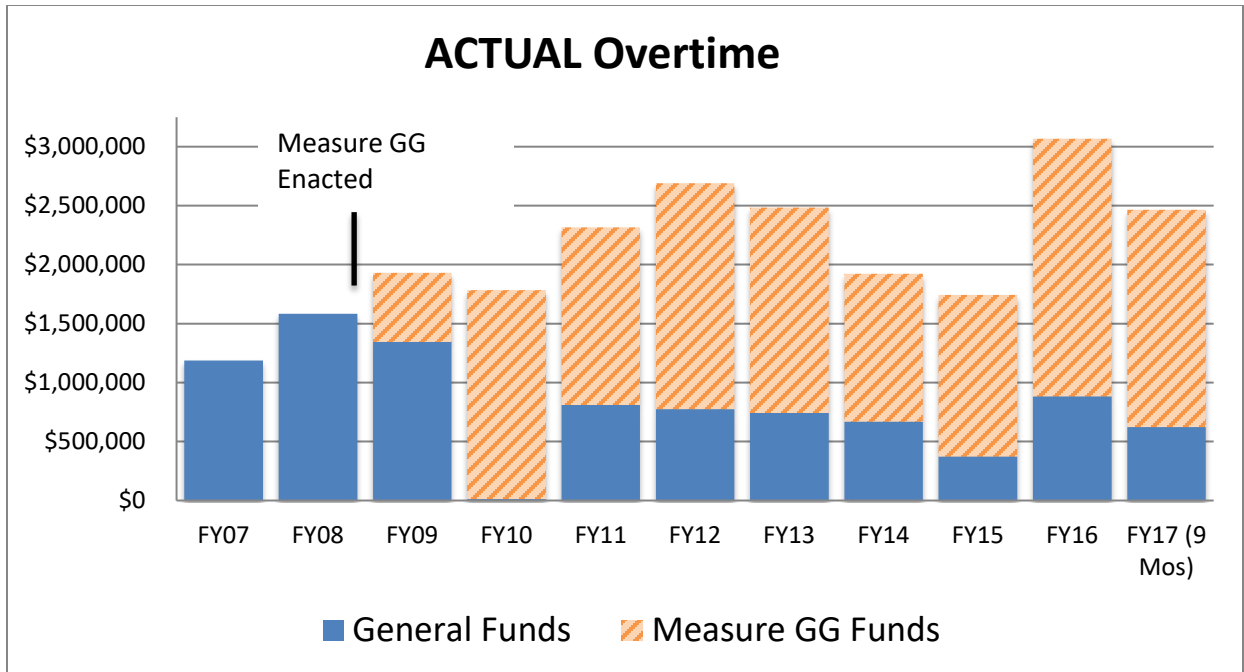
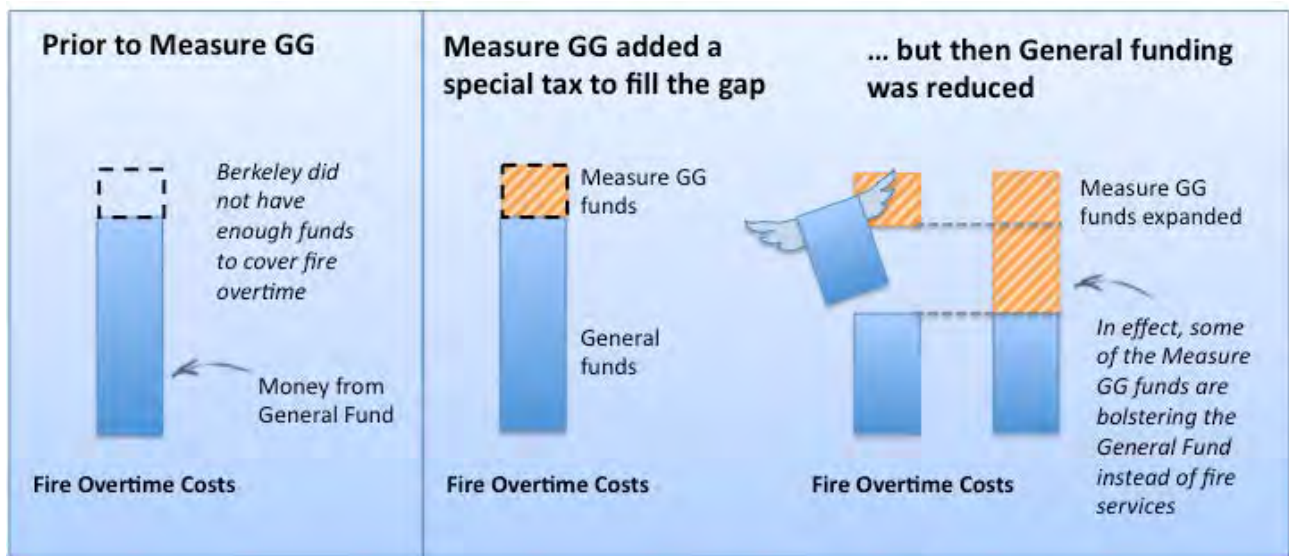


Figure 2: Berkeley Fire Department Overtime – Actual Overtime  
 Data from City of Berkeley's FUND\$ system

The following figure shows an illustration of how the current funding allocation has the same effect as moving Measure GG funding away from its designated Fire Department use and into the General Fund:



**A City Attorney says this is perfectly legal, but is this good governance?**

Figure 3: Visual Illustration of Measure GG and General Funding

Shall an ordinance enacting a tax at a rate of \$0.1047 per square foot of improvements, which is estimated to generate \$8.5 million annually for firefighting, emergency medical response, 9-1-1 communications services, hazard mitigation, and wildfire prevention and preparedness, until repealed by the voters, be adopted?



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

**IMPOSING A SPECIAL TAX AT A RATE OF \$0.1047 PER SQUARE FOOT OF IMPROVEMENTS TO PAY FOR FIREFIGHTING, EMERGENCY MEDICAL RESPONSE, 9-1-1 COMMUNICATIONS SERVICES, HAZARD MITIGATION, AND WILDFIRE PREVENTION AND PREPAREDNESS**

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

Section 1. Findings and declarations.

The People of the City of Berkeley find and declare as follows:

A. On June 16, 2020, the City Council adopted an ordinance declaring a Fiscal Emergency due to the significant loss of revenue attributable to the COVID-19 pandemic and does not have adequate resources to maintain existing staffing levels, fill vacant positions, adequately train firefighters and paramedics, maintain and replace equipment and facilities, prepare and plan for wildfires, and upgrade and modernize its 9-1-1 dispatch system.

B. Over the years, the Fire Department has experienced a significant increase in calls-for-service, rising from approximately 6,300 in 1995 to approximately 16,000 in 2017 without adequate increases in staffing levels. Over the years, this has resulted in increasing response times.

C. An increasing number of calls in the Fire Department are dedicated to addressing the needs of vulnerable populations including individuals experiencing homelessness and mental health crises and the Fire Department does not have resources dedicated to addressing these vital community needs.

D. The City's 9-1-1 dispatch center does not have the resources to ensure adequate staffing levels, upgrade its systems, and modernize to include emergency medical dispatching to ensure that the appropriate emergency response services are deployed to 9-1-1 calls-for-service.

E. The City is vulnerable to wildfires that could impact significant portions of the City and without a consistent source of funding, the City does not have the resources to address wildfire prevention activities such as vegetation management, hazard mitigation, evacuation planning, public education, and an emergency alert system.

Section 2. Code Amendment. A new Chapter 7.83 is hereby added to the Berkeley Municipal Code to read as follows:

**Chapter 7.83**  
**Fire, Emergency Medical Response, 9-1-1 Communications Services, Hazard Mitigation, and Wildfire Prevention and Preparedness Tax**

**7.83.010 Special Tax.**

A. A special tax for the purpose of funding firefighter and emergency medical response including, but not limited to, training, hiring, maintaining and upgrading facilities and equipment, upgrades to the 9-1-1 communication system, and wildfire prevention and preparedness activities is hereby authorized to be imposed on all improvements in the City of Berkeley as more fully set forth in this Chapter.

B. The City Council may impose the tax authorized by this Chapter at the rate and subject to the inflation adjustments, set forth in Section 7.83.020.

C. This special tax is imposed under Article XIII A, Section 4, of the California Constitution and the City's constitutional authority as a charter city under Article XI, Section 5 of the California Constitution.

D. The proceeds of the tax imposed by this Chapter shall be placed in a special fund to be used only for the purpose of enhancing public safety by funding the following:

1. Local firefighter and emergency medical response including hiring and training personnel and upgrading safety equipment and facilities.
2. Upgrading and modernizing the 9-1-1 dispatch system to implement and maintain a system to provide emergency medical dispatching.
3. Wildfire prevention and preparedness activities including, but not limited to, vegetation management, hazard mitigation, public education, evacuation planning, and an emergency alert system.

**7.83.020 Tax Authorized – Tax rate – Adjustments for Inflation**

A. The City Council is hereby authorized to impose a special tax of \$0.1047 per square foot of improvements in the City of Berkeley.

B. Annually in May, the City Council may increase the previous year's tax by up to the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state, as verified by official United States Bureau of Labor statistics. If either index referred to above is discontinued, the City shall use any successor index specified by the applicable agency, or if there is none, the most similar existing index then in existence.

**7.83.030 Definitions.**

For purposes of this chapter, the following terms shall be defined as set forth below:

A. "Building" shall mean any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "building" includes the word "structure."

B. "Improvements" shall mean all buildings or structures erected or affixed to the land.

C. "Square footage" shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes, notwithstanding paragraph 3 below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.

2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools, and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.

3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display storage, service, or production areas.

D. "Structure" shall mean anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

E. "Parcel" shall mean a unit of real estate in one ownership as shown on the most current official assessment roll of the Alameda County Assessor.

**7.83.040 Exemptions.**

A. The tax imposed by this Chapter shall not apply to parcels and improvements exempt from taxation by the City pursuant to the laws or constitutions of the United States and the State of California.

B. The tax imposed by this Chapter shall not apply to any property owned by any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute "very low-income," as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this section shall be required to demonstrate their entitlement thereto annually

by submitting an application and supporting documentation to the City Manager or their designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

C. Any person or entity claiming an exemption from the tax imposed by this Chapter shall file a verified statement of exemption on a form prescribed by the City Manager prior to June 30th of the first fiscal year for which the exemption is sought

**7.83.050 Duties and Authority of the City Manager.**

It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter and to keep an accurate record thereof. The City Manager is charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter, including provisions for the re-examination and correction of returns and payments.

**7.83.060 Collection with Property Tax – Penalties and Interest.**

The special tax imposed by this Chapter shall be due in the same manner, on the same dates, and subject to the same penalties and interest as established by law for other charges and taxes fixed and collected by the County of Alameda on behalf of the City of Berkeley. The special tax imposed by this Chapter, together with all penalties and interest thereon, shall constitute a lien upon the parcel upon which it is levied until it has been paid, and shall constitute a personal obligation of the owners of the parcel on the date the tax is due.

**7.83.070 Collection.**

The amount of any tax, penalty, or interest imposed under the provisions of this chapter shall be deemed a debt to the City. Any person owing money under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount. The City shall be entitled to reasonable attorneys' fees and its costs of suit in any such action.

**7.83.080 Refunds.**

Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in Chapter 7.20 of the Berkeley Municipal Code or any such successor chapter.

**7.83.090 Savings clause – Severability.**

The provisions of this chapter shall not apply to any person, association, corporation, entity, or property as to whom or which it is beyond the power of the City of Berkeley to impose the tax herein provided. If any sentence, clause, section, or part of this chapter, or any tax against any individual or any of the several groups specified herein

is found to be unconstitutional, illegal, or invalid, such sentence, clause, section or part shall be severable and such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this chapter. It is hereby declared to be the intention of the City Council and the People of the City of Berkeley that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

**7.83.100 Violation – Penalty.**

Any person who fails to perform any duty or obligation imposed by this chapter shall be guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code. The penalties provided in this section are in addition to the several remedies provided in this chapter.

Section 3. Increase appropriations limit. Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from 2021 through 2024.

Section 4. Effective date. The tax imposed by this Chapter shall be operative on January 1, 2021.

Section 5. Amendment, repeal, and reenactment. The City Council may repeal this ordinance, or amend it in any manner that does not result in an increase in the tax imposed herein, or add or modify exemptions, without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 6. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 7. Special Tax; Two Thirds Vote Requirement. This Ordinance imposes a special tax for restricted general revenue purposes and shall be effective only if approved by two-thirds of the voters voting thereon.

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

**IMPOSING A SPECIAL TAX AT A RATE OF \$0.1047 PER SQUARE FOOT OF IMPROVEMENTS TO PAY FOR FIREFIGHTING, EMERGENCY MEDICAL RESPONSE, 9-1-1 COMMUNICATIONS SERVICES, HAZARD MITIGATION, AND WILDFIRE PREVENTION AND PREPAREDNESS**

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

Section 1. Findings and declarations.

The People of the City of Berkeley find and declare as follows:

A. On June 16, 2020, the City Council adopted an ordinance declaring a Fiscal Emergency due to the significant loss of revenue attributable to the COVID-19 pandemic and does not have adequate resources to maintain existing staffing levels, fill vacant positions, adequately train firefighters and paramedics, maintain and replace equipment and facilities, prepare and plan for wildfires, and upgrade and modernize its 9-1-1 dispatch system.

B. Over the years, the Fire Department has experienced a significant increase in calls-for-service, rising from approximately 6,300 in 1995 to approximately 16,000 in 2017 without adequate increases in staffing levels. Over the years, this has resulted in increasing response times.

