



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

MONDAY, MARCH 6, 2023

2:30 P.M.

2180 Milvia Street, 6th Floor - Redwood Room

1404 Le Roy Ave, Berkeley 94708 – Teleconference Location

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Ben Bartlett

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

Remote participation by the public is available through Zoom. To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://cityofberkeley-info.zoomgov.com/s/1615313815>. 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 **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and Enter Meeting ID: **161 531 3815**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

To submit a written communication for the Committee's consideration and inclusion in the public record, email policycommittee@cityofberkeley.info.

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.

AGENDA

Roll Call

Public Comment

Review of Agendas

- 1. Approval of Minutes: February 27, 2023**
- 2. Review and Approve Draft Agenda:**
 - a. 3/21/23 – 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

- 8a. Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**
- 8b. Analysis of Return to In-Person Meetings of City Legislative Bodies**
- 9. Discussion of Potential Changes and Enhancements to the City Council Legislative Process**

Unscheduled Items

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

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment – Next Meeting Monday, March 27, 2023

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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:

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.

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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, March 2, 2023.

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

Mark Numainville, City Clerk

Communications

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

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

MONDAY, FEBRUARY 27, 2023

2:30 P.M.

Committee Members:

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

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

Pursuant to 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://cityofberkeley-info.zoomgov.com/j/1603320255>. 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 **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and Enter Meeting ID: 160 332 0255. 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.

Roll Call: 2:33 p.m. All present.

Public Comment – 2 speakers

Review of Agendas

1. Approval of Minutes: February 14, 2023

Action: M/S/C (Wengraf/Arreguin) to approve the minutes of 2/14/23.

Vote: All Ayes.

2. Review and Approve Draft Agenda:

a. 3/14/23 – 6:00 p.m. Regular City Council Meeting

Action: M/S/C (Arreguin/Wengraf) to approve the agenda of 3/14/23 with the changes noted below.

- *Item 10 Oppose Initiative #1935 (Arreguin) – Councilmembers Hahn, Harrison, and Wengraf added as co-sponsors*
- *Item 11 Support SB 50 (Arreguin) – Councilmember Hahn added as a co-sponsor*
- *Item 12 Support SB 252 (Arreguin) – Councilmembers Hahn, Harrison, and Wengraf added as co-sponsors*
- *Item 13 Street Maintenance (Kesarwani) – Referred to FITES Committee*
- *Item 14 Vision 2050 (Taplin) – Councilmembers Harrison and Robinson added as co-sponsors*
- *Item 15 Unionization (Taplin) – Councilmember Robinson added as a co-sponsor*
- *Item 16 Support SB 58 (Taplin) – Councilmember Robinson added as a co-sponsor*
- *Item 17 Support SB 466 (Robinson) – Councilmembers Hahn and Harrison added as co-sponsors*
- *Item 18 Support HR 852 (Robinson) – Councilmember Hahn added as a co-sponsor*
- *Item 23 Economic Dashboards (City Manager) – Moved to Action Calendar*

Order of Action Items

Item 19 Ambulance Fees

Item 20 BERA Amendments

Item 21 Climate Action

Item 23 Economic Dashboards

Item 22 BE RIPE Initiative

Vote: Ayes – Wengraf, Arreguin; Noes – None; Abstain – None; Absent - Hahn.

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

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

8b. Analysis of Return to In-Person Meetings of City Legislative Bodies

Action: 2 speakers. Discussion held.

9. Discussion of Potential Changes and Enhancements to the City Council Legislative Process

Action: 1 speaker. Brief discussion held.

Unscheduled Items

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

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

Items for Future Agendas

- None

Adjournment

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

Vote: All Ayes.

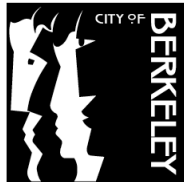
Adjourned at 3:26 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on February 27, 2023.

Mark Numainville, City Clerk

Communications

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DRAFT AGENDA
BERKELEY CITY COUNCIL MEETING

Tuesday, March 21, 2023
6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

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 – MARK HUMBERT

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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.

*Remote participation by the public is available through Zoom. To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL: <<INSERT ZOOM for GOV 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 **1-669-254-5252** or **1-833-568-8864 (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.

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:

Land Acknowledgement Statement: *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

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. Persons attending the meeting in-person and wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

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 or Information 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. 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, May 10, 2022, June 28, 2022, July 26, 2022, September 20, 2022, November 3, 2022, December 13, 2022, and January 31, 2023.

Financial Implications: To be determined.

Contact: Farimah Brown, City Attorney, (510) 981-6950

2. Designate the Line of Succession for the Director of Emergency Services

From: City Manager

Recommendation: Adopt a Resolution approving the designated line of succession to the position of Director of Emergency Services in the event of an emergency, and rescinding Resolution No. 70,406-N.S.

Financial Implications: None

Contact: Dee Williams-Ridley, City Manager, (510) 981-7000

Consent Calendar

- 3. Grant Application: Funding from the Federal Emergency Management Agency (FEMA) to expand a NFPA 1582/1583 compliant employee Wellness, Fitness and Human Performance Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to apply for and accept a grant, and any amendments, from the Federal Emergency Management Agency (FEMA) for up to \$840,000 with a 10% or \$84,000 in matching city funds to expand a National Fire Protection Association (NFPA) 1582/1583 compliant employee Wellness, Fitness and Human Performance Program.
Financial Implications: See report
Contact: David Sprague, Fire, (510) 981-3473
- 4. Contract No. 32200156 Amendment: Options Recovery Services for Community Crisis Response Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32200156 with Options Recovery Services (Options) to add \$561,917.11 and extend the term of the Community Crisis Response Services to December 31, 2023 with a not to exceed amount of \$1,201,917.11.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 5. Contract No. 32200147 Amendment: Women’s Daytime Drop-In Center for Community Crisis Response Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32200147 with Women’s Daytime Drop-In Center (WDDC) to add \$75,600 and extend the term of the Community Crisis Response Services to December 31, 2023 with a not to exceed amount of \$195,600.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 6. Contract No. 32300025 Amendment: Non-Profit Intelligence Partners for Flexible Funding program services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32300025 with Non-Profit Intelligence Partners (NPI) to provide Flexible Funding program services through June 30, 2024 in an amount not to exceed \$350,000. This will extend the existing contract by one year and add \$300,000 in funding.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

7. **Revenue Agreements: California Department of Public Health Childhood Lead Poisoning Prevention and CalFresh Grants**

From: City Manager

Recommendation: Adopt two Resolutions authorizing the City Manager or her designee to submit grant agreements to the State of California, California Department of Public Health (CDPH), to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the following two revenue agreements:

1. CDPH: Childhood Lead Poisoning Prevention Program (CLPPP), in the projected total 3-year amount of \$383,455 for FY 2024, FY 2025, and FY 2026.
2. CDPH: CalFresh Healthy Living Program (CalFresh), in the projected amount of \$162,390 each year in FFY 2024, FFY 2025, FFY 2026, for a projected total 3-year amount of \$487,170.

Financial Implications: See report

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

8. **Funding Recommendation and Joint Homekey Application for the University Inn at 1461 University**

From: City Manager

Recommendation: Adopt three resolutions approving the following actions in support of a Homekey program funding allocation by:

1. Reserving up to \$8,500,000 in General Funds received pursuant to Measure P for the University Inn permanent supportive housing project at 1461 University Avenue as proposed by a partnership between Memar Properties (Memar) and Housing Consortium of the East Bay (HCEB).
2. Reserving up to \$1,000,000 in General Funds received pursuant to Measure P for Memar and HCEB to operate the University Inn as an emergency shelter prior to permanent housing conversion.
3. Authorizing the City Manager or her designee to prepare and submit a joint application together with Memar and HCEB for the State of California Housing and Community Development (HCD) Department's Homekey program for the University Inn permanent supportive housing project.
4. Authorizing the City Manager or her designee to take actions needed for the City's participation in HCD's Homekey program, including entering into HCD's Standard Agreement and any amendments.
5. Authorizing the City Manager or her designee to execute all original or amended documents or agreements to effectuate these actions.

Financial Implications: See report.

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

Consent Calendar

9. Amending the Program Year 2021 (PY2021) Annual Action Plan to Accept HOME-American Rescue Plan Funds

From: City Manager

Recommendation: Adopt a Resolution:

1. Amending the PY2021 Annual Action Plan to expend HUD's allocation of HOME Investment Partnerships Program – American Rescue Plan (HOME-ARP) funds to the City of Berkeley, totaling \$2,735,696, upon HUD's acceptance of the City's Allocation Plan.
2. Allocating up to the allowable 15% (\$410,354) of the HOME-ARP funds for administration and planning, up to the allowable 5% (\$136,785) for nonprofit capacity building, and the remaining 80% (\$2,188,557) to supportive services for the qualifying populations. If the HOME-ARP award amount is modified, the same formulas will be applied for allocating funds.
3. Authorizing the City Manager or her designee to submit the approved PY2021 Annual Action Plan Substantial Amendment to HUD, and accept any resulting agreements, and amendments thereto with HUD.

Financial Implications: See report.

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

10. Salary Range Adjustments: Senior Behavioral Health Clinician, Mental Health Clinical Supervisor, Mental Health Program Supervisor, Assistant Manager of Mental Health Division, and Manager of Mental Health Division

From: City Manager

Recommendation: Adopt a Resolution amending Resolution No. 69,997-N.S.

Salary Resolution for Public Employees Union – Local 1 to increase the top step salary of the Senior Behavioral Health Clinician by 0.83%; Mental Health Clinical Supervisor by 4.18%; Mental Health Program Supervisor by 7.33%; Assistant Manager of Mental Health Division by 7.33%; and Manager of Mental Health Division by 1.20%, effective January 14, 2023.

Financial Implications: See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

11. Salary Range Adjustments: Deputy City Manager and Employee Relations Manager Classifications

From: City Manager

Recommendation: Adopt a Resolution to amend Resolution No. 69,998-N.S.

Classification and Salary Resolution for classifications in Representation Unit Z-1 (Confidential and Executive Management Employees) to increase the top step salary of the Deputy City Manager classification from \$277,840.99 to \$291,733.04, and the Employee Relations Manager classification from \$175,026.38 to \$180,065.60 effective January 14, 2023.

This Resolution follows Council consideration of this item in Closed Session on December 12, 2022.