C. An increasing number of calls in the Fire Department are dedicated to addressing the needs of vulnerable populations including individuals experiencing homelessness and mental health crises and the Fire Department does not have resources dedicated to addressing these vital community needs.

D. The City's 9-1-1 dispatch center does not have the resources to ensure adequate staffing levels, upgrade its systems, and modernize to include emergency medical dispatching to ensure that the appropriate emergency response services are deployed to 9-1-1 calls-for-service.

E. The City is vulnerable to wildfires that could impact significant portions of the City and without a consistent source of funding, the City does not have the resources to address wildfire prevention activities such as vegetation management, hazard mitigation, evacuation planning, public education, and an emergency alert system.

Section 2. Code Amendment. A new Chapter 7.83 is hereby added to the Berkeley Municipal Code to read as follows:

**Chapter 7.83**  
**Fire, Emergency Medical Response, 9-1-1 Communications Services, Hazard Mitigation, and Wildfire Prevention and Preparedness Tax**

**7.83.010 Special Tax.**

A. A special tax for the purpose of funding firefighter and emergency medical response including, but not limited to, training, hiring, maintaining and upgrading facilities and equipment, upgrades to the 9-1-1 communication system, hazard mitigation, and wildfire prevention and preparedness activities is hereby authorized to be imposed on all improvements in the City of Berkeley as more fully set forth in this Chapter.

B. The City Council may impose the tax authorized by this Chapter at the rate and subject to the inflation adjustments, set forth in Section 7.83.020.

C. This special tax is imposed under Article XIII A, Section 4, of the California Constitution and the City's constitutional authority as a charter city under Article XI, Section 5 of the California Constitution.

D. The proceeds of the tax imposed by this Chapter shall be placed in a special fund to be used only for the purpose of enhancing public safety by funding the following:

1. Local firefighter and emergency medical response including hiring and training personnel and upgrading safety equipment and facilities.
2. Upgrading and modernizing the 9-1-1 dispatch system to implement and maintain a system to provide emergency medical dispatching.
3. Wildfire prevention and preparedness activities including, but not limited to, vegetation management, hazard mitigation, public education, evacuation planning, and an emergency alert system.

**7.83.020 Tax Authorized – Tax rate – Adjustments for Inflation**

A. The City Council is hereby authorized to impose a special tax of \$0.1047 per square foot of improvements in the City of Berkeley.

B. Annually in May, the City Council may increase the previous year's tax by up to the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state, as verified by official United States Bureau of Labor statistics. If either index referred to above is discontinued, the City shall use any successor index specified by the applicable agency, or if there is none, the most similar existing index then in existence.

**7.83.030 Definitions.**

For purposes of this chapter, the following terms shall be defined as set forth below:

A. "Building" shall mean any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "building" includes the word "structure."

B. "Improvements" shall mean all buildings or structures erected or affixed to the land.

C. "Square footage" shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes, notwithstanding paragraph 3 below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.

2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools, and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.

3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display storage, service, or production areas.

D. "Structure" shall mean anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

E. "Parcel" shall mean a unit of real estate in one ownership as shown on the most current official assessment roll of the Alameda County Assessor.

**7.83.040 Exemptions.**

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by submitting an application and supporting documentation to the City Manager or their designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

C. Any person or entity claiming an exemption from the tax imposed by this Chapter shall file a verified statement of exemption on a form prescribed by the City Manager prior to June 30th of the first fiscal year for which the exemption is sought

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**7.83.070 Collection.**

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is found to be unconstitutional, illegal, or invalid, such sentence, clause, section or part shall be severable and such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this chapter. It is hereby declared to be the intention of the City Council and the People of the City of Berkeley that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

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Section 4. Effective date. The tax imposed by this Chapter shall be operative on January 1, 2021.

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Section 6. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 7. Special Tax; Two Thirds Vote Requirement. This Ordinance imposes a special tax for restricted general revenue purposes and shall be effective only if approved by two-thirds of the voters voting thereon.



Office of the Mayor

02a.34

CONSENT CALENDAR  
June 28, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Suspension of Sister City Relations with Dmitrov, Russia and Ulan-Ude, Russia

### RECOMMENDATION

Adopt a Resolution to suspend Sister City relations with the cities of Dmitrov, Russia and Ulan-Ude until Russian hostilities against Ukraine come to an end.

### BACKGROUND

The City of Berkeley currently has 17 Sister City relationships, including two in Russia. Dmitrov, located just north of Moscow, was established in 1991, and Ulan-Ude, located in Siberia near Lake Baikal, was established in 1992. Despite an initial warm response to the establishment of these Sister Cities, there has been no known formal communication between Berkeley and Dmitrov and Ulan-Ude since the early 1990s.

On February 24, 2022, Russian President Vladimir Putin initiated a full-scale invasion of Ukraine, sparking international outrage. At least 15 million civilians, out of a population of around 40 million, have been displaced so far. Entire cities have been flattened from indiscriminate bombing. The United Nations has verified at least 4,183 civilian deaths as of June 3, but concedes that the actual number is significantly higher. According to Ukraine's top prosecutor, 15,000 war crimes have allegedly been committed with 200-300 war crimes being reported daily. The International Criminal Court is currently investigating such allegations, and war crime trials are already taking place within Ukraine by their national government. As of early June, 2022, Russia is estimated to occupy about 20% of Ukrainian territory, mostly in the southeastern Black Sea area and the eastern Donbas region, which has been in a state of war with Russian-backed separatists since 2014. Also in 2014, Russia forcefully annexed the southern region of Crimea from Ukraine.

On June 4, 2022, Ukrainian President Volodymyr Zelensky spoke at the 90<sup>th</sup> annual US Conference of Mayors meeting, calling upon US cities to sever ties with Russian sister cities. As of April 21, an estimated 10% of US-Russian sister city relations have been suspended or ended.

Since the War in Ukraine started, Berkeley has taken multiple actions to support the people of Ukraine and oppose Russia's aggression. Just two days before the invasion began, the Council passed an urgency item in support of Ukraine and its territorial integrity. The Ukrainian flag was authorized to fly at the Civic Center flagpole during the

first month of the war, with two rallies taking place that brought together the local Ukrainian diaspora. On June 14, the Council adopted a Resolution urging an immediate ceasefire in the War in Ukraine and to convene peaceful negotiations to bring an end to hostilities.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1: Resolution

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

SUSPENSION OF SISTER CITY STATUS WITH DMITROV AND ULAN-UDE

WHEREAS, the City of Berkeley currently has 17 Sister Cities, which are designed to promote human rights, culture, and education through peaceful exchanges; and

WHEREAS, the City of Berkeley has two Sister Cities that are located in Russia – Dmitrov which was established through Resolution No. 55,889-N.S. on May 21, 1991, and Ulan-Ude which was established through Resolution NO. 56,236-N.S on January 7, 1992; and

WHEREAS, on February 24, 2022, Russia initiated a full-scale invasion of Ukraine, which to date has displaced over 15 million people, killed thousands of civilians, and allegedly has resulted in thousands of war crimes which are currently being investigated; and

WHEREAS, the City of Berkeley has taken multiple steps since February to support Ukraine and oppose Russian aggression, including an urgency resolution that supports the country's territorial integrity, rallies and Ukrainian flag raisings, and calls for an immediate ceasefire; and

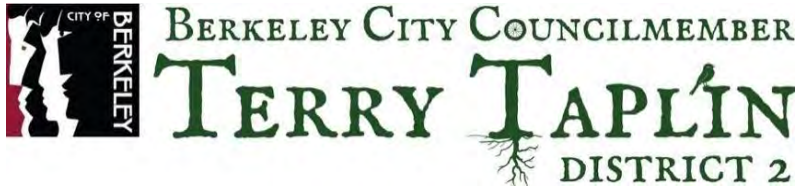
WHEREAS, on June 3, Ukrainian President President Volodymyr Zelensky spoke at the 90<sup>th</sup> annual US Conference of Mayors meeting, calling upon US cities to sever ties with Russian sister cities; and

WHEREAS, having active Sister Cities with cities in countries whose governments have committed unprovoked acts of war and are allegedly committing active acts of war crimes is antithetical to Berkeley values.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby suspends its Sister City status with the cities of Dmitrov, Russia, and Ulan-Ude, Russia until Russian hostilities against Ukraine come to an end.

BE IT FURTHER RESOLVED that this action is not to be considered a referendum against the citizens of Dmitrov and Ulan-Ude, but serves as a statement of opposition to the Russian government's invasion of Ukraine.





02a.35

CONSENT CALENDAR  
June 28, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Parking Minima for Mixed-Use Projects and Manufacturing Districts

### RECOMMENDATION

Refer to the City Manager and Planning Commission to develop amendments to Berkeley Municipal Code Chapter 23 Section 322 and return an Ordinance to Council with such amendments to include the following:

- In BMC 23.322.030(B)(1), Table 23.322-2:
  - remove “(residential use only)” from Mixed-Use Residential category;
  - reduce “Live/Work” off-street parking requirements to, at most, 1 space per unit;
  - reduce “Manufacturing” off-street parking requirements to, at most, 1 space per 1,500 gross square feet;
  - reduce off-street parking requirements for “All non-residential uses except uses listed below” to, at most, 1 space per 1,000 square feet.
- In BMC 23.322.020(C)(2)(i): reduce district minimum parking requirements to 1 space per 1,000 square feet at most in Manufacturing Districts.

### FINANCIAL IMPLICATIONS

Staff time.

### CURRENT SITUATION AND ITS EFFECTS

Reducing minimum parking requirements is a Strategic Plan Priority Project, advancing our goals to create affordable housing and housing support service for our most vulnerable community members, and to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

On March 19, 2021, a parking reform ordinance (Ordinance 7,751-N.S.) became effective after being adopted by the City Council, eliminating minimum residential parking requirements across all zoning districts (except in the ES-R district, and except in the Hillside Overlay district on roads less than 26 feet in width) and requiring Transportation Demand Management (TDM) measures for projects with ten or more

units. However, this policy change only applied to residential uses, and to the residential portions of mixed-use projects.

Several mixed-use projects have been permitted in Berkeley with off-street parking spaces required for non-residential uses that could have otherwise provided more housing near transit. For example, 1717 University Ave. (Use Permit #2016-0101) has 28 dwelling units (including 4 Below Market-Rate) and 14 parking spaces. Four of those spaces on the ground floor could have been additional housing units.

## BACKGROUND

Minimum parking requirements have been shown to increase the cost of housing by discouraging the construction of smaller, lower-cost units that can be offered at lower prices<sup>1</sup> and reducing the overall supply of housing.<sup>2</sup> Cities that have removed minimum parking requirements for non-residential uses have also seen improved outcomes. In Arkansas, the City of Fayetteville removed commercial parking requirements entirely in 2015, and as a result, saw many long-term vacant commercial buildings revived with new businesses<sup>3</sup> and rising wages.<sup>4</sup> In New York, the City of Buffalo removed parking minimums citywide in 2017. Following this change, researchers found that “47% of major developments included fewer parking spaces than previously permissible, suggesting earlier minimum parking requirements may have been excessive.” In particular, mixed-use projects provided 53% fewer parking spaces.<sup>5</sup>

While originally adopted in 1993 as Resolution No. 57,301-N.S., the West Berkeley Plan anticipated increased parking demand resulting from development in West Berkeley, including in Manufacturing Zones. These were addressed in Section 4 of the Environmental Impact Report for Transportation impacts, including a Transportation Demand Management (TDM) program, increased transit service, and employer-provided shuttle service.<sup>6</sup> However, the EIR’s measure of transportation impact was “Level of Service,” a now-outdated metric for automobile convenience that has been replaced by Vehicle Miles Traveled (VMT) or the aggregate demand for automobile travel, pursuant to Senate Bill 743 (2013).<sup>7</sup>

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<sup>1</sup> Lehe, L. (2018). Minimum parking requirements and housing affordability. *Journal of Transport and Land Use*, 11(1), 1309-1321.

<sup>2</sup> Gabbe, C. J., Pierce, G., & Clowers, G. (2020). Parking policy: The effects of residential minimum parking requirements in Seattle. *Land Use Policy*, 91, 104053.

<sup>3</sup> Gould, C. (2022). No Minimum Parking Requirements? No Problem For Fayetteville, Arkansas. *Sightline Institute*. Retrieved from <https://www.sightline.org/2022/02/22/no-minimum-parking-requirements-no-problem-for-fayetteville-arkansas/>

<sup>4</sup> Jebaraj, M., & Sorto, D. (2021). Northwest Arkansas State of the Region Report 2021. State of the Northwest Arkansas Region Report. Retrieved from <https://scholarworks.uark.edu/nwregion/12>

<sup>5</sup> Hess, D. B., & Rehler, J. (2021). Minus Minimums: Development Response to the Removal of Minimum Parking Requirements in Buffalo (NY). *Journal of the American Planning Association*, 87(3), 396-408.

<sup>6</sup> [https://berkeleyca.gov/sites/default/files/2022-03/12\\_14\\_1993%3B%20CLK%20-%20Resolution%3B%20City%20Council%3B%2057301%3B%20West%20Berkeley%20Area%20Plan%3B.pdf](https://berkeleyca.gov/sites/default/files/2022-03/12_14_1993%3B%20CLK%20-%20Resolution%3B%20City%20Council%3B%2057301%3B%20West%20Berkeley%20Area%20Plan%3B.pdf)

<sup>7</sup> <https://mtc.ca.gov/planning/transportation/driving-congestion-environment/sb-743-los-vmt-transition>



ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Data from Seattle<sup>8</sup> and Buffalo<sup>9</sup> suggests that developers provide more parking than needed when required to do so, but will otherwise provide a lower, though often non-zero amount of parking spaces. Minimum parking requirements thus effectively subsidize automobile travel at the expense of other land uses by reserving more land for automobile storage. Research has found that a greater supply of free or underpriced parking increases Vehicle Miles Traveled (VMT) per capita and increases emissions from the transportation sector by reducing parking availability and increasing time spent searching for parking.<sup>10</sup> Transportation comprised 59% of the City of Berkeley's greenhouse gas emissions in 2018.