Financial Implications: See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

Consent Calendar

- 12. Contract: TEROCONS INC. for Aquatic Park Paddling and Rowing Club Parking Lot Improvements Project**
From: City Manager
Recommendation: Adopt a Resolution:
1. Approving the plans and specifications for the Aquatic Park Paddling and Rowing Club Parking Lot Improvements Project; and
 2. Accepting the bid of the lowest responsive and responsible bidder, TEROCONS INC.; and
 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with TEROCONS INC., for the Aquatic Park Paddling and Rowing Club Parking Lot Improvements Project at 2851 West Bolivar Drive, Berkeley, CA 94710, in an amount not to exceed \$260,312.50 which includes a contract amount of \$208,250.00 and a 25% contingency in the amount of \$52,062.50.
- Financial Implications:** Parks Tax Fund - \$260,312.50
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 13. Grant Funding Application for SolarAPP+ integration**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or their designee to submit a grant application in the amount of \$80,000 to The California Energy Commission, to receive technical assistance to integrate the SolarAPP+ web software to the City of Berkeley Permit Service Center operations, and to accept grant funds and execute a resulting grant agreement.
Financial Implications: See report.
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 14. Contract No. 32100192 Amendment: California Constructores for Sidewalk Repairs FY 2020 Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32100192 with California Constructores, increasing the contract amount by \$200,000 for a total not-to-exceed amount of \$2,375,900.
Financial Implications: See report.
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

- 15. Contract: JV Lucas Paving, Inc. for Street Rehabilitation FY 2023 Project**
From: City Manager
Recommendation: Adopt a Resolution: 1) approving plans and specifications for the Street Rehabilitation FY 2023 Project, Specification No. 23-11558-C; and 2) accepting the bid of the lowest responsive and responsible bidder, JV Lucas Paving, Inc. and 3) authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project, in accordance with the approved plans and specifications in an amount not to exceed \$10,203,711.
Financial Implications: See report.
Contact: Liam Garland, Public Works, (510) 981-6300
- 16. Purchase Order: Pape Machinery, Inc. for One John Deere 320P Backhoe Loader**
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City Manager to participate in Sourcewell bid procedures and authorizing the City Manager to execute a purchase order for one (1) 2023 John Deere 320P Backhoe Loader with Pape Machinery, Inc. in an amount not to exceed \$215,000.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 17. Purchase Order: Nicholas K Corp dba the Ford Store San Leandro for Eight Ford Interceptor Hybrid Utility Vehicles**
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City Manager to participate in Alameda County bid procedures and authorize the City Manager to execute a purchase order for eight (8) Ford Interceptor Utility Hybrid vehicles with Nicholas K Corp dba the Ford Store San Leandro in an amount not to exceed \$496,454.
Financial Implications: See report.
Contact: Liam Garland, Public Works, (510) 981-6300
- 18. Referral Response: Grant Program for Retaining and Improving Creative Spaces**
From: Civic Arts Commission
Recommendation: Referral to the FY 2024 Budget Process an annual allocation of \$300,000 for funding the Civic Arts program to administer an annual Capital Projects Grant Program for Berkeley-based nonprofit arts and cultural organizations in order to retain and sustain the vitality of Berkeley's arts sector through real estate and capital project support.
Financial Implications: See report
Contact: Jennifer Lovvorn, Commission Secretary, (510) 981-7530

Consent Calendar

19. Resolution to Adopt a City-Wide “Care First, Jails Last” Policy

From: Mental Health Commission

Recommendation: Adopt a City-wide “Care First, Jails Last” policy that prioritizes a continuum of care for individuals with mental illness, substance use, or co-occurring disorders rather than incarceration. Mandate that City’s mental health and substance use disorder providers become active participants in the County continuum of care network. Require City departments that have contact with the public revise policies, procedures, and practices to reflect this priority and policy resolution.

Financial Implications: See report

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

20. Referral of two health educator positions to the COB FY 2024 budget process

From: Peace and Justice Commission

Recommendation: Refer to the budget process a request for estimated \$150,000 annually, beginning in FY 2024 or as early as the AAO #2 process in spring 2023, for staffing, materials, and supplies to be able to more broadly and flexibly conduct health education, prevention, and outreach to reduce health disparities, as proposed by the Peace and Justice Commission.

Financial Implications: See report

Contact: Okeya Vance-Dozier, Commission Secretary, (510) 981-7100

Council Consent Items

21. Budget Referral: Post COVID-19 Rental Assistance/Anti-Displacement

From: Mayor Arreguin (Author)

Recommendation: Refer \$2,000,000 to the FY 2024/June Budget Process to augment the Housing Retention Program, (administered by the Eviction Defense Center, EDC) as part of the City’s anti-displacement programs (launched in 2017), for the purpose of providing rental assistance to tenants due to the COVID-19 eviction moratorium expiration and rent debt due to inflation and rental increases. The proposed funding source is FY 2023-2024 Measure P tax receipts.

Financial Implications: See report

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

22. City Co-Sponsorship of Bioneers Conference and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund

From: Mayor Arreguin (Author)

Recommendation: Adopt a resolution memorializing City of Berkeley co-sponsorship of the non-profit Bioneers Conference, to be held April 6-8, 2023 and approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Mayor Arreguin, to the Berkeley Chamber of Commerce to offset permit costs, with funds relinquished to the City’s general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.

Financial Implications: See report

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

Council Consent Items

- 23. Budget Referral - Speed Feedback Signs for Arlington Avenue**
From: Councilmember Hahn (Author), Councilmember Taplin (Co-Sponsor)
Recommendation: In support of the City's Vision Zero Action Plan and Pedestrian Plan goals, refer to the Fiscal Year 2024 Budget Process an allocation of \$40,000 for two Speed Feedback Signs on Arlington Avenue between The Circle and Mendocino Avenue, to encourage slower speeds on a stretch with numerous hidden and mid-block crosswalks.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
- 24. Pedestrian Safety Upgrades for Arlington Avenue**
From: Councilmember Hahn (Author), Councilmember Taplin (Co-Sponsor)
Recommendation: In support of the City's Vision Zero Action Plan and Pedestrian Plan goals, refer to the Fiscal Year 2024 Budget Process an allocation of \$35,000 for traffic control measures on Arlington Avenue from The Circle to Mendocino Avenue, to enhance pedestrian safety at hidden crosswalks and where paths cross mid-block, and refresh painted markings that narrow lanes and encourage reduced speeds.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
- 25. 2023 Virtual Holocaust Remembrance Day Program: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**
From: Councilmember Wengraf (Author), Councilmember Hahn (Author)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 each from Councilmember Wengraf and Councilmember Hahn, to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf's and Hahn's discretionary Council Office Budgets and all other Councilmembers who would like to contribute, allows the City of Berkeley to invite the community to the City's 20th Annual Holocaust Remembrance Day virtual program, created by the community with City Council support. This year's program will be held virtually on April 16th, 2023 from 2:00 – 3:00 PM. Register via Eventbrite to attend.
Financial Implications: See report
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 26. Proclamation in Honor of City of Berkeley Holocaust Remembrance Day From: Councilmember Wengraf (Author), Councilmember Hahn (Author), Mayor Arreguin (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)**
Recommendation: Adopt the Holocaust Remembrance Day Proclamation for the City of Berkeley's 20th Annual Holocaust Remembrance Day. The program will take place virtually on Sunday, April 16th from 2:00 - 3:00 PM.
Financial Implications: See report
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

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 line up at the podium, or use the "raise hand" function in Zoom, to be recognized and to determine the number of persons interested in speaking at that time.

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

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

27. Implement Residential Preferential Parking (RPP) Program on the 1600 Block of Fifth Street

From: City Manager

Recommendation: Conduct a public hearing and upon its conclusion, adopt a Resolution amending Resolution No. 56,508-N.S. Section 25P by adding a subsection to implement Residential Preferential Parking (RPP) on the east side of the 1600 block of Fifth Street in Area P.

Financial Implications: See report.

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

Action Calendar – New Business

28. Unfunded Liability Obligations and Unfunded Infrastructure Needs

From: City Manager

Recommendation: Accept the Unfunded Liability Obligations and Unfunded Infrastructure Needs report and presentation and provide direction and recommendations to staff.

Financial Implications: See report

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

29. Berkeley Transit-First Policy Implementation Plan

From: City Manager

Recommendation: 1. Adopt a Resolution approving the Berkeley Transit-First Policy Implementation Plan and authorizing the City Manager to pursue implementation of the Plan as funding and staffing permit; and

2. Appoint two members and one alternate to serve on the Inter-Agency Liaison Committee (ILC) between the City of Berkeley and AC Transit to discuss transit-related matters on a quarterly schedule.

Financial Implications: See report

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

Action Calendar – Policy Committee Track Items

- 30. Incentives for Equitable and Affordable Middle Housing**
From: Councilmember Taplin (Author), Councilmember Bartlett (Author)
Recommendation: 1. Refer to the City Manager and the Planning Commission to study and return to Council potential amendments to the Berkeley Municipal Code and General Plan to further the City of Berkeley’s goals for affirmatively furthering fair housing with additional incentives for affordability and ownership opportunities, including first-time homebuyers and households inheriting properties from relatives, in “Middle Housing” zoning categories. At a minimum, consider:
- a. A local density bonus for on-site affordable housing for Middle Housing, including additional dwelling units, Floor Area Ratio, lot coverage, reduced or waived fees, and ministerial approval for projects with on-site deed-restricted units affordable to Low- and Moderate-Income households, and incentives for first-time homebuyer opportunities. Consider regulating maximum buildable width and/or depth to disincentivize higher-cost dwelling units.
 - b. A density bonus for additional Accessory Dwelling Units in exchange for the inclusion of deed-restricted ADUs on-site affordable to Low- and Moderate-Income households. To the extent feasible, incorporate scope of study with Council’s referral to develop an Efficiency Unit Ordinance.
 - c. A density bonus for Middle Housing residential projects in which an owner-occupier receives a minimum of in-kind compensation for the parcel with on-site ownership unit(s) in the project. Consider standard form agreements and other technical assistance.
 - d. Pre-approved designs for bonus-compliant projects.
 - e. Seek to leverage consistency and compatibility with state and regional resources including the Bay Area Housing Finance Authority (BAHFA), MTC/ABAG, AC Boost, and the CA Dream For All program.
2. Refer to the Fiscal Year 25/26 biennial budget process \$250,000 for technical assistance.
- Financial Implications:** See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 31. Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code to Establish a Labor Peace Policy Minimizing Labor/Management Conflict in Berkeley Marina Zone**
From: Councilmember Harrison (Author), Mayor Arreguin (Co-Sponsor)
Recommendation: Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code (BMC) to Establish a Labor Peace Policy minimizing labor/management conflict in Berkeley Marina Zone.
- Financial Implications:** See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Action Calendar – Policy Committee Track Items

32. Referral: On-Street Secure Bike Storage

From: Councilmember Robinson (Author)

Recommendation: Refer to the City Manager to develop and return to Council with a plan to create on-street secure bike parking in multi-family residential and commercial districts across the City in parking spots previously reserved for car storage. Take associated actions, including:

1. Determining recommended locations for installation that take into consideration factors such as equity priority neighborhoods; transit connections; bicycle network connections; areas with high percentages of tenants; access to destinations such as schools, community centers, employment centers, and businesses; and public input.
2. Developing and issuing a Request for Proposal for an operator to install and maintain on-street bike lockers, including lockers that can accommodate bikes of varying shapes and sizes.
3. Pursuing available grant opportunities to fund initial costs and ongoing maintenance.

Financial Implications: See report

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

Information Reports

33. Fiscal Year 2023 Mid-Year Budget Update

From: City Manager

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000; Henry Oyekanmi, Finance, (510) 981-7300

34. LPO NOD: 1581 Le Roy Avenue/#LMSAP2022-0009

From: City Manager

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

35. LPO NOD: 1325 Arch Street/#LMSAP2022-0013

From: City Manager

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

36. LPO NOD: 1911 Fourth Street /#LMSAP2022-0014

From: City Manager

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

37. 2022 Disaster and Fire Safety Commission Work Plan

From: Disaster and Fire Safety Commission

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

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

Agendas and agenda reports may be accessed via the Internet at:

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and may be read at reference desks at the following locations:

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

Libraries: Main – 2090 Kittredge Street,
Claremont Branch – 2940 Benvenue, West Branch – 1125 University,
North Branch – 1170 The Alameda, Tarea Hall Pittman South Branch – 1901 Russell

COMMUNICATION ACCESS INFORMATION:

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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Office of the City Manager

CONSENT CALENDAR  
March 21, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Lovvorn, Secretary to the Civic Arts Commission

Subject: Referral Response: Grant Program for Retaining and Improving Creative Spaces

RECOMMENDATION

Referral to the FY 2024 Budget Process an annual allocation of \$300,000 for funding the Civic Arts program to administer an annual Capital Projects Grant Program for Berkeley-based nonprofit arts and cultural organizations in order to retain and sustain the vitality of Berkeley's arts sector through real estate and capital project support.

FISCAL IMPACTS OF RECOMMENDATION

Annual allocation of \$300,000 from General Fund revenues beginning in FY 2024; it is anticipated that establishment of an annual allocation for an ongoing transparent grants process will regularize the fiscal impacts to the City. There is a demonstrated need for an annual allocation of \$300,000 for this program, which is described in the "Rationale for Recommendation" section. This grant program is a proposed alternate approach to the practice of making one-time funding allocations to specific arts organizations for capital projects and purchases during the annual budget process. The administration of a Capital Projects grant program requires the annual commitment of staff time. To minimize the impact, staff would incorporate development and review processes for this grant program into the current workflow of the Civic Arts grants cycle.<sup>1</sup>

CURRENT SITUATION AND ITS EFFECTS

This report responds to a referral to the Civic Arts Commission "to develop a grant program available for arts and cultural organizations to support retaining and improving creative spaces for artists" (Attachment 1). The referral originally appeared on the agenda of the October 29, 2019 Council meeting and was sponsored by Councilmembers Rashi Kesarwani and Lori Droste.

Providing state-of-the-art, well-maintained infrastructure, amenities, and facilities is a priority in the City's Strategic Plan. Due to high costs, many of Berkeley's arts and

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<sup>1</sup> Overview of the Civic Arts grant cycle: <https://berkeleyca.gov/community-recreation/civic-arts/civic-arts-grants>, 2023.

cultural organizations—most of which are non-profit—struggle to attain appropriate spaces for their programs and services, or to maintain the spaces they currently manage.

The first two goals of The City of Berkeley's *Arts and Culture Plan (2018)* support the development of a Capital Projects grant program for arts organizations in order to help sustain Berkeley's arts sector.

- Goal 1: Increase Access to Affordable Housing and Affordable Spaces for Artists and Arts Organizations*
- Goal 2: Increase Investment in a Vibrant Arts Community<sup>2</sup>*

Currently, there is no formal process for awarding capital improvement funds to arts and cultural organizations. Historically, specific arts organizations in need of capital funding have made requests directly to Council and subsequently some have been awarded one-time funding allocations through the City's annual budget process.

The recommendation of this report is to fund a formal Capital Projects grant program managed by Civic Arts staff with awards to individual organizations be approved by the Civic Arts Commission. This grant program would be administered through a competitive process, and allow Berkeley-based non-profit arts organizations to access funds for documented capital improvement needs, including but not limited to; accessibility upgrades, updated ventilation and filtration systems, elevators, roof improvements, electrical systems, and other capital projects or facility upgrades.

In response to the 2019 Council referral, the Capital Projects grant guidelines (Attachment 2) were developed over several meetings between Civic Arts staff and the Civic Arts Commission Grants Subcommittee, and finally through discussion and approval with the full Civic Arts Commission. The guidelines for this grant program use the same rigorous, transparent review process as the other Civic Arts grant categories and are aligned with national and regional best practices in civic art administration. At the December 7, 2022 Civic Arts Commission meeting, the Commission unanimously approved the Capital Projects Grant Guidelines (Attachment 2). Action: *M/S/C (Bullwinkel/Woo) to approve the FY24 Capital Projects Grant Guidelines with minor edit to correct typo and remove from eligibility that organization be incorporated prior to 2023.* Vote: Ayes — Anno, Blecher, Bullwinkel, Covarrubias, Dhesi, Ozol, Passmore, Woo; Nays — None; Abstain — None; Absent — None.

## BACKGROUND

In the past, individual Berkeley-based arts and cultural organizations have received direct capital funding through budget referrals. Since FY2016, the following funds have

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<sup>2</sup> [The City of Berkeley's Arts and Culture Plan \(2018 – 2027 Update\)](#), adopted July 24, 2019.

been awarded to arts and cultural organizations for capital improvements or capital purchases as a result of Council budget referrals:

|                                         |                  |
|-----------------------------------------|------------------|
| FY 2016: The UC Theatre                 | \$150,000        |
| FY 2016: Kala Art Institute             | \$100,000        |
| FY 2018: Capoeira Arts Foundation       | \$150,000        |
| FY 2023: Luna Kids Dance                | \$150,000        |
| <u>FY 2023: La Pena Cultural Center</u> | <u>\$150,000</u> |
| 8-year funding total (FY):              | \$700,000        |

This has been an effective way for arts organizations to get much-needed funding for their facilities, however, this process is less accessible to smaller and newer Berkeley organizations or to those art and cultural organizations unfamiliar with the City’s budgeting processes. Alternatively, by providing capital project funds through an objective grant process, it ensures that resources are more broadly accessible. This would enable more arts and cultural organizations to access crucial funding for capital improvements and ultimately help Berkeley retain a vibrant and diverse arts community.

In January of 2023, Civic Arts conducted a public *Arts Space Needs Assessment Survey* (Attachment 3) to gather data about the community’s space needs for arts programming. The survey received 74 responses and provided crucial data about the capital funding needs of Berkeley’s arts organizations. The survey response findings are summarized in Attachment 4; and demonstrate a high need for capital project funding for Berkeley’s arts and cultural organizations.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The Civic Arts Commission requests \$300,000 annually beginning in FY 2024 to fund a Capital Projects grant program that would be accessible to non-profit arts and cultural organizations located in Berkeley. The rationale for this recommendation is as follows:

*Demonstrated need:* The January 2023 *Arts Space Needs Assessment* findings demonstrate the breadth of the need for capital funding throughout Berkeley’s arts sector and further underscore the necessity for the City to have an accessible and objective grant process to broadly award funds. Survey data shows that capital projects and purchases are costly. While the City cannot address the entire need of the arts community, an annual allocation of \$300,000 for this grant program would provide enough funding for two grant awards at a maximum award amount of \$150,000 each.

*Precedent of awarding capital funding to arts organizations:* In FY 2023, this amount has already been allocated to two (2) arts organizations for capital projects through

direct Council budget referrals. Over the last 8 years, the City has allocated a total of \$700,000 to arts organizations through the budget referral process.

*Open and transparent grant process:* The Civic Arts program currently has a robust grant program; which is administered in keeping with national, state and regional best practices in grant making. Similarly, the program will be able to provide an efficient implementation of a local capital grants program for Berkeley's arts organizations.

#### ALTERNATIVE ACTIONS CONSIDERED

The *Arts Space Needs Assessment* conducted in January 2023 demonstrates that many Berkeley-based arts and cultural organizations need to make repairs to their current facilities or need to purchase equipment to provide community programs. An alternative to funding a Capital Projects grant program would be to increase the City's annual allocation for Civic Arts Grants, which could be used to increase the general operating support for all grant-funded arts and cultural organizations. In this way, grantees could opt to utilize the increased grant funding for any needed repairs and equipment, albeit at a smaller scale than the proposed Capital Projects grant program.

#### CONTACT PERSON

Jennifer Lovvorn, Secretary to the Civic Arts Commission, (510) 981-7533  
Hilary Amnah, Civic Arts, Office of Economic Development, (510) 981-7539

#### Attachments:

- 1: Referral to the Civic Arts Commission: Develop a Grant Program Available for Arts and Cultural Organizations to Support Retaining and Improving Creative Spaces for Artists (October 29, 2019)
- 2: Civic Arts Capital Projects Grant Guidelines
3. Arts Space Needs Assessment Survey Questionnaire
- 4: Arts Space Needs Assessment Findings



Rashi Kesarwani  
Councilmember District 1

CONSENT CALENDAR  
October 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Rashi Kesarwani and Lori Droste  
Subject: Referral to the Civic Arts Commission to develop a grant program available for arts and cultural organizations to support retaining and improving creative spaces for artists

RECOMMENDATION

Referral to the Civic Arts Commission to prioritize within their current Work Plan creating a process for awarding competitive grants to Berkeley-based arts and cultural organizations that will help support their ability to stay in Berkeley.

FINANCIAL IMPLICATIONS

Staff time to develop a grant program.

CURRENT SITUATION AND ITS EFFECTS

A stated priority within the City's current strategic plan is providing state-of-the-art amenities such as those our arts and cultural institutions make available. More than 150 Berkeley arts and cultural institutions enrich our community and provide a significant economic engine that generates millions of dollars and employs thousands of workers. However, rising real estate costs and lack of affordable housing, office, and studio space of any kind pose a significant challenge to the ability of these institutions to remain in Berkeley.<sup>1</sup>

This referral to the Civic Arts Commission asks that they prioritize within their current work plan the development of a competitive grant program framework through which any arts and cultural institution would be able to apply for City funds to assist in staying in Berkeley, such as through capital improvements, the acquisition of a permanent location, or temporary rental assistance.

According to The City of Berkeley Arts and Culture Plan, 2018-2027 Update, the first of the five strategic goals towards actualizing our City's vision for the arts is to "support the long-term sustainability of the arts and culture sector by expanding the availability of affordable housing and spaces for both artists and arts organizations."<sup>2</sup> In an effort to ensure equitable distribution of City funds for these purposes, this referral requests the

<sup>1</sup> See April 25, 2019 [Berkeleyside](#) article: "Why new office space in Berkeley is so hard to find."

<sup>2</sup> City of Berkeley Arts and Culture Plan, 2018-2027 Update, page iii

creation of a competitive grant application and fair selection process that would be available to any Berkeley art and cultural institution.