However, because of Berkeley's lower average per capita emissions relative to the region and the state at large, Wheeler et al (2018) concluded that cities like Berkeley have the most potential to reduce carbon emissions through local policy by enabling more urban infill housing. Even in wealthier neighborhoods with higher than average carbon footprints per capita, the authors observed that cities in the urban core still "have lower than average carbon footprints for their income level," and thus: "Low carbon footprint cities that make housing available at all income levels help share the burden of meeting housing demand, while lessening the impact on the climate across the population."<sup>11</sup>

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

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<sup>8</sup> See footnote 2.

<sup>9</sup> See footnote 5.

<sup>10</sup> Shoup, D. C. (2006). Cruising for parking. *Transport policy*, 13(6), 479-486.

<sup>11</sup> Wheeler, S. M., Jones, C. M., & Kammen, D. M. (2018). Carbon footprint planning: quantifying local and state mitigation opportunities for 700 California cities. *Urban Planning*, 3(2), 35-51.





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

02a.36

CONSENT CALENDAR  
 June 28, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Terry Taplin (Co-Sponsor), and Mayor Jesse Arreguín (Co-Sponsor)

Subject: Referral: Keep Innovation in Berkeley

RECOMMENDATION

Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore:

1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C) and Downtown Berkeley (C-DMU) with a **Zoning Certificate/AUP**.
2. Updating the “District Purpose” sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.
3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.
4. Reviewing and considering repeal of Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D.
5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.

RECOMMENDED POLICY COMMITTEE TRACK

Land Use, Housing & Economic Development Policy Committee.

BACKGROUND

The City of Berkeley has over 400 “innovation sector” businesses in tech, biotech, R&D, and other STEM industries. The 2021 Berkeley Economic Dashboard (published in Q1 2022) reported robust growth opportunities in this sector, with 10 Berkeley-based companies receiving a total of nearly \$9 million in federal and state grants for R&D.<sup>1</sup>

<sup>1</sup> <https://berkeleyca.gov/sites/default/files/2022-04/2022-03-22%20Item%2038%20Economic%20Dashboards%20Update.pdf>

35% of Berkeley's innovation companies develop software, 31% develop biotechnology and healthcare technologies, and 13% develop clean technologies to support environmental sustainability and address climate change. Nearly 87% of these innovation companies are relatively early stage and take advantage of the city's coworking spaces, accelerators, and incubators.

It is critical for the City to continue efforts to encourage the growth of R&D in Berkeley. In addition to providing jobs and fueling economic development locally, innovation companies make a global impact across sectors, including in the healthcare field and the fight against climate change. Berkeley benefits from the presence of the University of California, Berkeley and the Lawrence Berkeley National Laboratory (LBNL), whose affiliates go on to found startups supported by the Berkeley Startup Cluster and accelerators or incubators like Berkeley SkyDeck or Bakar Labs.<sup>2</sup> There is a clear demand for R&D space from companies who have grown out of UC Berkeley and are seeking to build their enterprise in Berkeley, close to the talent, facilities, and entrepreneur support programs on campus. If the City's zoning regulations do not provide sufficient opportunities for emerging growth companies, they have no choice but to leave Berkeley and settle in nearby cities that accommodate them with open arms, such as Oakland, Emeryville, San Leandro, and Alameda.

On March 22, 2022, Council adopted the first reading of a Zoning Ordinance amendment that modified the land use definition of Research and Development (R&D) in Berkeley Municipal Code 23.502.020.R.8.<sup>3</sup> This amendment came to Council as a referral response to a March 20, 2020 referral from Mayor Arreguin and Councilmember Wengraf.

The original definition read:

*Research and Development.* An establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities: industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.

The updated definition reads:

*Research and Development:* An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping, or testing. This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.

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<sup>2</sup> <https://berkeleystartupcluster.com/>

<sup>3</sup> <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-03-22%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>

The March 2020 referral observed that the R&D definition in the BMC did not adequately reflect present-day R&D business activities. For example, the definition prohibited R&D establishments from including office space and required the inclusion of a laboratory. The referral requested that the new definition reflect evolving business practices and provide flexibility for R&D establishments to occupy spaces that meet their operating needs. Modifying the R&D definition supported the City's Strategic Plan goal of fostering a dynamic, sustainable, and locally-based economy.

Through that process, additional issues have come to light that have the effect of inhibiting innovation in Berkeley, which this referral aims to address.

***Recommendation #1: Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C) and Downtown Berkeley (C-DMU) with a [Zoning Certificate/AUP].***

BMC 23.204.020.A Table 23.204-1<sup>4</sup> and 23.206.020.A Table 23.206-1<sup>5</sup> lay out allowed land uses for each commercial and manufacturing district, respectively. Currently, R&D is permitted in three districts across the city: C-W (with an Administrative Use Permit) and MM and MU-LI (with a Zoning Certificate if under 20,000 sq. ft. and an AUP if over 20,000 sq. ft.).

Notably, the commercial districts in Southside (C-T), the southern portion of Telegraph (C-C), and the Downtown (C-DMU) do not currently allow R&D. R&D spaces close to campus would be extremely valuable to students, alumni, and others affiliated with UC Berkeley and LBNL. By allowing R&D in these districts, the City would make it easier to keep the innovation and talent that flows from the university in Berkeley.

Additional discussion at the Land Use, Housing & Economic Development Policy Committee, consultation with staff, and outreach to stakeholders should determine whether a Zoning Certificate or AUP is most appropriate. Startups have expressed that the City's permitting process remains a challenge, particularly if the Zoning Ordinance requires an AUP. This process can take months or even years, which is problematic for R&D companies whose runway for finding a suitable space to develop proof of concept is limited by the funding they have available from early-stage investors. The timelines associated with an AUP provide founders no concrete assurance and can jeopardize operations during the most critical time for startups.

However, noise disruption and biohazard safety are of particular concern when permitting new uses in C-T, C-C, and C-DMU due to their mixed-use residential buildings and proximity to residential districts. It is important that the committee, staff, and the Planning Commission consider strategies for mitigating any impacts of R&D on

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<sup>4</sup> <https://berkeley.municipal.codes/BMC/23.204.020>

<sup>5</sup> <https://berkeley.municipal.codes/BMC/23.206.020>

Telegraph and Downtown Berkeley, including required permits and the potential use of performance standards. Performance standards, which lay out metrics and regulations that the applicant must agree to before being issued a Zoning Certificate, may be an important tool to ensure conformance to the neighborhood without imposing lengthy permit approval timelines.

***Recommendation #2:*** *Updating the “District Purpose” sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.*

The “District Purpose” sections of the Zoning Ordinance determine the purpose of each zoning district, detailing what uses are allowed, welcomed, and explicitly stated to further the City’s goals. R&D applicants need to feel confident that they will have a place in the district if they choose to locate there. In MM and MU-LI, where R&D is currently permitted, the Purpose sections do not mention R&D despite calling out the importance and belonging of similar industries, including manufacturing, industrial use, and laboratories.

Staff and the Commission should consider amending BMC 23.206.070.A and 23.206.080.A with the following language:

**23.206.070 MM Mixed Manufacturing District.**

- A. District Purpose. The purpose of the Mixed Manufacturing (MM) district is to:
1. Implement the West Berkeley Plan MM designation;
  2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
  3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses including research and development, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
  4. Encourage the creation and continuation of well paid (often unionized) jobs for men and women without advanced degrees;
  5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry and other research and development uses;
  6. Allow reuse of upper story industrial space as offices to facilitate use of upper story space;
  7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers; and
  8. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment.

**23.206.080 MU-LI Mixed Use-Light Industrial District.**

A. District Purpose. The purpose of the Mixed Use-Light Industrial (MU-LI) district is to:

1. Implement the West Berkeley Plan Light Manufacturing District designation;
2. Encourage development of a mixed use-light industrial area for a range of compatible uses;
3. Encourage development of an area where light manufacturers can operate free from the economic, physical and social constraints caused by incompatible uses;
4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;
5. Provide for the continued availability of manufacturing and industrial buildings for manufacturing uses, especially of larger spaces needed by medium sized and larger light manufacturers;
6. Provide opportunities for office development when it will not unduly interfere with light manufacturing uses and/or the light manufacturing building stock;
7. Provide the opportunity for laboratory development the development of research and development facilities in appropriate locations;
8. Support the development of businesses which contribute to the maintenance and improvement of the environment;
9. Allow on-site ancillary retail as a tool to maintain and enhance the economic viability of manufacturers in the district; and
10. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of light industrial uses.

***Recommendation #3: Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.***

BMC 23.322.030 details the minimum off-street parking spaces required for each use. Currently, in M-prefixed districts, R&D is not explicitly named in Table 23.322-4, meaning that it is parked under “All non-residential uses except uses listed below” at 2 spaces per 1,000 sq. ft. In contrast, laboratories are parked as 1 space per 650 sq. ft., despite R&D spaces typically accommodating a similar number of people per square foot as laboratories. This disadvantages R&D by requiring them to provide more parking than their laboratory counterparts, which is expensive and creates incentives for employees to drive to work that run counter to the City’s Climate Action Plan goals. For the purposes of consistency, R&D parking requirements should be amended to align with Laboratory parking requirements.

In C-T, off-street parking is not required, so no amendments are needed. In C-prefixed districts excluding C-T, R&D is also not listed in Table 23.322-2. It may be unclear to

applicants whether R&D falls under Manufacturing (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU, 1 per 1,000 sq. ft. in C-W, and 2 per 1,000 sq. ft. in all other C-prefixed districts), or under “All non-residential uses except uses listed below,” (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU and 2 per 1,000 in all other C-prefixed districts). This can create confusion for R&D companies looking to locate in C-W. Adding an R&D section here to align parking requirements with Manufacturing would improve clarity and consistency.

Staff and the Commission should consider the following additions to BMC 23.322.030 Table 23.322-2 and Table 23.322-4:

**Table 23.322-2. REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)**

Land Use	Required Parking Spaces
<b>Residential Uses</b>	
Accessory Dwelling Unit	See Chapter <u>23.306</u>
Dwellings, including Group Living Accommodations	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit All Other Locations: None required
Hotel, Residential	None required
Mixed-Use Residential (residential use only)	None required
Senior Congregate Housing	None required
<b>Non-Residential Uses</b>	
All non-residential uses except uses listed below	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Hospital	1 per each 4 beds plus 1 per each 3 employees
Library	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 300 sq. ft.
Hotels, Tourist	C-DMU District: 1 per 3 guest/sleeping rooms or suites



	C-C, C-U, C-W Districts: 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees All Other Commercial Districts: 2 per 1,000 sq. ft.
Motels, Tourist	C-DMU District: 1 per 3 guest/sleeping rooms or suites C-C, C-U, C-W Districts: 1 per guest/sleeping room plus 1 for owner or manager [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
Large Vehicle Sales and Rental	C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Small Vehicle Sales and Service	C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Manufacturing	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
<u>Research and Development</u>	<u>C-DMU District: 1.5 per 1,000 sq. ft.</u> <u>C-W District: 1 per 1,000 sq. ft [1]</u> <u>All Other Commercial Districts: 2 per 1,000 sq. ft.</u>
Wholesale Trade	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft All Other Commercial Districts: 2 per 1,000 sq. ft.
Live/Work	If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area

**Notes:**

[1] Spaces must be on the same lot as building it serves.

**Table 23.322-4. REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS**

Land Use	Required Parking Spaces
<b>Residential Uses</b>	
Accessory Dwelling Unit	See Chapter <u>23.306</u>
Dwellings	None required

Group Living Accommodation	None required
<b>Non-Residential Uses</b>	
All non-residential uses except uses listed below	2 per 1,000 sq. ft.
Art/Craft Studio	1 per 1,000 sq. ft.
Community Care Facility	1 per 2 non-resident employees
Food Service Establishment	1 per 300 sq. ft.
Library	1 per 500 sq. ft. of publicly accessible floor area
Laboratories	1 per 650 sq. ft.
<u>Research and Development</u>	<u>1 per 650 sq. ft.</u>
Nursing Home	1 per 5 residents, plus 1 per 3 employees
Medical Practitioners	One per 300 sq. ft.
Large Vehicle Sales and Rental	MU-LI District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay
Manufacturing	MU-R District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Storage, warehousing, and wholesale trade	1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Live/Work	MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area

**Notes:**

**[1]** For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.

**Recommendation #4:** *Reviewing and considering repeal of Berkeley Municipal Code 23.206.080 to ensure that language related to Biosafety Level (BSL) Classes 1-4 is clear and consistent with requirements in neighboring jurisdictions and other cities that support a broad range of R&D.*

BSL lab levels, ranging from BSL-1 to BSL-4, are set by the Centers for Disease Control and Prevention to protect laboratory personnel and the surrounding community. The primary risks that determine levels of containment are infectivity, severity of disease, transmissibility, and the nature of the work conducted.<sup>6</sup>

**Chart of Biosafety Levels<sup>7</sup>**

Biosafety Level	BSL-1	BSL-2	BSL-3	BSL-4
Description	<ul style="list-style-type: none"> <li>No Containment</li> <li>Defined organisms</li> <li>Unlikely to cause disease</li> </ul>	<ul style="list-style-type: none"> <li>Containment</li> <li>Moderate Risk</li> <li>Disease of varying severity</li> </ul>	<ul style="list-style-type: none"> <li>High Containment</li> <li>Aerosol Transmission</li> <li>Serious/Potentially lethal disease</li> </ul>	<ul style="list-style-type: none"> <li>Max Containment</li> <li>"Exotic," High-Risk Agents</li> <li>Life-threatening disease</li> </ul>
Sample Organisms	E.Coli	Influenza, HIV, Lyme Disease	Tuberculosis	Ebola Virus
Pathogen Type	Agents that present minimal potential hazard to personnel & the environment.	Agents associated with human disease & pose moderate hazards to personnel & the environment.	Indigenous or exotic agents, agents that present a potential for aerosol transmission, & agents causing serious or potentially lethal disease.	Dangerous & exotic agents that pose a high risk of aerosol-transmitted laboratory infections & life-threatening disease.
Autoclave Requirements	None	None	Pass-thru autoclave with Bioseal required in laboratory room.	Pass-thru autoclave with Bioseal required in laboratory room.