In providing a framework for a grant application and selection process for arts and cultural organizations, the Civic Arts Commission may consider the following:

- Recommending an annual award amount (or range) available to each institution;
- Recommending funding stream(s) to fund the grant from existing or new sources and a total amount to make available;
- Establishing a fair and transparent process for reviewing grant applications, including determining the reviewing body (i.e., Office of Economic Development staff or Civic Arts Commission);
- How the funds are to be used.

### BACKGROUND

On January 26, 2016, the Berkeley City Council approved capital improvement grants totaling \$250,000 to the U.C. Theatre (\$150,000) and Kala Art Institute (\$100,000) to assist with critically needed facilities upgrades. Without these funds, these anchor art institutions were at risk of becoming non-operational. On the October 15, 2019 City Council agenda, the City Council considered a grant totaling \$150,000 to the Capoeira Arts Foundation (CAF) to assist this globally recognized arts and cultural institution in purchasing their current building on San Pablo Avenue in Berkeley. Without this financial support to assist in purchasing the building, Capoeira would likely be forced to leave Berkeley due to a prohibitive rent increase once their lease expires at the end of this year.

Many arts institutions struggle to remain in Berkeley due to the high cost of living and housing. Given that the City has already supported U.C. Theatre and Kala Art Institute, and Capoeira Arts Foundation is seeking assistance, it is apparent that an open and transparent process that enables any Berkeley-based arts and cultural organization to apply for funding would be an equitable approach to handling this challenge. Smaller and less established arts institutions often do not have the capacity to raise the necessary funds for capital improvements, site acquisition, or temporary rental assistance.

### ENVIRONMENTAL SUSTAINABILITY

To the extent that arts and cultural organizations can acquire their buildings and develop on-site housing, this item could reduce vehicle miles traveled.

### CONTACT PERSON

Councilmember Rashi Kesarwani, Council District 1  
510-981-7110





# FY25 Capital Projects

## City of Berkeley | Civic Arts Grant Guidelines

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*APPLICATION DEADLINE: XX XX, 20XX, 11:59 PM*

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### Important Dates (Subject to change)

|                                                       |  |
|-------------------------------------------------------|--|
| Applications Open                                     |  |
| Application Deadline                                  |  |
| Grant Review Panel Meeting                            |  |
| Grants Subcommittee Meeting – Funding Recommendations |  |
| Civic Arts Commission Meeting – Grant Awards Approval |  |
| City Council Adopts Fiscal Year Budget                |  |
| Grant Activity Period                                 |  |
| Final Report Due                                      |  |

## 1. OVERVIEW

### 1.1 Purpose – Why these grants are offered.

The purpose of the Capital Projects grant program is to support the long-term sustainability of the arts and culture sector by retaining and improving arts organizations' spaces in the City of Berkeley. Capital projects and asset acquisitions funded in this program are intended to help arts organizations stay in Berkeley.

Applicants may only propose funding for a single project or asset acquisition; multiple projects proposed in a single grant application will not be considered. Arts organizations may only submit one (1) application in this grant category per grant cycle.

As smaller and less established arts organizations often do not have the capacity to raise the necessary funds for essential equipment, capital improvements, or site acquisition, **organizations with total cash revenues of under \$1,000,000 will be prioritized.**

Additionally, **capital projects that increase the accessibility of an organization to people with physical disabilities will also be prioritized.** Examples of these projects include but are not limited to, installation of accessible signage, construction of wheelchair-accessible doors and ramps, and purchasing assistive listening systems.

Please note: Completing a capital project usually impacts an organization's operating budget by either increasing or decreasing, depending on the type of project. A capital project usually requires a large investment of funds and staff resources from project conception to project closeout.

## 1.2 Land Acknowledgment

The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun), the ancestral and unceded land of the Chochenyo-speaking Ohlone people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. We acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.

## 1.3 Cultural Equity Statement

The City of Berkeley Civic Arts program commits to equity within the arts and culture sector by consistently evaluating its programs and practices. The City recognizes the multiple benefits the arts provide, regardless of race, color, religion, age, disability, national origin, sex, sexual orientation and gender identity/expression.

Beyond ensuring access to the arts, the City of Berkeley commits to supporting artists and arts organizations that represent diverse cultures, life experiences, and socio-economic backgrounds. The City supports the empowerment of perspectives and identities that have been historically and systemically underrepresented.

## 1.4 Capital Project Definition

A capital project is a project that helps maintain, improve, or adds to the organization's infrastructure. It results in an acquisition of a new asset or new construction, improvements, expansion, renovation, rehabilitation, repairs, or replacement of an existing facility and other infrastructure assets in the City of Berkeley. Capital projects are expected to result in a long-term useful life and long-term benefit.

## 1.5 Eligibility – Who can apply?

Applicants must meet all of the following eligibility requirements:

- Applicant's official business address is located in the City of Berkeley
- Applicant is a non-profit 501(c)(3) organization
- Applicant is an arts organization
  - An arts organization is defined as an entity with a primary purpose of providing arts, creative, or cultural programming/services. The organization's purpose is assessed and verified by staff using the organization's website, mission, core activities, and IRS National Taxonomy of Exempt Entities (NTEE) codes.

## 1.6 Eligibility – Who can't apply?

- City of Berkeley government departments or units
- Colleges or universities
- Fiscally sponsored organizations
- For-profit businesses or sole proprietorships
- Individual artists
- Public or private school districts
- *In the pilot year*, recipients of previous City Council or Mayoral capital project funding

### 1.7 Who is encouraged to apply?

Although not considered in review process, organizations representing systemically marginalized identities, including but not limited to: Arab, MENASA (Middle Eastern, North African, South Asian); Asian; Black, African American; California Native American, Indigenous, Tribal; Disabled; Elders, Seniors; Latinx, Chicanx; LGBTQIA2S+; Low Income; Neuro-Divergent; Pacific Islander; People of Color; Trans and/or Non-Binary People; Immigrants (Documented and/or Undocumented), Refugees, Asylum Seekers, Migrants; Unhoused; Unsheltered; Veterans; or Youth 18 years of age or older are strongly encouraged to apply.

### 1.8 Grant Amount

All applicants may request between **\$2,000** and **\$150,000** for capital project expenses or asset acquisition.

Final award amounts are contingent upon City Council's adoption of the Fiscal Year 2024 budget. Final award amounts are subject to change based on the adopted budget allocation for Capital Grants in Fiscal Year 2024.

### 1.9 Funding Use – Grant money can be used for these things.

A project budget is required for this application. Examples of eligible expenses for this funding include, but are not limited to:

- Assistive technology
- Contractor and permit fees
- Construction and repairs
- Down-payment for real estate purchase
- Equipment
- Established capital campaigns where Civic Arts funding would be the final amount needed
- Lighting
- Heating, ventilation, and air conditioning (HVAC)
- Project planning, assessment consultancies, or feasibility studies
- Project management salaries

### 1.10 Funding Use Restrictions – Grant money can't be used for these things.

Grant funds may not be used for:

- Administrative or other organizational costs unrelated to the capital project
- Locations on public or private school grounds
- Locations on college or university campuses
- Locations outside the City of Berkeley
- Multiple projects proposed within the same grant application
- Fundraising
- Regular programming
- Political advocacy or lobbying
- Spaces not available or accessible to the general public
- Start-up costs for creating new organizations or businesses
- Trusts, endowments, or cash reserves

### 1.11 Project Requirements

- Documentation of the project process and completion
- Project must be completed within the Grant Activity Period
- Project must be completed within the City of Berkeley
- Project must meet [Americans with Disabilities Act \(ADA\) standards](#)
- *For construction projects only:* Proof of building ownership or long-term lease

### 1.12 Fiscal Sponsors

The use of Fiscal Sponsors is not permitted for this grant program.

## 2. APPLICATION PROCESS

### 2.1 Grant Application Materials

All application materials must be submitted electronically before the deadline. The Capital Projects grant application consists of the following components:

- Proof of Berkeley business address
- Proof of non-profit status for applicant
- 990 or 990-EZ Income tax forms from FY21 and FY22
- Narrative questions
- Key personnel biographies/qualifications
- Board of directors, including city of residence
- Project budget and budget notes
- Support materials

### 2.2 Grants Management System

All application materials must be submitted electronically using the Office of Economic Development's grants management system, [Submittable](#). Technical assistance creating a Submittable account is available through [Submittable's Customer Support](#).

Please note: Paper or physical applications are not accepted at this time.

### 2.3 Technical Assistance

Technical assistance for grant program-specific inquiries is available from Civic Arts staff by email or by phone appointment. This technical assistance can help provide guidance around eligibility, application requirements, or review criteria.

Resources available at any time on the Civic Arts website are a FAQs (frequently asked questions) page and a recording of the Grant Program Webinar workshop.

Staff contact: Hilary Amnah, Grants Program Lead  
[hamnah@cityofberkeley.info](mailto:hamnah@cityofberkeley.info)  
[Schedule a phone or virtual appointment](#)

### 2.4 Accommodations for Disabilities

Individuals with disabilities who need reasonable accommodations to participate should make their requests to the Civic Arts staff at [civicsarts@cityofberkeley.info](mailto:civicsarts@cityofberkeley.info). Staff will work with the Disability Compliance Program to review and fulfill the request. Disability-related accommodation requests must be made at least 72 hours in advance of deadlines or meetings.

### 2.5 Translation Services

The grant guidelines are available to be translated into another language upon request. Requests can be emailed to Civic Arts staff at [civicsarts@cityofberkeley.info](mailto:civicsarts@cityofberkeley.info). If the application is submitted in a language other than English, a third-party translation service will be used to translate application answers into English for Grant Review Panelists.

### 3. EVALUATION AND SCORING

#### 3.1 Review Criteria

Applications will be evaluated in a Grant Review Panel meeting according to the following criteria:

##### Capital Need (25%)

- Applicant demonstrates a need for a capital improvement, site acquisition, or equipment/asset purchase
- Applicant organization has total revenue of under \$1,000,000
- Project goals are clearly defined

##### Planning and Implementation (30%)

- Project timeline is clear, feasible, and includes identified milestones
- Project budget is clear and reasonable given the scope
- Key personnel demonstrate qualifications or experience with managing capital projects relative to the scope
- Plans for documenting the project's implementation and completion are feasible
- *For construction projects only:* Identified architect, contractor, consultant, or project manager demonstrate qualifications appropriate to the project goals

##### Accessible Community Impact (20%)

- Community benefit is clearly demonstrated
- Extent to which project enhances meaningful engagement for people with physical disabilities
- Extent to which the completed project meets ADA requirements and is accessible to people with physical disabilities

##### Cultural Equity (25%)

- Extent to which the organization employs diverse personnel and is governed by a diverse board of directors
- Extent to which the organization's programming and services are rooted in institutionally underserved communities and geographically underserved areas of the city
- Extent to which the organization meaningfully engages economically-disadvantaged individuals
- Applicant shows organizational growth through changes made directly related to cultural equity in the past two years

#### 3.2 Scoring Scale

Grant Review Panelists use the following scale in assessing how well the applicant meets the review criteria. Numerical values are then translated to the appropriate weight for each criterion.

|   |                       |                                                                      |
|---|-----------------------|----------------------------------------------------------------------|
| 5 | <b>Exceptional</b>    | meets review criteria to the highest degree                          |
| 4 | <b>Strong</b>         | strongly meets review criteria                                       |
| 3 | <b>Good</b>           | satisfactorily or successfully meets review criteria; average        |
| 2 | <b>Fair</b>           | moderately meets some of the review criteria; needs some improvement |
| 1 | <b>Underdeveloped</b> | minimally meets the review criteria; greatly needs improvement       |
| 0 | <b>Weak</b>           | does not meet any elements of the review criteria                    |

## 4. REVIEW PROCESS

### 4.1 Eligibility Screening

Civic Arts staff will review each application submitted before the deadline for eligibility and completeness. Eligible applications will be evaluated by a Grant Review Panel for scoring in accordance with the review criteria.

### 4.2 Grant Review Panel

The Grant Review Panel is comprised of individuals located in the greater Bay Area with diverse backgrounds in the cultural sector. Individuals apply to be included in the panelist pool through an open call. The Civic Arts Commission approves the pool of panelists that can be selected to serve on a panel.

Any Review Panelist who has a conflict of interest with an application(s) must recuse themselves from reviewing that application(s). A 'conflict of interest' is defined as a situation in which a Review Panelist has a competing professional, financial, or personal interests that might could impair their ability to perform their evaluation responsibilities objectively.

The Grant Review Panel meeting is public and facilitated through a Zoom Video Webinar. All applicants receive information regarding the panel meeting's date, time, and order in which applications will be reviewed. Applicants are encouraged to attend the panel meeting.

Applicants are permitted three (3) minutes at the end of the panel's review of their application to clarify any aspects of the application that may have been misunderstood by the panelists. The three minutes to address the panelists may not be used to give additional information not included in the application.

Panel comments made by panelists in support of their scores are available to applicants upon request once they receive the official notice of their application's award or decline from Civic Arts.

### 4.3 Civic Arts Commission Approval

After the Grant Review Panel has scored all applications, the Civic Arts Commission's Grants Subcommittee meets to develop funding recommendations in alignment with the ranking of scores within and to align proposed grant awards with available funds and for consistency with granting policies and guidelines, before forwarding the recommendations to the full Civic Arts Commission.

The award amounts as recommended by the Grants Subcommittee are made public at least five (5) business days prior to the Civic Arts Commission approval. The Civic Arts Commission reviews the funding recommendations for approval and votes on final approval.

### 4.4 Appeal Process

Applicants who have evidence of misconduct or technical error in the panel review process may appeal the Grant Subcommittee's proposed funding scenario by completing an official appeal form. Appeal forms must be received at least 48 hours in advance of the Civic Arts Commission meeting where final funding decisions are made. Applicants can email appeal forms to [civicarts@cityofberkeley.info](mailto:civicarts@cityofberkeley.info).

Please note: Dissatisfaction with a final score or award amount is not grounds for appeal.



## 5. GRANTEE REQUIREMENTS AND POLICIES

### 5.1 Invoicing

Grantees must complete a Demographic Survey to receive their grant award invoice from Civic Arts. Staff will provide an invoice for 100% of the grant amount following City Council's approval of the Fiscal Year's budget.

### 5.2 Final Report

All grantees must submit a completed Final Report form within 30 days after the end of the Grant Activity Period. Final Reports are usually due by July 30 unless otherwise noted. The Final Report should demonstrate how the grant-funded project was developed and implemented. The Final Report also includes evaluation questions for self-reflection and for Civic Arts staff to make improvements to the program. Grantees who do not submit a Final Report are ineligible from applying for any future Civic Arts grants.

### 5.3 Grant Activity Period Extension Requests

Grantees who experience circumstances that prevent them from spending grant funds before the end of the Grant Activity Period may request a Grant Activity Period Extension. A Grant Activity Period Extension may be requested for up to one (1) year beyond the original end-date. Requests must be received before the end of the Grant Activity Period and approved by Civic Arts staff.

### 5.4 Business License

Awarded applicant organizations must have a current [City of Berkeley Business License](#).

### 5.5 Acknowledging City Support

It is important that the Berkeley community know that their local tax dollars make it possible for them to enjoy the caliber of arts produced in Berkeley. Grant recipients should acknowledge the City's financial support by using the phrase "Supported in part by a Civic Arts Grant from the City of Berkeley" or including the "City of Berkeley" in lists of supporters. Grantees must display the [City's logo](#) in all promotional materials and media.

### 5.6 City Permits and Permissions

Receiving a grant does not imply that the Civic Arts program or any other City department will produce, exhibit, or promote artwork(s) created with grant funds. It is the responsibility of the grantee to secure a venue and appropriate insurance for public presentations.

The grantee is solely responsible for securing the necessary City permits or approvals for elements such as publicly installed art, street closures, sound amplification in public space, or murals if included as part of the grant proposal. Planning for this should be reflected in the application narrative. Any grant-funded art installed in the public realm or on property owned by the City of Berkeley must be reviewed and approved by the Civic Arts Commission and its Public Art Subcommittee. The review process must be complete before the project is implemented. This review process applies to murals, public sculpture, and similar projects. This review process should be reflected in the project narrative.

### 5.7 Incomplete Projects

Failure to complete the grant-funded project will result in a forfeiture of grant funds. Grantees with incomplete projects must return their award funds to the City of Berkeley.



# Berkeley Arts Space Needs Assessment

Increasing access to affordable art spaces is a top priority for the City of Berkeley's Arts and Culture Plan.

The purpose of this survey is to gather data for the development of two space-related solutions:

1. Civic Arts is developing a Capital Projects Grant to help arts organizations stay in Berkeley. This grant will support efforts to retain and improve buildings, facilities, and organizational spaces for arts organizations located in the City of Berkeley. For this program, a capital project is defined as a project that helps maintain, improve, or adds to the organization's infrastructure.
2. The City of Berkeley is developing plans to revitalize the Civic Center to become the prime space for civic life, culture, and the arts. This includes transforming the Veterans Memorial Building into a Community Arts Center and creating enhanced spaces in the Civic Center Park for performances and events.

Data from this survey will help us better understand the space needs of Berkeley's arts community, especially organizations and artists who rent spaces for their performances, exhibitions, classes, and events.

Thank you for completing this survey. Your participation will help the City of Berkeley better serve its arts community.

If you don't already receive the Civic Arts newsletter, [sign up here](#) to stay informed about our grant opportunities and program updates.

\* Required

1. Organization Name \*

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2. Organization Contact Name \*

---

3. Organization Address \*

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4. What is your organization's artistic focus? (You may select more than one.) \*

*Check all that apply.*

- Theater
- Music
- Dance
- Visual Arts
- Literary Arts
- Media Arts
- Arts Education
- Other: \_\_\_\_\_

5. Choose a description of the space where your organization operates. (Select one.) \*

*Mark only one oval.*

- Short-term lease of building, facility, or space
- Long-term lease of building, facility, or space
- Own building, facility, or space
- Share building, facility, or space with another organization
- Lease administrative office and occasionally rent other spaces for events, rehearsals, and other programming
- Home office for administration and space rentals for occasional events, rehearsals and other programming
- Currently not operating out of a physical space
- Other: \_\_\_\_\_

6. How long has your organization operated in its current building, facility, or space? \*

*Mark only one oval.*

- Less than a year
- 1 – 2 years
- 3 – 5 years
- 5 – 10 years
- More than 10 years
- N/A
- Other: \_\_\_\_\_

7. How much does your organization pay in rent/mortgage each month? \*

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8. If your organization **owns or leases** a building, facility, or space where it conducts all of its operations and programming, please indicate what features it has. \*

*Check all that apply.*

- Auditorium
- Thrust Stage
- Theater in the Round
- Black Box Theater
- Concert Hall
- Chamber Music Stage / Space
- Gallery / Exhibition Space
- Museum
- Dance Studio
- Outdoor Amphitheatre
- Park / Plaza / Flexible Outdoor Space
- Production / Recording Studio
- Screening Room
- Studio (Visual Arts)
- Classroom
- Administrative Space
- N/A
- Other: \_\_\_\_\_

9. Do you have any **subtenants or rent spaces out to others?** \*

Mark only one oval.

- Yes
- No
- N/A
- Other: \_\_\_\_\_

10. Please select the types of spaces your organization manages and **rents out to others.** \*

Check all that apply.

- Auditorium
- Thrust Stage
- Theater in the Round
- Black Box Theater
- Concert Hall
- Chamber Music Stage / Space
- Gallery / Exhibition Space
- Museum
- Dance Studio
- Outdoor Amphitheatre
- Park / Plaza / Flexible Outdoor Space
- Production / Recording Studio
- Screening Room
- Studio (Visual Arts)
- Classroom
- Administrative Space
- N/A
- Other: \_\_\_\_\_

11. If your organization **rents space out to others**, what's the size and capacity (number of people) of the space?
- 

12. Does your organization rent spaces for your programming or operations **from other organizations**? (For example, a concert hall, theater, exhibition space, etc.) \*

*Mark only one oval.*

Yes

No

Unsure

13. Please select the types of spaces your organization **rents from other organizations** for regular or special programming. \*

*Check all that apply.*

- Auditorium
- Thrust Stage
- Theater in the Round
- Black Box Theater
- Concert Hall
- Chamber Music Stage / Space
- Gallery / Exhibition Space
- Museum
- Dance Studio
- Outdoor Amphitheatre
- Park / Plaza / Flexible Outdoor Space
- Production / Recording Studio
- Screening Room
- Studio (Visual Arts)
- Classroom
- Administrative Space
- N/A
- Other: \_\_\_\_\_

14. If your organization **rents space from others**, what is the size and capacity (number of people) of the space?

\_\_\_\_\_

15. If you rent spaces, what is the primary factor driving the selection of a space?

Mark only one oval.

- Price
- Availability
- Size
- Equipment
- Special configuration of the space
- Other: \_\_\_\_\_

16. What **types of spaces would be useful** to your organization in a City-owned arts center, such as a renovated Veterans Memorial Building in Civic Center? (Please select up to three.) \*

Check all that apply.

- Auditorium
- Black Box Theater
- Small Concert Hall
- Chamber Music Stage / Space
- Gallery / Exhibition Space
- Dance Studio
- Production / Recording Studio
- Screening Room
- Studio (Visual Arts)
- Classroom or Workshop Space
- Maker Space
- Rehearsal Space
- Administrative Space
- N/A
- Other: \_\_\_\_\_



17. If your organization would rent space in a City-owned arts center, for the types of spaces that you selected in the previous question, please describe what size and capacity of that space is needed.

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18. How interested are you having your organization's programming in the Veterans Memorial Building? \*

Mark only one oval.

Not interested

1

2

3

4

5

Very interested

19. How interested are you in having your organization's programming in the Downtown Berkeley? \*

Mark only one oval.