BMC 23.206.080.B.5<sup>8</sup> reads:

*Commercial Physical or Biological Laboratories.* Commercial physical or biological laboratories using Class 3 organisms are not permitted in the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.

<sup>6</sup> <https://www.cdc.gov/training/quicklearns/biosafety/>

<sup>7</sup> <https://consteril.com/biosafety-levels-difference/>

<sup>8</sup> <https://berkeley.municipal.codes/BMC/23.206.080>

This section is the only place in the BMC where organism classes, presumably referring to BSL, are mentioned other than in the defined terms. Staff and the Commission should conduct a review of nearby jurisdictions, including Oakland, San Francisco, South San Francisco, Emeryville, Alameda, San Leandro, and Fremont, as well as other cities across the country that support a broad range of R&D, such as Cambridge, MA. This research should provide insight into best practices for BSL zoning regulations that keep the surrounding neighborhood safe while allowing biological labs where they make sense, with federally-required protocols and locally-required performance standards or other conditions in place.

Staff and the Commission should return to Council with amendments to this BMC section and other relevant sections that provide clarity for potential applicants, ensure that Biosafety Levels are clearly stated and defined in accordance with the most recent CDC guidelines, and bring the City of Berkeley in alignment with other jurisdictions.

***Recommendation #5:*** *Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.*

The City Manager and/or Planning Commission may choose to return to Council with additional recommendations that would serve to encourage R&D in Berkeley, in addition to the ones suggested in this item.

#### FINANCIAL IMPLICATIONS

Staff time.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable negative environmental impacts associated with this action.

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Angie Chen, Legislative Assistant



02a.41

Human Welfare and Community  
Action Commission

INFORMATION CALENDAR  
June 28, 2022

To: Honorable Mayor and Members of the City Council  
From: Human Welfare and Community Action Commission (HWCAC)  
Submitted by: Praveen Sood, Chairperson, Human Welfare and Community Action  
Commission  
Subject: HWCAC 2018-2023 Work Plan

INTRODUCTION

At its April 27, 2022 regular meeting, the HWCAC adopted its 2018-2023 Work Plan (Attachment 1).

CURRENT SITUATION AND ITS EFFECTS

At its April 27, 2022 regular meeting, the HWCAC adopted its 2018-2023 Work Plan (M/S/C: Sood/Omodele. Vote: Ayes –Bookstein, Lippman, Omodele, Sood, Sim; Noes – None; Abstain – Behm-Steinberg; Absent – None).

BACKGROUND

In 2016, Council adopted direction to Commissions to submit a work plan annually.

The City of Berkeley is a Community Action Agency (BCAA) and receives Community Services Block Grant funds (CSBG) to support anti-poverty programs. CSBG funds are part of the federal Department of Health and Human Services budget and are passed through the State of California's Community Services and Development Department to local CAAs. The HWCAC acts as the Board of the BCAA and is required to have a strategic plan.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental sustainability or climate impacts associated with the adoption of this work plan.

POSSIBLE FUTURE ACTION

The HWCAC will review the work plan annually and revise the plan as appropriate.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no fiscal impacts in accepting this work plan.

CONTACT PERSON

Mary-Claire Katz, Associate Management Analyst, HHCS, 981-5414

Attachments:

1: HWCAC 2018-2023 Strategic Plan



Human Welfare and  
Community Action Commission

## 2018-2023 STRATEGIC PLAN

### **Vision**

Eradicate persistent poverty in the city of Berkeley by offering residents the services they require for a decent life while offering a path to economic stability.

### **Mission**

Provide city council with recommendations to support a fully integrated system of community services and policies that provide low income residents of Berkeley, with the following: (A) Responsive, caring, and effective community services that provide basic human needs, including, but not limited to, the core services; (B) Opportunities for employment that provide a living wage and offer future growth; (C) Opportunities to continuously build an asset and skills base that can lead to greater economic stability.

### **Core Services to be provided by City and/or Agencies**

1. Access to nutritious food/Food Security
2. Housing/Housing stability
3. Healthcare (Including Mental health services)
4. Childcare
5. Transportation
6. Services for the Disabled
7. Computer and Internet Access
8. Legal Services
9. Skills Training
10. Job/Opportunity Development
11. Banking Services
12. Money Management

### **Target Populations**

1. General Funds: Low income (up to 60% of AMI.) households that own or rent within the City of Berkeley.
2. CSBG Funds: Households that reside within the City of Berkeley whose household income is 125% or less of the poverty level.

### **Objectives**

1. Increase engagement with community to understand needs
2. Increase the number of low-income commissioners serving on the HWCAC.
3. Create partnerships with other commissions and city agencies to find ways to increase services and leverage resources
4. Support city staff and agencies with the following objectives:
  - a. Show an improvement in living conditions of target population through the following:
    1. Increase in people with access to regular meals
    2. Increase in people with access to healthcare
    3. Increase in people with stable housing
    4. Increase in median household income
    5. Increase In long term employment rates
    6. Increase in median savings or net worth
    7. Increase in education levels attained
  - b. Reduce the number of households in target population
  - c. Maintain a high client approval rate on agency and city services

### **Strategies**

1. Establish baseline metrics and mechanisms for gathering those metrics on a regular basis
2. Use feedback and data to determine Core Service priorities before each funding cycle
3. Collaborate with other commissions on policy and recommendations when possible and appropriate
4. Monitor all council activities that may affect target populations and determine a response
5. Develop agency events or other programs that enhance collaboration and knowledge sharing



6. Keep strategic plan up to date

### **Action Plan**

1. Develop feedback mechanisms from community, agencies, and city staff on services currently provided and needed
  - a. Develop a questionnaire aimed at gathering information on services needed and provided
  - b. Carry out “listening booth” meetings at locations that can yield good information and/or carry out a semiannual community meeting to discuss needs
  - c. Bring in community experts to discuss and educate commissioners on agenda topics as required
  - d. Carry out regular meetings with agencies and city teams providing services regarding quality services
  - e. Work with staff to implement a survey form for agency clients to complete and submit
2. Commissioner Engagement
  - a. Find ways to recruit more low-income members of the community into the commission
  - b. Strive to keep agenda focused and relevant
  - c. Keep all commissioners engaged and participating by encouraging them to take on tasks and to bring forward recommendations
  - d. Establish call-in meeting procedures
3. Metrics
  - a. Determine number of households that currently are in the target populations
  - b. Develop additional metrics per objectives
4. Stay informed on Council activities
  - a. Appoint commissioners on a monthly rotating basis to examine council agenda and come back to group with relevant items
  - b. Add relevant items to meeting agenda to help ensure that they get discussed
  - c. Formally determine a no action/action (communication or recommendation) from commission on agenda items

5. Agency Reviews

- a. Look at implementing an annual meeting with agencies to discuss their programs and best practices
- b. Review existing agency reports and provide staff with ideas on ways that could help provide additional information
- c. Review all agency reports annually and work with city staff to carry out site visits at least once every funding cycle
- d. Look for alternative sources of funding to help support agencies and staff

6. Carry out an annual planning meeting in October each year to discuss the following items

- a. Review of accomplishments for current year
- b. Discuss commission priorities for the coming year
- c. Review community services to ensure that community needs are being met
- d. Review any recommendations for changes to commission bylaws
- e. Discuss any updates to work/strategic plan

7. Working with other commissions

- a. Establish liaisons for other commissions
- b. Find ways to bring other commissions into council recommendations when possible and appropriate
- c. Share information with other commissions as needed



Landmarks Preservation Commission

02a.42

INFORMATION CALENDAR

June 28, 2022

To: Honorable Mayor and Members of the City Council

From: Landmarks Preservation Commission (LPC)

Submitted by: Charles Enchill, LPC Chairperson

Subject: Annual Report on LPC Actions

INTRODUCTION

LPC has prepared a report on its activities during the period June 2021 through May 2022; see Attachment 1, "Annual Report on Landmarks Preservation Commission Actions." Reports on the Commission's activities are required on an annual basis, in accordance with Berkeley Municipal Code Chapter 3.24.090 - *Annual Report Required*.

CURRENT SITUATION AND ITS EFFECTS

On May 5, 2022, the Commission voted to adopt the attached report and to forward it to City Council. Vote: 6-0-1-1 (one vacancy); Yes: Adams, Crandall, Enchill, Leuschner, Schwartz, Twu; No: none; Abstain: Finacom; Absent: Montgomery.

BACKGROUND

Staff prepared a draft report summarizing LPC's action and then presented it for the Commission's consideration at its meeting on May 5, 2022. The Commission received the report favorably and voted to adopt it and to forward it to City Council in accordance with the BMC requirement.

The Commission held a total of 12 meetings during this reporting period, all occurred via video conferencing in compliance with City's measures to socially distance in order to curtail the spread of the COVID-19 virus. Commissioners have adapted to the remote meeting format and many have expressed a desire to continue for the foreseeable future.

Among numerous accomplishments, the Commission:

- Designated four properties as City Landmarks.
- Granted six Structural Alteration Permits for existing properties on the City's register of historic properties.
- Considered 11 demolition referrals from the Zoning Adjustments Board.
- Identified a need for a City-wide Historic Context Statement and prepared a budget request to City Council for the 2022/23 budget cycle.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Historic preservation practices encourage the adaptive re-use and rehabilitation of cultural resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The LPC will continue to submit an annual report on its activities in accordance with the BMC requirement.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no fiscal impacts associated with this reporting activity.

CONTACT PERSON

Fatema Crane, LPC Secretary, 510-981-7413

Attachments:

1: Annual Report of Landmarks Preservation Commission (LPC) Activities



L A N D M A R K S  
P R E S E R V A T I O N  
C O M M I S S I O N

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R E P O R T T O C I T Y C O U N C I L

**Annual Report on  
Landmarks Preservation Commission (LPC)  
Actions**

Reporting Period: June 2021 through May 2022  
Due Date: June 30, 2022

Presented to City Council  
By the LPC Secretary  
On behalf of the LPC Chairperson and the Commission  
In accordance with Berkeley Municipal Code Section 3.24.090

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**Part 1: Introduction**

In accordance with Berkeley Municipal Code Section 3.24.090, the LPC shall report its actions to City Council on an annual basis. The report must arrive not later than June 30 of each year.

Herein City Council will find summaries of all LPC activities for the current reporting period. The summary lists are arranged in categories reflecting LPC’s compulsory duties, such as public meetings and quasi-judicial reviews, as well as other efforts that further cultural resource preservation in Berkeley.