Not interested

1

2

3

4

5

Very interested

20. How interested are you in outdoor venues in Civic Center Park? \*

Mark only one oval.

Not interested

1

2

3

4

5

Very interested

21. Where do you hold most of your organization's events annually (performances, exhibits, workshops, etc.)? Please choose the top one or two locations. \*

Check all that apply.

Berkeley

Oakland

Emeryville

Albany

El Cerrito

San Francisco

Other: \_\_\_\_\_

22. What are the two biggest challenges of sustaining your organization's space? \*

*Check all that apply.*

- Long-term affordable lease terms
- Legally mandated upgrades (ADA upgrades, fire-safety repairs)
- Deferred maintenance costs
- Demand for more space
- Other: \_\_\_\_\_

23. Which two of the below programs would be of most interest to your organization? \*

*Check all that apply.*

- Technical assistance with real estate acquisition or leasing
- Grant program for repairs and maintenance
- No-interest / Low-interest loan program to purchase real estate
- No-interest / Low-interest loan program for a renovation project
- Planning for a move
- Planning to build out a space
- Equipment purchase
- ADA upgrades
- Other: \_\_\_\_\_

24. Are you interested in space-sharing for any part of your organization's operations or programming? \*

*Mark only one oval.*

- Yes
- No
- Maybe

25. Is your organization considering purchasing space in the future? \*

Mark only one oval.

Yes

No

Unsure

My organization already owns its space

26. Is your organization in need of any renovations or large equipment purchases for its operations? If yes, please describe and include a cost estimate. \*

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27. Is your organization in need of any renovations related to ADA compliance? If yes, please describe and include a cost estimate. \*

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28. Is your organization contemplating a capital campaign for any other reason not described above? If so, please describe the purpose of the campaign and the fundraising goal amount.

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29. Do you have any other feedback related to art spaces that you think would be of interest to us as we analyze this data?

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Office of Economic Development  
Civic Arts

## Summary of Arts Space Needs Assessment Findings

February 15, 2023

### Background:

In January of 2023, Civic Arts conducted a public Arts Space Needs Assessment Survey to gather data about the community's space needs for arts programming. The purpose of this survey was to gather data for the development of two space-related solutions:

1. Capital Projects Grant to help arts organizations stay in Berkeley by supporting efforts to retain and improve buildings, facilities, and organizational spaces for arts organizations located in the City of Berkeley. For this program, a capital project is defined as a project that helps maintain, improve, or adds to the organization's infrastructure.
2. Further developing plans to revitalize the Civic Center to become the prime space for civic life, culture, and the arts. Questions in the survey were specific to transforming the Veterans Memorial Building into a Community Arts Center and creating enhanced spaces in the Civic Center Park for performances and events.

### Outreach:

The survey was open from January 12 – February 2, 2023. Civic Arts promoted the survey through various channels:

- Publicized through the Civic Arts newsletter (1,808 subscribers)
- Announced to Civic Arts grantees through our grants management system
- Publicized through the Berkeley Cultural Trust email list
- Promoted to Civic Arts Commissioners to share with their networks
- Direct email sent to Civic Arts grantees prior to survey closing
- Reminder announced through the Civic Arts newsletter prior to survey closing
- Promotion via social media

The survey received 79 responses and provided crucial data about the capital funding needs of Berkeley's arts organizations.

### Key Findings:

An analysis of survey responses demonstrates a high need for capital project funding for Berkeley's arts and cultural organizations.

#### 1. Financial Need

Survey responses demonstrate that Berkeley-based arts organizations would like to make capital investments in a facility for the following reasons:

30% want to purchase or may want to purchase a facility  
45% want to make renovations to their facility  
30% want to make capital investments in equipment for their facility  
27% want to make capital investments related to ADA compliance and accessibility

## **2. Average Cost of Capital Needs**

Survey results demonstrate a sustained need for a high level of capital funding among Berkeley's arts organizations:

- Of the 45% of survey respondents who said their organization needed renovations or large equipment purchases, 17 provided cost estimates. These cost estimates, ranging from \$3,600 to \$5 million, averaged \$495,535.
- Of the 23% of respondents who said their organization needed renovations related to ADA compliance, 13 provided cost estimates. These ADA estimates, ranging from \$2,000 to \$1 million, averaged \$150,000.

## **3. Biggest Challenges Related to Sustaining an Arts Facility**

Many Berkeley-based arts organizations face challenges related to attaining or maintaining space:

35% have a need for more space  
25% are burdened with deferred maintenance costs  
23% need to make legally mandated upgrades





Mental Health Commission

CONSENT CALENDAR  
March 21, 2023

To: Honorable Mayor and Members of the City Council  
 From: Mental Health Commission  
 Submitted by: Dr. Margaret Fine, Chairperson  
 Subject: Resolution to Adopt a City-Wide “Care First, Jails Last” Policy

RECOMMENDATION

Adopt a Resolution adopting a City-wide “Care First, Jails Last” policy that prioritizes a continuum of care for individuals with mental illness, substance use, or co-occurring disorders rather than incarceration. Mandate that City’s mental health and substance use disorder providers become active participants in the County continuum of care network. Require City departments that have contact with the public revise policies, procedures, and practices to reflect this priority and policy resolution.

SUMMARY

Care First, Jails Last is a policy resolution that is used nationwide. In fact, the Board of Supervisors for Alameda County has adopted the “Care First, Jails Last” policy resolution for the entire county. However, the City of Berkeley has neither adopted this policy nor participated in the continuum of care offered by the County. Thus, if an individual experiencing mental illness and/or substance use disorder commits a crime in the City of Berkeley, he or she would be subject to arrest and detention at the city or county jail (Santa Rita Jail). However, persons who are similarly situated that commit a crime outside the City of Berkeley but within Alameda County may be offered a “care option” and not jail. This difference between enforcement and care based on City of Berkeley borders is non-sensical and harmful, when there are treatment and services options available to serve our most vulnerable, marginalized persons in the City of Berkeley. The City of Berkeley needs to join Alameda County and other jurisdictions nationwide (like Los Angeles) in adopting a “Care First, Jails Last” policy resolution.

FISCAL IMPACTS OF RECOMMENDATION

There will be no fiscal impacts to the City of Berkeley in choosing to provide “care” over “jails.” Indeed, the cost of the care for an individual in a crisis care center or other facility associated with a continuum of care will not be billed to the City of Berkeley, but rather to Medi-Cal who finances treatment and services to our vulnerable and marginalized people. It is true that some of these care facilities only accept Medi-Cal (not private insurance); however, there are usually private insurance options available at other comparable facilities should this be needed.

The City will make its mental health and substance use disorder providers available to the County should the County wish to use these care options in lieu of jail. For instance, an individual might be assigned to Options Recovery in Berkeley (perhaps because it is the closest substance use disorder provider to where they live) instead of incarceration. In exchange, the City will have access to CARE Navigation Centers which offer pre-booking diversion to available numerous and various programs and providers throughout the County to meet the individual's mental health and/or substance use disorder needs. The County has plans to set up two additional CARES Navigation Centers. There are also long-term plans for providing "care" at different points, not just pre-booking, to assist those with mental illness and substance use disorder who are in our jail system. While this will be a gradual process, the County has far more resources than the City of Berkeley. – funding and staffing -- to set up this infrastructure and these programs. It is only logical that the City become a part of this program, offer the resources it has and gain from the far more numerous resources the County does and will continue to offer.

#### CURRENT SITUATION AND ITS EFFECTS

The "Care First, Jails Last" program in Alameda County is designed to divert individuals from the criminal legal case processing and incarceration and also to assist those who are currently incarcerated who have mental illness and/or substance use disorder so they may be released and succeed on the outside. Currently, the City of Berkeley does not have any of its own established diversion programs that provide options for those experiencing mental illness or substance use issues or disorders from jail to care. People who have mental illness or substance use issues or disorders and who commit crimes are either taken to Santa Rita Jail, which has recent history of ADA violations resulting from their treatment of people with mental health disabilities. <https://www.justice.gov/opa/pr/justice-department-finds-alameda-county-california-violates-americans-disabilities-act-and-us> (finding that those with mental illness at Santa Rita Jail would be better served by community-based alternatives). Likewise given the significantly higher suicide rate at Santa Rita Jail than most jails based on the Department of Justice investigation into Santa Rita Jail, the City of Berkeley should consider the potential risks of placing people at these facilities when there is opportunity to offer alternatives. <https://www.justice.gov/crt/case-document/file/1388891/download> p. 25 (noting that from 2015 through 2019, there were at least 14 suicides in the Santa Rita Jail, which equates to a rate of suicides that is more than twice the national average in other jails).

Currently, the City of Berkeley has not participated in any of Alameda County's Care First, Jails Last work. The City of Berkeley has not availed itself of resources offered by Alameda County such as the CARES Navigation Center in East Oakland which offers "pre-booking diversion" for arrested individuals. This Center offers mental health and/or substance use disorder referrals and case management for those committing misdemeanors in lieu of criminal charging or jail. We believe that the City of Berkeley need not re-invent the wheel to provide diversion programs for those with mental illness

or substance use issues or disorders but rather integrate the work with Alameda County.

In addition, the City of Berkeley has no established arrangements with local crisis stabilization, detox, and withdrawal management centers or other care facilities to take those seeking voluntary services for mental illness or substance use issues and/or disorders instead of taking people in custody at the city or county jail. There are such options. The Mental Health Commission has been conducting site visits into these options by touring the crisis stabilization center on the first floor of Amber House, as well as the crisis residential treatment center on its second floor. The Mental Health Commission believes that Amber House, for example, located in Oakland (close to the Berkeley border and 12 minutes from downtown Berkeley) has the potential of being an excellent alternative to jail for those voluntarily seeking care. The Mental Health Commission has advised the Berkeley Police Department (BPD) as such but no action has been taken to establish Amber House as an alternative in the BPD policies, along with the CARES Navigation Center. If the City were to adopt a Care First, Jails Last Policy, Amber House would likely be used for our residents as it is a part of the County’s provider network in its care continuum.