**Part 2: LPC Meetings Held – via video conferencing only**

Meeting Body	Date
Landmarks Preservation Commission (LPC)	June 3, 2021
	July 1, 2021
	August 5, 2021
	September 2, 2021
	October 7, 2021
	November 4, 2021
	December 2, 2021
	January 6, 2022
	February 3, 2022
	March 3, 2022
	April 7, 2022
	May 5, 2022
LPC Ad Hoc Subcommittee: Acheson Commons Development Project Structural Alteration Permit	April 6-9, 2021
	June 7-14, 2021
	September 15-21, 2021
	March 11-17, 2002

June 30, 2022

**Part 3: LPC Regulatory Actions**

Activity	Property Address	Application Number	Action Date
Landmark & Structure of Merit Designations BMC Section 3.24.150	1325 Arch Street	#LMIN2020-0008	August 5, 2021
	2212 Fifth Street (denied)	#LMIN2021-0001	October 7, 2021
	2523 Piedmont Avenue	#LMIN2021-0002	February 3, 2022
	1940 Hearst Avenue	#LMIN2021-0003	March 3, 2022
	2113 Kittredge Street	#LMIN2022-0001	May 5, 2022
Structural Alteration Permits BMC Section 3.24.240	1120 Second Street	#LMSA2021-0001	August 5, 2021
	1960 University Avenue	#LMSA2021-0003	October 7, 2021
	1325 Arch Street	#LMSAP2021-0003	January 6, 2022
	2328 Channing Way	#LMSAP2021-0002	February 3, 2022
	2580 Bancroft Way	#LMSAP2022-0003	April 7, 2022
	8 Greenwood Common	#LMSAP2022-0002	May 5, 2022
Use Permit Demolition Referrals BMC 23C.08.050	2942 College Avenue	#ZP2021-0072	July 1, 2021
	2213 Fourth Street	#ZP2021-0043	July 1, 2021
	2221 Fourth Street		
	2216 Fifth Street		
	1710 University Avenue	#ZP2021-0127	December 2, 2021
	130 Berkeley Square	#ZP2021-0158	February 3, 2022
	134 Berkeley Square		
	701, 703, 705, & 705A Bancroft Way	#ZP2021-0096	March 3, 2022
	747 Bancroft Way		
	2440 Shattuck Avenue	#ZP2021-0201	April 7, 2022
2439 Durant Avenue	#ZP2021-0192	May 5, 2022	
Design Review Referrals BMC 23E.12.020.B	2345 Channing Way	#DRSL2021-0012	November 4, 2021
Mill Act Contract Applications City Council Resolution 59,355	None		
Section 106 Referrals National Preservation Act	None		

**Part 4: LPC Agenda Discussions Held**

Topic	Discussion	Outcome	Date(s)
Draft Plaque Content for City Landmark Fred Turner Building at 2580 Bancroft Way	Commented on draft plaque content.	Approved the content, and assigned inspection of the plaque installation to the Subcommittee for Acheson Commons.	July 1, 2021
National Register of Historic Places Nomination for City Landmark Peoples Park at 2526 Haste Street	Reviewed the nomination materials and considered providing comments to the State Historic Resources Commission (SHRC) as Certified Local Government.	Commissioners did not reach a consensus on this topic; no comments were provided to the SHRC.	October 7, 2021
City-wide Historic Resources Survey	Discussed strategies to initiate a survey effort, to define a scope, and to identify potential funding sources.	Authored a Budget Referral to City Council.	November 4, 2021
			December 2, 2021
			January 6, 2022
			February 3, 2022
			March 3, 2022

**Part 5: LPC Agenda Presentations Received**

Topic	Presenter	Date
Housing Element Update	Land Use Planning staff presented information on the upcoming Housing Element Update.	September 2, 2021
City Landmark School for the Deaf & Blind/Clark Kerr Campus at 2601 Warring Street	UC Campus Architect presented information about pending development and seismic improvement project.	November 4, 2021
Draft EIR for North Berkeley & Ashby BART Station Re-Zoning	Land Use Planning staff presented information about the cultural resources components of the Draft EIR.	November 4, 2021





Zero Waste Commission

02a.43

INFORMATION CALENDAR

June 28, 2022

To: Honorable Mayor and Members of the City Council  
From: Zero Waste Commission  
Submitted by: Christienne de Tournay, Chairperson, Zero Waste Commission  
Subject: Zero Waste Commission Fiscal Year 2022-23 Work Plan

INTRODUCTION

The Zero Waste Commission (ZWC) is responsible for making recommendations on City solid waste policy and goals, including commercial and residential garbage, and recycling services, budgets, and other decisions relating to solid waste in the City of Berkeley. The ZWC adopted the FY 2022-23 Work Plan on May 23, 2022.

M/S/C: de Tournay/Curtis; Ayes: de Tournay, Sherman; Nelson, Curtis; Abstain: None; Absent: Doughty; Stein.

CURRENT SITUATION AND ITS EFFECTS

Over the last two years, the City of Berkeley, along with the rest of the world, has made its best efforts to survive during Covid-19, and operations/staff have been running as usual following the initial lock-down period. The City of Berkeley is enacting important changes and improvements to its Zero Waste services and long-term plans, including:

- Continuing the process to design the replacement of the Solid Waste & Recycling Transfer Station (SW&RTS), which is currently going through the CEQA process,
- Adapting to changes in the recycling export markets,
- Implementing the Single Use Foodware and Litter Reduction Ordinance,
- Implementing new state legislation SB 1383 to reduce landfilled organics, and
- Expanding collection services for hard-to-recycle materials.

ZWC is supporting the development of a Zero Waste Division Strategic Plan, and the SW&RTS replacement, as well as evaluate new proposed legislation or programs targeting some of the larger remaining components of avoidable waste.

These projects advance the City's Strategic Plan goals to:

1. Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities
2. Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment

The following goals have been identified for the upcoming year:

Goal	Resources	Program activities	Outputs	Outcomes
Transfer Station Replacement	Feasibility Study (completed Nov. 2019) First Carbon Solutions retained for CEQA	Consultant presentation to Commission TBD	None	N/A
Zero Waste Strategic Plan	RFP was issued for consultant in Q2 2022	Consultant presentation at ZWC TBD	Commission recommendations to City Council	Ongoing Commission Feedback
Food Recovery and Organics Diversion SB1383	City Staff	Continue staff updates	Provide recommendations as needed to Council and other stakeholders	Help achieve state SB1383 requirements
Single-Use Foodware & Litter Reduction Ordinance	City Staff, Ecology Center, UC Berkeley/Cal Zero Waste	Follow implementation of Single-Use Foodware Ordinance, review through lens of Covid-19 repercussions	Provide recommendations as needed to Council and other stakeholders	Provide feedback to Council on Ordinance Implementation
Reduce Landfilling of Construction Debris	Deconstruction Subcommittee, Bay area Deconstruction group, Urban Ore	Work with builders, material resellers, CEAC, Community Health, Landmarks, Disaster/Fire Safety and Planning to increase reuse of old growth wood debris	Recommendations for Council	Recommendations for Council by end of year 2022
Clarify/Define/ Revisit what is acceptable for program acceptance/ recycling of all plastics	City Staff, Community Conservation Centers, Ecology Center, StopWaste	Listen to experts, gather information, receive updates from City partners	Recommendation to Council	Economically viable and environmentally responsible collection operation for recyclable plastics (Highest and best use)

**BACKGROUND**

- **Transfer Station Replacement:** Community meetings were held in 2019 for design of replacement input. First Carbon Solutions has been retained to conduct the CEQA certification process for the replacement project.
- **Food Recovery & Organics Diversion SB 1383** requires reduction of organic waste disposal 50% by 2020 and 75% by 2025. Starting in 2022, all CA jurisdictions will need to provide organic waste collection services to all residents and businesses. Berkeley will be required to use products made from this recycled organic material, such as renewable energy, compost, and mulch. Food

service businesses must donate edible food to food recovery organizations. This will help feed the almost 1 in 4 Californians without enough to eat. California has a 2025 goal to rescue 20% of edible food currently thrown away, and redirect it to those in need.

- Single-Use Foodware & Litter Reduction Ordinance: All of the Foodware Ordinance phases have been enacted. Phase 2, requiring all disposable foodware to be compostable and includes a .25 cent charge for disposable cups, took effect on 1/1/20 (just before the mandated Covid-19 *Shelter in Place order*). Phase 3, mandating reusables for dine-in, began on 7/1/2020. Enforcement of all phases has been relaxed due to the pandemic, but is now increasing with addition of new staff positions.
- Plastics - Feasibility of Recyclability: Due to declining infrastructure/operations and unreliable markets for many grades and compositions of plastics, the City's municipal collection program will require reassessment of which plastics are acceptable in its stream.
- Reduce Landfilling of Construction Debris: Carpet recycling program was established at the Transfer Station in 2019. Due to multi-city operations of the construction industry, Deconstruction Ordinance may be introduced at regional level. Recommendations for Council will likely be proposed by end of year 2022.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Potential to reduce quantity of material sent to landfill and reduce consumption of new materials.

#### POSSIBLE FUTURE ACTION

Future Action Items that ZWC may send to City Council include:

- Resolution to support a Regional Deconstruction Ordinance
- Resolution to support a Citywide Reusable Food Container program
- Resolution to support an expanded coordinated effort with UCB during Cal moveout months
- Public information available for transparency in materials being recycled based on markets and destinations.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Reusable Food Container program and City/UCB collection efforts require funding.

#### CONTACT PERSON

Heidi Obermeit, Recycling Program Manager, Public Works, (510) 981-6357



Upcoming Worksessions and Special Meetings <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
June 21	1. Ballot Measure Development/Discussion
July 19	1. Fire Facilities Study Report

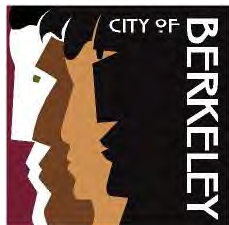
*There are no Worksessions scheduled for Fall 2022 due to limited meeting dates and cultural/religious holidays.*

Unscheduled Workshops
<ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> <li>2. Alameda County LAFCO Presentation</li> </ol>

Unscheduled Presentations (City Manager)
<ol style="list-style-type: none"> <li>1. Civic Arts Grantmaking Process &amp; Capital Grant Program</li> </ol>

	<b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>
1.	<p><b>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers</b> <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p><b>From: City Manager</b></p> <p><b>Recommendation:</b> Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.</p> <p><b>Financial Implications:</b> None</p> <p>Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000</p> <p><b>Note:</b> <i>Referred to Agenda &amp; Rules for future scheduling.</i></p>

<b>CITY CLERK DEPARTMENT</b>			
<b>WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL</b>			
<b>Address</b>	<b>Board/ Commission</b>	<b>Appeal Period Ends</b>	<b>Public Hearing</b>
<b>NOD – Notices of Decision</b>			
<b>Public Hearings Scheduled</b>			
1201-1205 San Pablo Avenue	ZAB		9/29/2022
<b>Remanded to ZAB or LPC</b>			
1643-47 California St (new basement level and second story)			
Deadline for ZAB action: July 25, 2022			
1205 Peralta Avenue (conversion of an existing garage)			
<b>Notes</b>			



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

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

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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.

<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

<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: *Dee* 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.

Page 2  
October 22, 2020  
Re: Commission Meetings During COVID-19 Emergency

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.

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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

<b>Boards and Commissions</b>	<b>Meetings Held Under COVID-19 Emergency (through 10/11)</b>	<b>Scheduled Meetings in October</b>	<b>Regular Mtg. Date</b>	<b>Secretary</b>	<b>Department</b>
Zoning Adjustments Board	10	1	2nd & 4th Thur.	Shannon Allen	PLD
Police Review Commission	9	1	2nd & 4th Wed.	Katherine Lee	CM
Fair Campaign Practices Commission	8	1	3rd Thur.	Sam Harvey	CA
Design Review Committee	5	1	3rd Thur.	Anne Burns	PLD
Landmarks Preservation Commission	5	1	1st Thur.	Fatema Crane	PLD
Open Government Commission	5	1	3rd Thur.	Sam Harvey	CA
Homeless Services Panel of Experts	4	1	1st Wed	Brittany Carnegie	HHCS
Disaster and Fire Safety Commission	3	1	4th Wed.	Keith May	FES
Parks and Waterfront Commission	3	1	2nd Wed.	Roger Miller	PRW
Planning Commission	3		1st Wed.	Alene Pearson	PLD
Public Works Commission	3	1	1st Thur.	Joe Enke	PW
Civic Arts Commission	2		4th Wed.	Jennifer Lovvorn	OED
Solano Avenue BID Advisory Board	2		Contact Secretary	Eleanor Hollander	OED
Elmwood BID Advisory Board	1		Contact Secretary	Kieron Slaughter	OED
Joint Subcom. on Implementation of State Housing Laws	1		4th Wed.	Alene Pearson	PLD
Mental Health Commission	1		4th Thur.	Jamie Works-Wright	HHCS
Personnel Board	1		1st Mon.	La Tanya Bellow	HR
Transportation Commission	1	1	3rd Thur.	Farid Javandel	PW
Animal Care Commission	0		3rd Wed.	Amelia Funghi	CM
Cannabis Commission	0		1st Thur.		PLD
Children, Youth, and Recreation Commission	0		4th Monday	Stephanie Chu	PRW
Commission on Aging	0		3rd Wed.	Richard Castrillon	HHCS
Commission on Disability	0		1st Wed.	Dominika Bednarska	PW
Commission on Labor	0		3rd Wed., alternate mo	Nathan Dahl	HHCS
Commission on the Status of Women	0		4th Wed.	Shallon Allen	CM
Community Environmental Advisory Commission	0		2nd Thur.	Viviana Garcia	PLD
Community Health Commission	0		4th Thur.	Roberto Terrones	HHCS
Energy Commission	0		4th Wed.	Billi Romain	PLD
Homeless Commission	0		2nd Wed.	Brittany Carnegie	HHCS
Housing Advisory Commission	0		1st Thur.	Mike Uberti	HHCS
Human Welfare & Community Action Commission	0		3rd Wed.	Mary-Claire Katz	HHCS
Loan Administration Board	0		Contact Secretary	Kieron Slaughter	OED
Measure O Bond Oversight Committee	0		3rd Monday	Amy Davidson	HHCS
Peace and Justice Commission	0		1st Mon.	Nina Goldman	CM
Sugar-Sweetened Beverage Product Panel of Experts	0		3rd Thur.	Dechen Tsering	HHCS
Youth Commission	0		2nd Mon.	Ginsi Bryant	PRW
Zero Waste Commission	0		4th Mon.	Heidi Obermeit	PW

## Hybrid Meeting Policies for City Council Meetings Revised May 2022

The policy below covers the conduct of hybrid City Council meetings (in-person and remote participation) held in accordance with the Government Code and any relevant Executive Orders or State declared emergencies. These administrative policies supplement the City Council Rules of Procedure and Order.

City Council policy committees and city boards and commissions will continue to meet in a virtual-only setting until the City Council makes the required findings under state law that in-person meetings may resume.

### I. Vaccination Status

Prior to entry, all in-person attendees at the meeting location must present valid proof of “up-to-date” COVID-19 vaccination or a verified negative test conducted within one day prior for an antigen test or two days prior for a PCR test. An attendee is “up-to-date” with their vaccinations if:

- It has been less than 2 months after receiving the initial dose of their Johnson & Johnson Vaccine.
- It has been less than 5 months after receiving the second dose of their two-dose Pfizer or Moderna initial series.
- The attendee has received a booster.

#### *Pre-entry negative testing*

*Definition: Testing must be conducted within one day for an antigen test and within two days for a PCR test prior to entry into an event. Results of the test must be available prior to entry into the facility or venue. Children under 2 years of age are exempt from the testing requirement, consistent with [CDC guidance](#).*

*Verification: See current [CDPH Updated Testing Guidance](#) and [CDPH Over-the-Counter Testing Guidance](#) for acceptable methods of proof of negative COVID-19 test result and information on Over-the-Counter tests. Note: Self-attestation may not be used to verify negative test result, even when using Over-the-Counter (or at home tests) for entry into Indoor Mega Events.*

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx>

### II. Health Status Precautions

If a person who desires to attend the meeting in-person is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing,

fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, they will be advised to attend the meeting remotely.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they are advised to attend the meeting remotely.

Close contact is defined as being within approximately 6 feet for greater than 15 minutes over 24 hours within 2 days before symptoms appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment).

A voluntary sign in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

### **III. Face Coverings/Mask**

Face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of the City Council, city staff, and the public are required to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium.

If an attendee at a Council meeting is not wearing a mask, a mask will be offered to them to use. If the attendee refuses to wear a mask, a recess will be called in order to provide guidance to the attendee on the requirement and their options for attending remotely and in-person.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

### **IV. Physical Distancing**

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Council meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. The relevant capacity limits will be posted at the meeting location. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as “distanced seating” to accommodate persons with a medical status that



requires distancing and for those that choose to distance for personal health reasons.

Conference room capacity is limited to 15 persons.

City staff will present remotely in order to reduce the number of persons in the Boardroom and back conference area.

Distancing is encouraged for the dais and partitions will be used as needed for the seating positions on the dais.

**V. Protocols for Remote Participation by Mayor or Councilmembers**

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for members of the Council participating remotely. For the Mayor and Councilmembers participating remotely, the remote location must be accessible to the public and the public must be able to participate and give public comment from the remote location.

- A Councilmember at a remote location will follow the same policies as the Boardroom with regards to vaccination status and testing requirements, health status precautions, and masking requirements.
- A Councilmember at a remote location may impose reasonable capacity limits at their location.

**VI. Hand Washing/Sanitizing**

There are hand sanitizing stations placed at the entry and strategically throughout the Boardroom. The bathrooms have soap and water for handwashing.

**VII. Air Flow/Circulation/Sanitizing**

Berkeley Unified Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor Volatile Organic Compounds, CO<sub>2</sub>, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

**VIII. Overflow in Gymnasium**

An overflow indoor seating area will be available at the West Campus Gymnasium if staff determines that attendance is likely to exceed the capacity of the Boardroom. The capacity of the gymnasium is 200 persons. The

overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. This area will be monitored by the BUSD security personnel.

**IX. Food Provided for Elected Officials and Designated Staff**

- No buffet dinner provided. Box lunches only. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

**X. In-Meeting Procedures**

**Revised and Supplemental Materials**

All revised and supplemental materials for items on the agenda submitted after 12:00pm (noon) the day prior to the meeting must be submitted to the City Clerk in both paper AND electronic versions.

- Paper: 42 copies delivered to the Boardroom (distributed per normal procedure)
- Electronic: e-mailed to the Agenda Inbox (posted online)

**Communications from the Public**

The public may submit communications in hard copy at the Boardroom or electronically to [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info). To ensure that both in-person and remote Councilmembers receive the communication, the public should submit 10 copies at the Boardroom and send the electronic version to the e-mail listed above.

## Hybrid Meeting Policies for City Council Meetings Revised May 2022

The policy below covers the conduct of hybrid City Council meetings (in-person and remote participation) held in accordance with the Government Code and any relevant Executive Orders or State declared emergencies.

City Council policy committees and city boards and commissions will continue to meet in a virtual-only setting until the City Council makes the required findings under state law that in-person meetings may resume.

### I. Vaccination Status

Prior to entry, all in-person attendees at the meeting location must present valid proof of “up-to-date” COVID-19 vaccination or a verified negative test conducted within one day prior for an antigen test or two days prior for a PCR test. An attendee is “up-to-date” with their vaccinations if:

- It has been less than 2 months after receiving the initial dose of their Johnson & Johnson Vaccine.
- It has been less than 5 months after receiving the second dose of their two-dose Pfizer or Moderna initial series.
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<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx>

### II. Health Status Precautions

If a person who desires to attend the meeting in-person is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing,

fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, they will be advised to attend the meeting remotely.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they will be advised to attend the meeting remotely.

Close contact is defined as being within approximately 6 feet for greater than 15 minutes over 24 hours within 2 days before symptoms appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment).

A voluntary sign in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

### **III. Face Coverings/Mask**

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If an attendee at a Council meeting is not wearing a mask, a mask will be offered to them to use. If the attendee refuses to wear a mask, a recess will be called in order to provide guidance to the attendee on the requirement and their options for attending remotely and in-person.

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**V. Protocols for Remote Participation by Mayor or Councilmembers**

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for members of the Council participating remotely. For the Mayor and Councilmembers participating remotely, the remote location must be accessible to the public and the public must be able to participate and give public comment from the remote location.

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**X. In-Meeting Procedures**

**Revised and Supplemental Materials from Staff and Council**

All revised and supplemental materials for items on the agenda submitted after 12:00pm (noon) the day prior to the meeting must be submitted to the City Clerk in both paper AND electronic versions.

- Paper: 42 copies delivered to the Boardroom (distributed per normal procedure)
- Electronic: e-mailed to the Agenda Inbox (posted online)

**Communications from the Public**

A communication submitted by the public during the City Council meeting may be shared as follows.

- Paper: If requested by the Presiding Officer, the document can be displayed in the Boardroom and screen shared on the Zoom.
- Electronic: If requested by the Presiding Officer, the document can be displayed in the Boardroom and screen shared on the Zoom.



Office of the City Attorney

Date: March 3, 2021  
To: Agenda and Rules Committee  
From: Office of the City Attorney  
Re: Continuing Use of Teleconferencing for Public Meetings

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Assembly Bill 361 amended the Ralph M. Brown act to authorize the City to continue to hold teleconferenced meetings during a Governor-declared state of emergency without complying with a number of requirements ordinarily applicable to teleconferencing. For example, under AB 361, the City may hold teleconferenced meetings without:

1. Posting agendas at all teleconference locations
2. Listing each teleconference location in the notice and agenda for the meeting
3. Allowing the public to access and provide public comment from each teleconference location
4. Requiring a quorum of the body to teleconference from locations within City boundaries

(Cal. Gov. Code § 549539(b)(3) & (e)(1).)

Under AB 361, the City can continue to hold teleconferenced meetings without adhering to the above practices as long as the state of emergency continues and either (1) “state or local officials have imposed or recommended measures to promote social distancing,” or (2) the City determines that “meeting in person would present imminent risks to the health or safety of attendees.” (Cal. Gov. Code § 54953(e)(1).)

Every thirty days, the City must review and determine that either of the above conditions continues to exist. (Cal. Gov. Code § 54953(e)(3).) Since September 28, 2021, the City Council has passed a recurring resolution every thirty days determining that both of the above conditions continue to exist and therefore teleconferencing under AB 361 is warranted. The Council may continue to renew the teleconferencing resolution every thirty days, and thereby continue to hold teleconferenced meetings under the procedures it has used throughout the pandemic, until the state of emergency ends. (See Cal. Gov. Code § 54953(e)(3)(A).)

The state of emergency for COVID-19 has been in effect since it was issued by the Governor on March 4, 2020. There is no clear end date for the state of emergency at this time. As recently as February 17, 2022, the Governor stated that, for now, the state will continue to operate under the state of emergency, but that his goal is “to unwind the state

March 2, 2022

Page 2 Re: Continuing Use of Teleconferencing for Public Meetings

of emergency as soon as possible.”<sup>1</sup> Additionally, per a February 25, 2022 *Los Angeles Times* article, Newsom administration officials have indicated that the state of emergency is necessary for the State’s continued response to the pandemic, including measures such as waiving licensing requirements for healthcare workers and clinics involved in vaccination and testing.<sup>2</sup>

On March 15, 2022, the California State Senate Governmental Organization Committee will consider a resolution (SCR 5) ending the state of emergency.<sup>3</sup> Some reporting suggests that the Republican-sponsored resolution is unlikely to pass. Notably, Senate Leader Toni Atkins’ statement on the Senate’s consideration of SCR 5 articulates strong support for the state of emergency.<sup>4</sup>

The Governor has issued an executive order (N-1-22) which extends to March 31, 2022 sunset dates for teleconferencing for state legislative bodies (under the Bagley-Keene Open Meeting Act) and student body organizations (under the Gloria Romero Open Meetings Act).<sup>5</sup> Executive Order N-1-22 does not affect the Brown Act teleconferencing provisions of AB 361, which have a sunset date of January 1, 2024. Therefore, until January 1, 2024, the City may utilize the teleconferencing provisions under AB 361 as long as the state of emergency remains in effect.

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<sup>1</sup> *New York Times*, California Lays Out a Plan to Treat the Coronavirus as a Manageable Risk Not an Emergency (Feb. 17, 2022), <https://www.nytimes.com/2022/02/18/us/california-lays-out-a-plan-to-treat-the-coronavirus-as-a-manageable-risk-not-an-emergency.html>.

<sup>2</sup> *Los Angeles Times*, Newsom scales back some special pandemic rules, but not California’s state of emergency (Feb. 25, 2022), <https://www.latimes.com/california/story/2022-02-25/newsom-scales-back-special-pandemic-rules-but-not-california-state-of-emergency>.

<sup>3</sup> Text of SCR 5 available at: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SCR5](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SCR5).

<sup>4</sup> Press release: Senator Toni G. Atkins, Senate Leader Atkins Issues Statement on SCR 5 and the State of Emergency (Feb. 17, 2022), <https://sd39.senate.ca.gov/news/20220217-senate-leader-atkins-issues-statement-scr-5-and-state-emergency>.

<sup>5</sup> Text of Executive Order N-1-22 available at: <https://www.gov.ca.gov/wp-content/uploads/2022/01/1.5.22-Bagley-Keene-waiver-EO.pdf>.



## Hybrid Meeting Policies for City Council Meetings Revised April 2022

The policy below covers the conduct of hybrid City Council meetings (in-person and remote participation) held in accordance with the Government Code and any relevant Executive Orders or State declared emergencies.

### I. Vaccination Status

Prior to entry, all in-person attendees at the meeting location must present valid proof of “up-to-date” COVID-19 vaccination or a verified negative test conducted within one day prior for an antigen test or two days prior for a PCR test. An attendee is “up-to-date” with their vaccinations if:

- It has been less than 2 months after receiving the initial dose of their Johnson & Johnson Vaccine.
- It has been less than 5 months after receiving the second dose of their two-dose Pfizer or Moderna initial series.
- The attendee has received a booster.

#### *Pre-entry negative testing*

*Definition: Testing must be conducted within one day for an antigen test and within two days for a PCR test prior to entry into an event. Results of the test must be available prior to entry into the facility or venue. Children under 2 years of age are exempt from the testing requirement, consistent with [CDC guidance](#).*

*Verification: See current [CDPH Updated Testing Guidance](#) and [CDPH Over-the-Counter Testing Guidance](#) for acceptable methods of proof of negative COVID-19 test result and information on Over-the-Counter tests. Note: Self-attestation may not be used to verify negative test result, even when using Over-the-Counter (or at home tests) for entry into Indoor Mega Events.*

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx>

### II. Health Status Precautions

If a person who desires to attend the meeting in-person is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell they will be advised to attend the meeting remotely.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they will be advised to attend the meeting remotely.

Close contact is defined as being within approximately 6 feet for greater than 15 minutes over 24 hours within 2 days before symptoms appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment relative to employees' duties and responsibilities).

A voluntary sign in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID contact resulting from the meeting.

### **III. Face Coverings/Mask**

Following the State of California and Local Health Officer Guidance, face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of the City Council, city staff, and the public are required to wear a mask at all times, including when speaking publicly at the meeting.

If an attendee at a Council Meeting is not wearing a mask, a mask will be offered to them to use. If the attendee refuses to wear a mask, a recess will be called in order to provide guidance to the attendee on the requirement and their options for attending remotely and in-person.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

### **IV. Physical Distancing**

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a council meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

Conference room capacity is limited to 15 persons. The relevant capacity limits will be posted at the meeting location.

City staff will present remotely in order to reduce the number of persons in the Boardroom and back conference area.

**V. Protocols for Remote Participation by Mayor or Councilmembers**

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for members of the Council participating remotely. For the Mayor and Councilmembers participating remotely, the remote location must be accessible to the public and the public must be able to participate and give public comment from the remote location.

- A Councilmember at a remote location will follow the same policies as the Boardroom with regards to vaccination status and testing requirements, health status precautions, and masking requirements.
- A Councilmember at a remote location may impose reasonable capacity limits at their location.

**VI. Hand Washing/Sanitizing**

There are hand sanitizing stations placed at the entry and strategically throughout the Boardroom. The bathrooms have soap and water for handwashing.

**VII. Air Flow/Circulation/Sanitizing**

BUSD Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor VOC's CO2, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

**VIII. Overflow in Gymnasium**

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is 200 persons. The overflow area will have a broadcast of the meeting in progress

to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. The broadcast audio and video will be provided to attendees in the overflow area. This area will be monitored by the BUSD security personnel.

**IX. Food Provided for Elected Officials and Designated Staff**

- No buffet dinner provided. Box lunches only. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

The policy below covers the conduct of hybrid City Council meetings (in-person and remote participation) held in accordance with the Government Code and any relevant Executive Orders or State declared emergencies.