#### BACKGROUND

A “Care First, Jails Last” policy in Alameda County has an effective date of May 25, 2021, when the Alameda County Board of Supervisors (BOS) unanimously approved the policy resolution. It calls for a “just and equitable transformation of criminal justice, behavioral health, and wraparound services to reduce incarceration of people with mental illness, substance use, and co-occurring disorders in Santa Rita Jail.” The Alameda County Care First, Jails Last Taskforce is a 25-member body “charged with developing a county-wide implementation plan.” Alameda County has begun to redefine its criminal justice system using the “Sequential Intercept Model” (SIM) approach which was first established in Ohio during the 1990s. The U.S. Department of Veterans Affairs later adopted this policy and implemented it via recommendations by the Substance Abuse and Mental Health Services Administration (SAMHSA) in the early 2000s. The “Care First, Jails Last” approach provides multiple points between arrest, sentencing, and release in which mental health and substance use supports are offered to persons in need—thus placing care first when possible.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None

#### RATIONALE FOR RECOMMENDATION

The City of Berkeley has not historically aimed to find care and not jail as an alternative to arresting individuals and taking them into custody at city or county jails. In reimagining public safety for the City of Berkeley, we need to embrace care for our vulnerable and marginalized populations and moreover, recognize that these types of

contemporary approaches are designed to improve well-being outcomes and bring us closer to achieving equity among diverse demographic and identity groups. If the City of Berkeley is committed to "solving the unhoused problem," there is a need for commitment to these approaches and moreover, ensuring our vulnerable, marginalized populations have a continuum of care designed to avoid police interactions at all. There is also a dire need for implementing a "Care First, Jails Last" policy resolution in light of the alleged arrest quotas that disproportionately impact those living with mental illness and substance use issues and disorders—many of whom are unhoused and may be vulnerable to policing on our city streets. This proposed recommendation is not a radical approach but rather a humane and common-sense one adopted by cities such as Los Angeles and counties such as Alameda County.

Additionally, this proposed recommendation will assist our Specialized Care Unit (SCU), when it is operable, by providing care options for the teams who are offering non-police responses to those having mental health and/or substance use crises. The SCU will now have access to CARES Navigation Centers and the entire care continuum in the County of Alameda.

Finally, it is also worth noting that this proposed recommendation will highlight that there is a spectrum of mental health and/or substance use responses beyond either a 72 hour involuntary commitment to a hospital (5150) or being left on the streets which is too often the choice our officers face. Hopefully, even in non-criminal situations our officers will recognize there are multiple care options beyond a 5150, such as urgent mental health care for 24 hours, so all who need help, no matter what degree of treatment required, can be assisted.

#### ALTERNATIVE ACTIONS CONSIDERED

Initially, the Mental Health Commission reviewed one particular program that is a part of Alameda County's "Care First, Jails Last" continuum of care: the CARES Navigation Center that is designed to address those with mental illness or substance use disorder who commit misdemeanors. In this situation, we would have our police officers bring persons from the City of Berkeley, who meet these criteria for the CARES Navigation Center, to this destination and they would receive care as opposed to jail. However, the Mental Health Commission believes we must serve all of those with mental illness and substance use disorders – not just those committing misdemeanors pre-booking. Rather we must provide care at all stages of the incarceration process, including pre-detention all the way to post-release support. This is how the benefits of care will truly be felt in our society.

#### CITY MANAGER

#### CONTACT PERSON

Jamie Works-Wright, MHC Secretary, HHCS, 510-981-7721  
Mary-Lee Kimber Smith, Commissioner

Attachments:  
1: Resolution

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

RESOLUTION TO ADOPT A CITY WIDE "CARE FIRST, JAIL LAST" POLICY

WHEREAS the City Council of the City of Berkeley, acknowledges the need to reduce the number of people with mental illness, substance use and co-occurring disorders in our jail; and

WHEREAS the City Council of the City of Berkeley, acknowledges it is critical that we provide quality, affordable, accessible, and compassionate community-based mental health and substance use treatment options in order to reduce the number of people with mental illness, substance use and co-occurring disorders in our jail; and

WHEREAS the fundamental goal of a "Care First, Jails Last" policy is to develop a continuum of care that includes a full spectrum of treatment and housing, including preventative and outpatient services, inpatient acute and subacute facilities, licensed board and care homes, and other wraparound support services so that people with mental illness, substance use, and co-occurring disorders have a full opportunity to receive and live stable lives; and

WHEREAS the City Council of the City of Berkeley, recognizes the importance of responding to unprecedented and sustained calls from community members and behavioral health and criminal justice reform advocates to end law enforcement responses to health and social services' needs; and

WHEREAS the Care First, Jails Last policy is consistent with the goals and mission of our Reimagining Public Safety and the resulting Specialized Care Unit; and

WHEREAS the Mental Health Commission, established pursuant to California Welfare and Institutions Code 5604 et seq, is composed of 10 to 15 members. Fifty percent of the board membership shall be consumers or the parents, spouses, siblings, or adult children of consumers, who are receiving or have received mental health services. At least 20 percent of the total membership shall be consumers, and at least 20 percent shall be families of consumers. Pursuant to Berkeley City Council Resolution No. 65,945-N.S.: "The Commission shall...Review and evaluate the community's mental health needs, services, facilities, and special problems Advise the governing body and the local mental health director as to any aspect of the local mental health program"; and

WHEREAS the COVID-19 public health and financial crisis has further highlighted the need to move away from criminalization, and to reduce our jail population and provide people with mental illness, substance use and co-occurring disorders with safe and community-based services; and

WHEREAS reducing the number of people with mental illness, substance use and co-occurring disorders and providing a quality, affordable, accessible, and compassionate community-based behavioral health continuum of care are racial justice issues; and

WHEREAS incarceration and insufficient mental health and substance use disorder services disproportionately impact Black residents in Berkeley; and

WHEREAS individuals with serious mental illness, substance use and co-occurring disorders are more likely to return to jail, experience deteriorated health, and cycle through the criminal justice system than those without serious mental illness; and

WHEREAS community-based behavioral health and substance use services have been proven to reduce crime and recidivism; and

WHEREAS jails spend two to three times more money on adults with mental illness who require intervention than on those without the same needs, with little or no improvement to public safety or individuals' health; and

WHEREAS community-based care for mental illness and substance use disorder is less expensive and more effective than treatment offered in a jail setting; and

WHEREAS both incarceration and insufficient quality, accessible behavioral health care services are linked to shortened life spans for people with mental illness, substance use, and co-occurring disorders; and

WHEREAS the Care First, Jails Last policy has demonstrated success in other jurisdictions, including Alameda County and Los Angeles County, in reducing incarceration and poor health outcomes of people with mental illness, substance use, and co-occurring disorders; and

WHEREAS counties are often confronted with obstacles, including minimal resources and insufficient coordination between agencies, to reducing the number of people with mental illness in the jails; and

WHEREAS it is critical to ensure that implementing a Care First, Jails Last policy allows those with lived experiences with the criminal justice system to meaningfully inform the recommendations for what a new system can look like.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley, does hereby adopt a "Care First, Jails Last Policy" for just and equitable behavioral health care services and alternatives to incarceration that transform the city's systems of criminal justice, behavioral healthcare, and wraparound services including public benefits, social services, and housing to prioritize preventative, rehabilitative, health-focused programs; and

BE IT FURTHER RESOLVED that the work advancing the Care First, Jails Last policy must prioritize equity and inclusion frameworks in addressing racial, economic, and other disparities in the City of Berkeley's criminal justice, behavioral health, and wraparound support services systems; and

BE IT FURTHER RESOLVED that all the City of Berkeley's departments, in particular public safety, Division of Mental Health and any other supportive services, shall collaborate to advance a Care First, Jails Last policy; and

BE IT FURTHER RESOLVED that the Division of Mental Health and the Berkeley Police Department take the recommendations of the Mental Health Commission into consideration with regard to facilities (such as the use of Amber House as a care facility) and other strategies for diversion; and

BE IT FURTHER RESOLVED that the work advancing the Care First, Jails Last policy shall be grounded in shared data from across the criminal justice, behavioral health, and other supportive services systems to the extent allowable by law; and

BE IT FURTHER RESOLVED that the Chief of Berkeley Police Department (BPD) shall publicly provide updates as to the use of diversion by the BPD to the City Council, including public disclosure of aggregate data every three months to the City Council as to the number of diversions versus number of transports to jail, including the place/type of diversion and including why diversion was not attempted and/or failed for those transported to jail, in an effort to uplift systemwide transparency and coordination; and

BE IT FURTHER RESOLVED that the Manager of the Division of Mental Health shall provide updates every three months to the City Council as to the implementation progress of a Care First, Jails Last policy, specifically, the use of any City providers for the CFJL network, any input from these City providers involved in the CFJL network, and any input received from stakeholders in the CFJL program; and

BE IT FURTHER RESOLVED that in conjunction with adopting this "Care First, Jails Last" resolution, the City Council of the City of Berkeley directs a member of the Division of Mental Health to attend all the meetings of the Alameda County "Care First, Jails Last Task Force" and to report back to the Division of Mental Health on any opportunities or ideas about diversion from jails to care.





Peace and Justice Commission

CONSENT CALENDAR  
MARCH 21, 2023

To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: George Lippman, Chairperson, Peace and Justice Commission

Subject: Referral of two health educator positions to the COB FY 2024 budget process

RECOMMENDATION:

Refer to the budget process a request for estimated \$150,000 annually, beginning in FY 2024 or as early as the AAO #2 process in spring 2023, for staffing, materials, and supplies to be able to more broadly and flexibly conduct health education, prevention, and outreach to reduce health disparities, as proposed by the Peace and Justice Commission.

FISCAL IMPACTS OF RECOMMENDATION

Estimated annual cost: \$150,000. This estimate was given by Dr. Lisa Warhuus, HHCS Director, for staffing, materials, and supplies to be able to more broadly and flexibly conduct health education, prevention, and outreach to reduce health disparities.

CURRENT SITUATION AND ITS EFFECTS:

According to HHCS Director Dr. Lisa Warhuus, “the overriding health challenge in Berkeley are health disparities....For many years, we have seen significant disparities between the health status of our white community members (generally well above national averages), and our BIPOC community members. Geographically, this shows up with generally excellent health outcomes for people living in the hills, with less ideal outcomes in zip codes in South and West Berkeley (although this is shifting somewhat with gentrification). In recent years, other high-risk populations would include people experiencing homelessness and, to some extent, the LGBTQ+ community (though we need more research on the latter as it can very dependent upon circumstances).

“One of the biggest challenges we have in addressing health disparities is in the communications and outreach (prevention) component of the work. We need to do more culturally responsive outreach to those most negatively impacted by disparities, **engage and listen to what people feel is most needed**, and work with them to fill that gap. In doing so over the years, our Public Health division has often found that what is most missing is trust in the system, information and education done in a culturally responsive way, and clear access points for medical insurance, coverage, and a medical home.

“For instance, in a health assessment conducted by the Public Health Division in 2018, the highest priority identified by Berkeley participants to achieve a healthy community was communities that had access to basic needs and services (i.e. healthcare, housing, healthy food, transportation, etc.), felt connected and was treated with openness, tolerance, and inclusion, and had resources and up to date information on services. “The greatest threats to optimal health that community members identified were high costs of living, food security, and stress/mental wellness with recurring barriers being lack of or limited information and resources available to community members.”

At its regular meeting January 9, 2023, the Peace and Justice Commission adopted the following recommendation proposing the hiring of two health educator positions for the next fiscal year.

M/S/C: Bohn, Jaquin.

Ayes: Lippman, Jacquelin, Bohn, Lee, Morizawa, Gussmann.

Noes: None.

Abstain: Maran.

Absent: Leon-Maldonado.