### I. **Vaccination Status**

Prior to entry, all in-person attendees at the meeting location must present valid proof of “up-to-date” COVID-19 vaccination or a verified negative test conducted within one day prior for an antigen test or two days prior for a PCR test. An attendee is “up-to-date” with their vaccinations if:

- It has been less than 2 months after receiving the initial dose of their Johnson & Johnson Vaccine.
- It has been less than 5 months after receiving the second dose of their two-dose Pfizer or Moderna initial series.
- The attendee has received a booster.

~~No requirement for vaccination to attend a Council meeting. Staff and Officials will not inquire about vaccination status for any attendees.~~

### II. **Health ~~Check~~Status Precautions**

If an in-person attendee is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell they will be advised to attend the meeting remotely.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they will be advised to attend the meeting remotely.

Close contact is defined as being within approximately 6 feet for greater than 15 minutes over 24 hours within 2 days before symptoms appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment relative to employees’ duties and responsibilities).

~~A walk-up temperature check device will be located at the entry to the in-person meeting location. All persons entering the in-person meeting location are required to perform a temperature check upon entering. A handheld non-touch thermometer will be available for individuals with disabilities. Private security personnel will be at the entry location for the duration of the meeting to monitor the temperature check station and mask requirement.~~

~~Attendees showing a fever will be directed to attend the meeting via remote participation (Zoom). If an attendee refuses to have their temperature~~

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

~~checked, guidance will be provided to the attendee on the requirement and their options for attending remotely and in-person.~~

~~Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.~~

### III. **Face Coverings/Mask**

Following the State of California and Local Health Officer Guidance, face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting.

If an attendee at a Council Meeting is not wearing a mask, a mask will be offered to them to use. If the attendee refuses to wear a mask, a recess will be called in order to provide guidance to the attendee on the requirement and their options for attending remotely and in-person.

Members of the City Council, city staff, and the public are required to wear a mask at all times, including when speaking publicly at the meeting.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

### IV. **Physical Distancing**

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a council meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

~~Relevant CalOSHA requirements for the workplace will be followed as is feasible. Capacity in the audience seating area (including members of the media and staff) at the BUSD Boardroom is limited to 40 persons due to~~

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

~~uncertainty about vaccination status of attendees and limiting attendance at indoor events to ensure the comfort and safety of attendees.~~ Conference room capacity is limited to ~~42-15~~ persons. The relevant capacity limits will be posted on the city council agenda and at the meeting location.

City staff will present remotely in order to reduce the number of persons in the Boardroom and back conference area.

### V. **Protocols for Remote Participation by Mayor or Councilmembers**

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for members of the Council participating remotely. For the Mayor and Councilmembers participating remotely, the remote location must be accessible to the public and the public must be able to participate and give public comment from the remote location.

- A Councilmember at a remote location will follow the same policies as the Boardroom with regards to vaccination status and testing requirements, health status precautions, temperature checks, and masking requirements.
- A Councilmember at a remote location may impose reasonable capacity limits at their location.

### VI. **Hand Washing/Sanitizing**

There are hand sanitizing stations placed at the entry and strategically throughout the Boardroom. The bathrooms have soap and water for handwashing.

### VII. **Air Flow/Circulation/Sanitizing**

BUSD Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor VOC's CO2, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

### VIII. Overflow in Gymnasium

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is ~~100~~200 persons. The overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. The broadcast audio and video will be provided to attendees in the overflow area. This area will be monitored by the BUSD security personnel.

### IX. Food Provided for Elected Officials and Designated Staff

- No buffet dinner provided.
- Box lunches only. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.



## Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

The policy below covers the conduct of hybrid City Council meetings (in-person and remote participation) held in accordance with the Government Code and any relevant Executive Orders or State declared emergencies.

### **I. Vaccination Status**

No requirement for vaccination to attend a Council meeting. Staff and Officials will not inquire about vaccination status for any attendees.

### **II. Health Check**

A walk-up temperature check device will be located at the entry to the in-person meeting location. All persons entering the in-person meeting location are required to perform a temperature check upon entering. A handheld non-touch thermometer will be available for individuals with disabilities. Private security personnel will be at the entry location for the duration of the meeting to monitor the temperature check station and mask requirement.

Attendees showing a fever will be directed to attend the meeting via remote participation (Zoom). If an attendee refuses to have their temperature checked, guidance will be provided to the attendee on the requirement and their options for attending remotely and in-person.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

### **III. Face Coverings/Mask**

Following the State of California and Local Health Officer Guidance, face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting.

If an attendee at a Council Meeting is not wearing a mask, a mask will be offered to them to use. If the attendee refuses to wear a mask, a recess will be called in order to provide guidance to the attendee on the requirement and their options for attending remotely and in-person.

Members of the City Council, city staff, and the public are required to wear a mask at all times, including when speaking publicly at the meeting.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

## Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

### IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a council meeting. Relevant CalOSHA requirements for the workplace will be followed as is feasible. Capacity in the audience seating area (including members of the media and staff) at the BUSD Boardroom is limited to 40 persons due to uncertainty about vaccination status of attendees and limiting attendance at indoor events to ensure the comfort and safety of attendees. Conference room capacity is limited to 12 persons. The relevant capacity limits will be posted on the city council agenda and at the meeting location.

### V. Protocols for Remote Participation by Mayor or Councilmembers

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for members of the Council participating remotely. For the Mayor and Councilmembers participating remotely, the remote location must be accessible to the public and the public must be able to participate and give public comment from the remote location.

- A Councilmember at a remote location will follow the same policies as the Boardroom with regards to vaccination status, temperature checks, and mask requirements.
- A Councilmember at a remote location may impose reasonable capacity limits at their location.

### VI. Hand Washing/Sanitizing

There are hand sanitizing stations placed at the entry and strategically throughout the Boardroom. The bathrooms have soap and water for handwashing.

### VII. Air Flow/Circulation/Sanitizing

BUSD Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor VOC's CO2, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

### VIII. Overflow in Gymnasium

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is 100 persons. The overflow area will have a broadcast of the meeting in progress

## Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. The broadcast audio and video will be provided to attendees in the overflow area. This area will be monitored by the BUSD security personnel.

### **IX. Food Provided for Elected Officials and Designated Staff**

- No buffet dinner provided.
- Box lunches only. Total of 18 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff, Extras [2])
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.



# URGENT ITEM AGENDA MATERIAL

Government Code Section 54954.2(b)  
Rules of Procedure Chapter III.C.5

**THIS ITEM IS NOT YET AGENDIZED AND MAY OR MAY NOT BE ACCEPTED FOR THE AGENDA AS A LATE ITEM, SUBJECT TO THE CITY COUNCIL'S DISCRETION ACCORDING TO BROWN ACT RULES**

**Meeting Date: September 28, 2021**

**Item Description: Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference**

This item is submitted pursuant to the provision checked below:

- Emergency Situation (54954.2(b)(1) - majority vote required)  
*Determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.*
- Immediate Action Required (54954.2(b)(2) - two-thirds vote required)  
*There is a need to take immediate action and the need for action came to the attention of the local agency subsequent to the agenda for this meeting being posted.*

Once the item is added to the agenda (Consent or Action) it must be passed by the standard required vote threshold (majority, two-thirds, or 7/9).

## **Facts supporting the addition of the item to the agenda under Section 54954.2(b) and Chapter III.C.5 of the Rules of Procedure:**

Assembly Bill 361 (Rivas) was signed by the Governor on September 16, 2021. This bill allows local legislative bodies to meet using videoconference technology while maintaining the Brown Act exemptions in Executive Order N-29-20 for noticing and access to the locations from which local officials participate in the meeting. Local agencies may only meet with the exemption if there is a state declared emergency.

The bill also requires that local legislative bodies meeting only via videoconference under a state declared emergency to make certain findings every 30-days regarding the need to meet in a virtual-only setting.

The agenda for the September 28, 2021 was finalized and published prior to the Governor signing AB 361 in to law. Thus, the need to take action came to the attention of the local agency after the agenda was distributed. This item qualifies for addition to the agenda with a two-thirds vote of the Council under Government Code Section 54954.2(b)(2).



Office of the City Attorney

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
Madame City Manager

From: Farimah Faiz Brown, City Attorney

Subject: Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RECOMMENDATION

Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference.

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to California Government Code section 8630 and Berkeley Municipal Code Chapter 2.88.040, on March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19), including a confirmed case in the City of Berkeley. As a result of multiple confirmed and presumed cases in Alameda County, the County has declared a local health emergency. On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19. On March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20, which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) related to the holding of teleconferenced meetings by City legislative bodies. Among other things, Executive Order N-29-20 suspended requirements that each location from which an official accesses a teleconferenced meeting be accessible to the public.

These changes were necessary to allow teleconferencing to be used as a tool for ensuring social distancing. City legislative bodies have held public meetings via videoconference and teleconference pursuant to these provisions since March 2020. These provisions of Executive Order N-29-20 will expire on September 30, 2021.

COVID-19 continues to pose a serious threat to public health and safety. There are now over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley. Additionally, the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease.

As a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination. Holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time

Assembly Bill 361 (Rivas), signed into law by Governor Newsom on September 16, 2021, amended a portion of the Brown Act (Government Code Section 54953) to authorize the City Council, during the state of emergency, to determine that, due to the spread of COVID-19, holding in-person public meetings would present an imminent risk to the health or safety of attendees, and therefore City legislative bodies must continue to meet via videoconference and teleconference. Assembly Bill 361 requires that the City Council must review and ratify such a determination every thirty (30) days. Therefore, if the Council passes this resolution on September 28, 2021, the Council will need to review and ratify the resolution by October 28, 2021.

This item requests that the Council review the circumstances of the continued state of emergency posed by the spread of COVID-19, and find that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination. This item further requests that the Council determine that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference and teleconference, and that City legislative bodies shall continue to comply with all provisions of the Brown Act, as amended by SB 361.

#### BACKGROUND

On March 1, 2020, Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 3, 2020, the City's Director of Emergency Services proclaimed a local emergency due to the spread of COVID-19, including a confirmed case in the City of Berkeley and multiple confirmed and presumed cases in Alameda County.

On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19.

On March 10, 2020, the City Council ratified the Proclamation of Local Emergency. Since that date, there have been over 4,700 confirmed cases of COVID-19 and at least 57 deaths in the City of Berkeley.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20 which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) to allow teleconferencing of public meetings to be used as a tool for ensuring social distancing. As a result, City legislative bodies have held public meetings via teleconference throughout the pandemic. The provisions of Executive Order N-29-20 allowing teleconferencing to be used as a tool for social distancing will expire on September 30, 2021.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

#### RATIONALE FOR RECOMMENDATION

The Resolution would enable the City Council and its committees, and City boards and commissions to continue to hold public meetings via videoconference and teleconference in order to continue to socially distance and limit the spread of COVID-19.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998  
Mark Numainville, City Clerk, (510) 981-6908

#### Attachments:

1: Resolution Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RESOLUTION NO. –N.S.

RESOLUTION MAKING THE REQUIRED FINDINGS PURSUANT TO GOVERNMENT CODE SECTION 54953(E)(3) AND DIRECTING CITY LEGISLATIVE BODIES TO CONTINUE TO MEET VIA VIDEOCONFERENCE AND TELECONFERENCE

WHEREAS, in accordance with Berkeley Municipal Code section 2.88.040 and sections 8558(c) and 8630 of the Government Code, which authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a City exist, the City Manager, serving as the Director of Emergency Services, beginning on March 3, 2020, did proclaim the existence of a local emergency caused by epidemic 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, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency pursuant to the California Emergency Services Act, in particular, Government Code section 8625; and

WHEREAS, the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020 continues to be in effect; and

WHEREAS, on September 16, 2021, Governor Newsom signed into law AB 361, which authorizes the City Council to determine that, due to the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril continue to exist, and now include over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley; and

WHEREAS, the City Council recognizes that the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease; and

WHEREAS, as a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination; and



WHEREAS, holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time; and

WHEREAS, the City Council will need to again review the need for the continuing necessity of holding City legislative body meetings via videoconference and teleconference by October 28, 2021.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that, pursuant to Government Code section 54953, the City Council has reviewed the circumstances of the continued state of emergency posed by the spread of COVID-19, and finds that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination; and

BE IT FURTHER RESOLVED that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference and teleconference; and

BE IT FURTHER RESOLVED that all City legislative bodies shall comply with the requirements of Government Code section 54953(e)(2) and all applicable laws, regulations and rules when conducting public meetings pursuant to this resolution.



OFFICE OF THE GOVERNOR

June 2, 2021

**VIA EMAIL**

Graham Knaus, Executive Director  
CA State Assoc. of Counties  
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RE: Transition Period Prior to Repeal of COVID-related Executive Orders

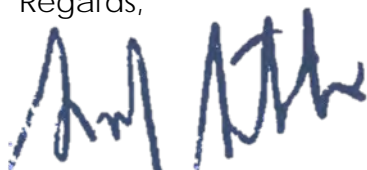
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

Thank you for your correspondence of May 18, 2021, inquiring what impact the anticipated June 15 termination of the Blueprint for a Safer Economy will have on Executive Order N-29-20, which provided flexibility to state and local agencies and boards to conduct their business through virtual public meetings during the COVID-19 pandemic.

Please be assured that this Executive Order Provision will not terminate on June 15 when the Blueprint is scheduled to terminate. While the Governor intends to terminate COVID-19 executive orders at the earliest possible date at which conditions warrant, consistent with the Emergency Services Act, the Governor recognizes the importance of an orderly return to the ordinary conduct of public meetings of state and local agencies and boards. To this end, the Governor's office will work to provide notice to affected stakeholders in advance of rescission of this provision to provide state and local agencies and boards time necessary to meet statutory and logistical requirements. Until a further order issues, all entities may continue to rely on N-29-20.

We appreciate your partnership throughout the pandemic.

Regards,

A handwritten signature in blue ink, appearing to read 'Ana Matosantos', written in a cursive style.

Ana Matosantos  
Cabinet Secretary



## NEWS RELEASE

Release

June 4, 2021

Number: 2021-58

### Standards Board Readopts Revised Cal/OSHA COVID-19 Prevention Emergency Temporary Standards

**The revised Cal/OSHA standards are expected to go into effect no later than June 15**

**Sacramento** — The Occupational Safety and Health Standards Board on June 3 readopted Cal/OSHA's revised COVID-19 prevention emergency temporary standards.

Last year, the Board adopted health and safety standards to protect workers from COVID-19. The standards did not consider vaccinations and required testing, quarantining, masking and more to protect workers from COVID-19.

The changes adopted by the Board phase out physical distancing and make other adjustments to better align with the state's June 15 goal to retire the Blueprint. Without these changes, the original standards, would be in place until at least October 2. These restrictions are no longer required given today's record low case rates and the fact that we've administered 37 million vaccines.

The revised emergency standards are expected to go into effect no later than June 15 if approved by the Office of Administrative Law in the next 10 calendar days. Some provisions go into effect starting on July 31, 2021.

The [revised standards](#) are the first update to Cal/OSHA's temporary COVID-19 prevention requirements adopted in November 2020.

**The Board may further refine the regulations in the coming weeks** to take into account changes in circumstances, especially as related to the availability of vaccines and low case rates across the state.

The standards apply to most workers in California not covered by Cal/OSHA's Aerosol Transmissible Diseases [standard](#). Notable revisions include:

- **Face Coverings:**
  - Indoors, fully vaccinated workers without COVID-19 symptoms do not need to wear face coverings in a room where everyone else is fully vaccinated and not showing symptoms. However, where there is a mixture of vaccinated and unvaccinated persons in a room, all workers will continue to be required to wear a face covering.
  - Outdoors, fully vaccinated workers without symptoms do not need to wear face coverings. However, outdoor workers who are not fully vaccinated must continue to wear a face covering when they are less than six feet away from another person.
- **Physical Distancing:** When the revised standards take effect, employers can eliminate physical distancing and partitions/barriers for employees working indoors and at outdoor mega events if they provide respirators, such as N95s, to unvaccinated employees for voluntary use. After July 31, physical distancing

and barriers are no longer required (except during outbreaks), but employers must provide all unvaccinated employees with N95s for voluntary use.

- **Prevention Program:** Employers are still required to maintain a written COVID-19 Prevention Program but there are some key changes to requirements:
  - Employers must review the California Department of Public Health's [Interim guidance for Ventilation, Filtration, and Air Quality in Indoor Environments](#).
  - COVID-19 prevention training must now include information on how the vaccine is effective at preventing COVID-19 and protecting against both transmission and serious illness or death.
- **Exclusion from the Workplace:** Fully vaccinated workers who do not have COVID-19 symptoms no longer need to be excluded from the workplace after a close contact.
- **Special Protections for Housing and Transportation:** Special COVID-19 prevention measures that apply to employer-provided housing and transportation no longer apply if all occupants are fully vaccinated.

The Standards Board will file the readoption rulemaking package with the Office of Administrative Law, which has 10 calendar days to review and approve the temporary workplace safety standards enforced by Cal/OSHA. Once approved and published, the full text of the revised emergency standards will appear in the Title 8 sections [3205](#) (COVID-19 Prevention), [3205.1](#) (Multiple COVID-19 Infections and COVID-19 Outbreaks), [3205.2](#) (Major COVID-19 Outbreaks) [3205.3](#) (COVID-19 Prevention in Employer-Provided Housing) and [3205.4](#) (COVID-19 Prevention in Employer-Provided Transportation) of the [California Code of Regulations](#). Pursuant to the state's [emergency rulemaking process](#), this is the first of two opportunities to readopt the temporary standards after the initial effective period.

The Standards Board also convened a representative subcommittee to work with Cal/OSHA on a proposal for further updates to the standard, as part of the emergency rulemaking process. It is anticipated this newest proposal, once developed, will be heard at an upcoming Board meeting. The subcommittee will provide regular updates at the Standards Board monthly meetings.

The [Occupational Safety and Health Standards Board](#), a seven-member body appointed by the Governor, is the standards-setting agency within the Cal/OSHA program. The Standards Board's objective is to adopt reasonable and enforceable standards at least as effective as federal standards. The Standards Board also has the responsibility to grant or deny applications for permanent variances from adopted standards and respond to petitions for new or revised standards.

The California Division of Occupational Safety and Health, or [Cal/OSHA](#), is the division within the Department of Industrial Relations that helps protect California's workers from health and safety hazards on the job in almost every workplace. [Cal/OSHA's Consultation Services Branch](#) provides free and voluntary assistance to employers to improve their health and safety programs. Employers should call (800) 963-9424 for assistance from Cal/OSHA Consultation Services.

**Contact:** Erika Monterroza / Frank Polizzi, [Communications@dir.ca.gov](mailto:Communications@dir.ca.gov), (510) 286-1161.

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The [California Department of Industrial Relations](#), established in 1927, protects and improves the health, safety, and economic well-being of over 18 million wage earners, and helps their employers comply with state labor laws. DIR is housed within the [Labor & Workforce Development Agency](#)



Office of the City Manager

June 1, 2021

To: Agenda & Rules Committee

From: Dee Williams-Ridley, City Manager

Subject: Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies

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### Introduction

This memo responds to the request from the Agenda & Rules Committee on May 17, 2021 for information from the City Manager on the options and timing for a return to in-person meetings for City legislative bodies. The analysis below is a preliminary summary of the considerations and options for returning to in-person meetings.

With the onset of the COVID-19 pandemic, the shelter-in-place order, and the issuance of Executive Order N-29-20 (“Executive Order”) in the spring of 2020, the City quickly adjusted to a virtual meeting model. Now, almost 15 months later, with the Blueprint for a Safer Economy scheduled to sunset on June 15, 2021, the City is faced with a new set of conditions that will impact how public meetings may be held in Berkeley. While the June 15, 2021 date appears to be certain, there is still a great deal of uncertainty about the fate of the Executive Order. In addition, the City is still awaiting concrete, specific guidance from the State with regards to regulations that govern public meetings and public health recommendations that will be in place after June 15, 2021.

For background, Executive Order N-29-20 allows legislative bodies to meet in a virtual setting and suspends the following Brown Act requirements:

- Printing the location of members of the legislative body on the agenda;
- Posting the agenda at the location of members of the legislative body that are remote; and
- Making publicly available remote locations from which members of the legislative body participate.

Meeting Options

There are three groups of City Legislative bodies that are considered in this memo

- City Council;
- City Council Policy Committees; and
- Boards and Commissions.

The three meeting models available are:

- In-person only;
- Virtual only; or
- Hybrid (in-person and virtual).

The scenarios below show the options available for each given set of facts.

Summary Recommendations of Meeting Options	Physical Distancing			No Physical Distancing		
	In-Person	Hybrid	Virtual*	In-Person	Hybrid	Virtual*
	City Council	X	X	X	X	X
Policy Committees			X	X		X
Board and Commissions			X	X		X

\* The ability to hold virtual-only meetings is dependent on the status of Executive Order N-29-20

Currently, the Centers for Disease Control recommends physical distancing for unvaccinated persons. While the City and the community have made tremendous progress with regards to vaccination, the City would use the guidelines for unvaccinated persons when making determinations regarding public meetings.

Meeting Type Considerations

Our previous experience pre-pandemic and our experience over the past 15 months demonstrates that the City can conduct all in-person and all virtual meetings. However, the possibility of hybrid meetings presents new questions to consider. The primary concern for a return to in-person meetings using a hybrid model is the impact on the public experience and the legislative process.

*Will the legislative body be able to provide a transparent, coherent, stable, informative, and meaningful experience for the both the public in attendance and virtually?*

*Will the legislative body be able to conduct the legislative process in an efficient, coherent, and meaningful manner with the members split between in-person and virtual, and considering the additional delays and logistical challenges of allowing for public participation in a hybrid model?*

For the City Council, testing has shown that the larger space and technology infrastructure at the Boardroom will allow the Council to conduct all three types of meetings (in-person, hybrid, virtual).

For Policy Committees and Commissions, only the “all virtual” or “all in-person” meetings are recommended. Preliminary testing has shown that the audio/visual limitations of the meeting rooms available for these bodies would result in inefficient and cumbersome management of the proceedings in a hybrid model. In addition, there are considerations to analyze regarding the available bandwidth in city facilities and all members having access to adequate devices. Continuing the all virtual model for as long as possible, then switching to an all in-person model when conditions permit provides the best access, participation, and legislative experience for the public and the legislative body.

#### Other Considerations

Some additional factors to consider in the evaluation of returning to in-person or hybrid meetings are:

- How to address vaccination status for in-person attendees.
- Will symptom checks and/or temperature checks at entry points be required?
- Who is responsible for providing PPE for attendees?
- How are protocols for in-person attendees to be enforced?
- Physical distancing measures for the Mayor and City Councilmembers on the dais.
- Installation of physical barriers and other temporary measures.
- Will the podium and microphone need to be sanitized after every speaker?
- High number of touch points in meeting rooms.
- Will chairs for the public and staff need to be sanitized if there is turnover during the meeting?
- Determining the appropriate capacity for meeting locations.
- The condition and capacity of meeting room ventilation system and air cycling abilities.
- How to receive and share Supplemental Items, Revisions, Urgent Items, and submissions by the public both in-person and virtually.
- Budget including costs for equipment, physical improvements, A/V, PPE, and sanitization.



Conclusion

As stated above, conditions are changing daily, and there is a high degree of uncertainty surrounding the future guidance, regulations, and actions at the state level. Planning, testing and analysis are already underway to prepare for an eventual return to in-person meetings. Staff will continue to monitor the evolving legislative and public health circumstances and advise the committee at future meetings.

Attachment:

1. Executive Order N-29-20

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

EXECUTIVE ORDER N-29-20

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** despite sustained efforts, the virus continues to spread and is impacting nearly all sectors of California; and

**WHEREAS** the threat of COVID-19 has resulted in serious and ongoing economic harms, in particular to some of the most vulnerable Californians; and

**WHEREAS** time bound eligibility redeterminations are required for Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries to continue their benefits, in accordance with processes established by the Department of Social Services, the Department of Health Care Services, and the Federal Government; and

**WHEREAS** social distancing recommendations or Orders as well as a statewide imperative for critical employees to focus on health needs may prevent Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries from obtaining in-person eligibility redeterminations; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

1. As to individuals currently eligible for benefits under Medi-Cal, CalFresh, CalWORKs, the Cash Assistance Program for Immigrants, the California Food Assistance Program, or In Home Supportive Services benefits, and to the extent necessary to allow such individuals to maintain eligibility for such benefits, any state law, including but not limited to California Code of Regulations, Title 22, section 50189(a) and Welfare and Institutions Code sections 18940 and 11265, that would require redetermination of such benefits is suspended for a period of 90 days from the date of this Order. This Order shall be construed to be consistent with applicable federal laws, including but not limited to Code of Federal Regulations, Title 42, section 435.912, subdivision (e), as interpreted by the Centers for Medicare and Medicaid Services (in guidance issued on January 30, 2018) to permit the extension of



otherwise-applicable Medicaid time limits in emergency situations.

2. Through June 17, 2020, any month or partial month in which California Work Opportunity and Responsibility to Kids (CalWORKs) aid or services are received pursuant to Welfare and Institutions Code Section 11200 et seq. shall not be counted for purposes of the 48-month time limit set forth in Welfare and Institutions Code Section 11454. Any waiver of this time limit shall not be applied if it will exceed the federal time limits set forth in Code of Federal Regulations, Title 45, section 264.1.
3. Paragraph 11 of Executive Order N-25-20 (March 12, 2020) is withdrawn and superseded by the following text:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow



members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

- (i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and
- (ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

- (i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

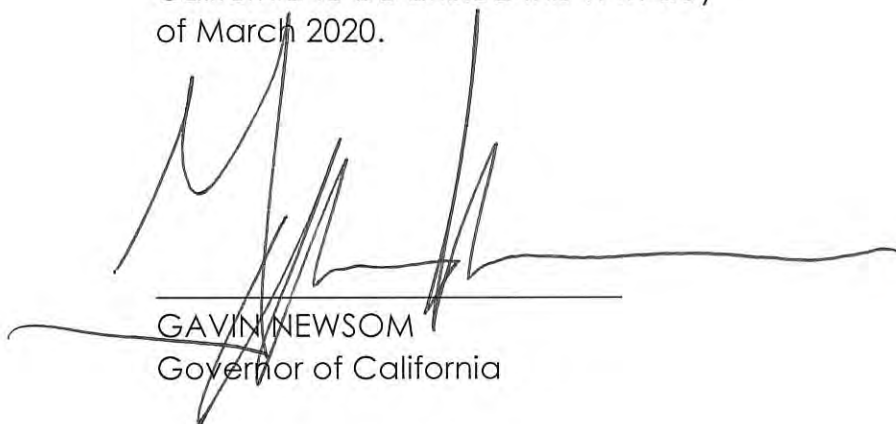
All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 17th day of March 2020.



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