ENVIRONMENTAL SUSTAINABILITY

N/A

BACKGROUND

Peace and Justice commissioners, along with members of the Commission on the Status of Women and the Community Health Commission, recently met with HHCS Director Dr. Lisa Warhuus and Public Health Manager Janice Chin, at Council’s request, to discuss resources for and obstacles to reproductive health services and education. Dr. Warhuus clarified that “from the lens of HHCS, the work in Berkeley needs to be centered on health disparities in the larger context first,” and to “ensure that our Public Health Division continuously includes Reproductive and Sexual Health (RSH) work as a part of their broader health education, prevention, and outreach strategy.”

HHCS is bringing on a consultant who will organize and engage community members and other stakeholders to create a Community Health Assessment and a Community Health Improvement Plan, including a pilot program to create a health innovation zone to work toward remedying severe health inequities. Performance measures will be tracked through a new web-based population data health platform that will be rolled out as part of this process.

RATIONALE FOR RECOMMENDATION

HHCS would benefit from hiring staff and paying for materials and supplies out of general fund to be able to more broadly and flexibly conduct health education, prevention, and outreach to reduce health disparities.

The department is facing the lack of sufficient resources to do culturally responsive outreach, engagement, and prevention on an unconstrained basis. Engagement of these educators would assist with Reproductive and Sexual Health (RSH) outreach as part of the larger health outreach program.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

The City Manager recommends referring this item to the Budget and Finance Policy Committee for further consideration.

CONTACT PERSON

George Lippman, Chairperson, Peace and Justice Commission  
Okeya Vance-Dozier, Commission Secretary, (510) 684-0503





Office of the Mayor

CONSENT CALENDAR  
March 21, 2023

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Budget Referral: Post COVID-19 Rental Assistance/Anti-Displacement

RECOMMENDATION

Refer \$2,000,000 to the FY 2024/June Budget Process to augment the Housing Retention Program, (administered by the Eviction Defense Center, EDC) as part of the City's anti-displacement programs (launched in 2017), for the purpose of providing rental assistance to tenants due to the COVID-19 eviction moratorium expiration and rent debt due to inflation and rental increases. The proposed funding source is FY 2023-2024 Measure P tax receipts.

BACKGROUND

The Housing Retention Program is an essential tool in preventing tenant displacement and preserving Berkeley's racial, economic and cultural diversity. In 1993, the City of Berkeley began the Homeless Prevention Grants Program, which in 2008 became the Housing Retention Program (HRP).

The program was reconstituted and bolstered in 2017 with an increased allocation of \$250,000 annually which was continued in all budgets since FY 2019. The City Council's annual allocation of General Fund revenues was made possible due to the passage of Measure U1 in 2016 which increased the business license tax for large rental properties, generating between \$4-7 Million annually.

At the onset of the COVID-19 pandemic and resulting shelter in place order, the City Council launched the Berkeley Relief Fund and allocated \$3 Million to initially capitalize the fund, to be split three ways between rental assistance, grants for arts non-profits and grants to small businesses. Tenant rent assistance was funded \$1,000,000 to expand the Housing Retention Program during this emergency with an additional \$900,000 added as private donations came in through the East Bay Community Foundation. Approved households were eligible to receive up to \$5,000 as a one-time grant, and an additional one-time grant of up to \$10,000 during the specified COVID-19 emergency. Additional funding was provided through a CBDG CARES grant from the Federal Government. A separate budget referral to continue funding of the COVID Emergency Rental Assistance Program with funds available through the American Rescue Plan Act (ARPA) was approved at the April 26, 2022 City Council meeting. Additional funding of \$1,800,000 (\$900,000 annually) was added to the programs in the

FY2023 - 2024 budget cycle.

Funding for this program is needed as many low-income households remain in massive debt that has accrued over the course of the pandemic. As the Statewide, County and Berkeley's eviction moratorium wind down, people cannot be evicted for lack of payment of rent during the local state of emergency, but property owners can seek back payment of rent through the courts. Additionally, increased inflation and cost of living, which disproportionately impacts low-income households, could put some people in a position of falling behind on rent in the coming months.

The purpose of this additional \$2,000,000 allocation for rental assistance is to supplement the Housing Retention Program to support more eligible households who have outstanding rent debt due to the pandemic, rising inflation and rent increases to continue the Housing Retention Program after the expiration of the eviction moratorium.

#### FINANCIAL IMPLICATIONS

Total allocation of \$2,000,000 from Measure P tax receipts. Since 2017, the City has funded these three programs out of Measure U1 tax receipts, and it is recommended that the Council continue this funding for the next fiscal year from Measure P.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100



Office of the Mayor

CONSENT ITEM  
March 21, 2023

TO: Honorable Members of the City Council  
 FROM: Mayor Jesse Arreguín  
 SUBJECT: City Co-Sponsorship of Bioneers Conference and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund

### RECOMMENDATION

Adopt a resolution memorializing City of Berkeley co-sponsorship of the non-profit Bioneers Conference, to be held April 6-8, 2023 and approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Mayor Arreguín, to the Berkeley Chamber of Commerce to offset permit costs, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguín and any other Councilmembers who would like to contribute.

### BACKGROUND

Now in its 34th year, the Bioneers Conference, viewed by many as the leading independent environmental and social-justice themed annual gathering in the U.S., will be held in Berkeley, California, on April 6-8, 2023. Featuring hundreds of inspiring and visionary leaders, Bioneers 2023 will bring thousands of engaged and civically active attendees to Zellerbach Hall on the UC Berkeley Campus and to venues across downtown Berkeley for three days of riveting talks, movement building, and connections.

The theme for 2023 is "Transformation, Regeneration, Celebration," and keynote speakers include legendary muralist Judy Baca; writer Rebecca Solnit; Chair of the Congressional Progressive Caucus Rep. Pramila Jayapal; activist and cultural leader Casey Camp-Horinek (*Ponca*); activist chef, writer and educator Bryant Terry; journalist Laura Flanders; and clean energy entrepreneur Danny Kennedy, with many more to be announced.

According to Bioneers CEO & Co-Founder Kenny Ausubel, "The big wheels of massive change are turning. Climate disruption bears down daily, and there's a widely felt morning-after awakening that it's going to crash the economy and bring civilization to its knees. Although the shift to renewables is now an accelerating inevitability, it's going to

City Co-Sponsorship of Bioneers Conference Relinquishing Council Office Budget  
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take relentless political action. Meanwhile, movements of the past decade for liberation, justice and multicultural democracy are swelling to challenge right-wing populist and neo-fascist forces underwritten by cynical plutocratic elites. Especially in these darkest of times, we come together to celebrate. We invite you to join forces with the Bioneers community of leadership in this time when we're all called upon to be leaders.”

For the past three decades, Indigenous knowledge, participants, and partners have fundamentally shaped and guided Bioneers. The annual Indigenous Forum is a Native-led sovereign conference-within-a-conference — a unique cross-cultural and invitational platform. Regularly attracting representatives from dozens of tribal nations, it remains the only gathering of its kind, bringing together Indigenous activists, scientists, elders, youth, culture-bearers, and scholars to share their knowledge and frontline solutions in dialogue with a dynamic, multicultural audience.

Organizers also invest in the potential of youth and educators, with a bustling youth scholarship program bringing upwards of 500 youth and mentors to experience the Bioneers Conference annually.

Described by Bill McKibben as “a crucial organizing principle,” the Bioneers Conference has long served as an annual focal point for the progressive community. The gathering strives to feature well known figures as well as emergent leaders who are engaged in exemplary work in their communities. And it's not just the speakers who make a difference. Bioneers attendees are sophisticated and active leaders in their own right, leveraging inspiration and connections built at the event to return to their communities and fields with new energy and momentum for change.

With the move to the East Bay, Bioneers is excited to be located in such a thriving, progressive, and accessible new home. The entire event will be within easy walking distance of the Downtown Berkeley BART Station. For those interested in learning more about cutting-edge work taking place in the region, Bioneers is offering two pre-conference tours on April 5, the first focused on urban farming and food production and the second exploring the vibrant cultural history and ever-developing landscape of the Berkeley and the East Bay as a hub of social justice activism.

Featuring engaged arts, musical performances, and ample opportunities for connection, Bioneers 2023 will bring hope, inspiration, and movement building to the East Bay.

Bioneers is an innovative nonprofit organization that highlights breakthrough solutions for restoring people and the planet. Founded in 1990 in Santa Fe, New Mexico, we act as a fertile hub of social and scientific innovators with practical and visionary solutions for the



City Co-Sponsorship of Bioneers Conference Relinquishing Council Office Budget  
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world's most pressing environmental and social challenges. Bioneers is inspiring and realizing a shift to live on Earth in ways that honor the web of life, each other and future generations.

FINANCIAL IMPLICATIONS

No General Fund impact; \$250 is available from Mayor Arreguin's Office Budget discretionary accounts.

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.

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE  
EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO  
PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE AND  
CITY CO-SPONSORSHIP OF THE BIONEERS CONFERENCE  
APRIL 6-8, 2023

WHEREAS, Mayor Jesse Arreguin has surplus funds in his office expenditure account;  
and

WHEREAS, a California non-profit tax-exempt corporation, the Berkeley Chamber of  
Commerce, seeks funds in the amount of \$250, to provide the following public services  
for the Bioneers Conference from April 6 - 8, 2023, that will offset the cost of city related  
permit fees (street closure, amplified sound, parking meter, food trucks etc.); and

WHEREAS, the provision of such services would fulfill the following municipal public  
purpose of bringing together communities across the City and the Bay Area region, by  
hosting the Bioneers Conference; and

WHEREAS, the Bioneers Conference will feature hundreds of inspiring and visionary  
leaders, and will bring thousands of engaged and civically active attendees to  
Zellerbach Hall on the UC Berkeley Campus and to venues across downtown Berkeley  
for three days of riveting talks, movement building, and connections; and

WHEREAS, Bioneers acts as a fertile hub of social and scientific innovators with  
practical and visionary solutions for the world's most pressing environmental and social  
challenges; and

WHEREAS, now in its 34th year, the Bioneers Conference, viewed by many as the  
leading independent environmental and social-justice themed annual gathering in the  
U.S., will be held in Berkeley, California, on April 6-8, 2023; and

WHEREAS, the theme for 2023 is "Transformation, Regeneration, Celebration," and  
keynote speakers include legendary muralist Judy Baca; writer Rebecca Solnit; Chair of  
the Congressional Progressive Caucus Rep. Pramila Jayapal; activist and cultural  
leader Casey Camp-Horinek (*Ponca*); activist chef, writer and educator Bryant Terry;  
journalist Laura Flanders; and clean energy entrepreneur Danny Kennedy, with many  
more to be announced; and

WHEREAS, the annual Indigenous Forum is a Native-led sovereign conference-within-a-conference — a unique cross-cultural and invitational platform. Regularly attracting representatives from dozens of tribal nations, it remains the only gathering of its kind, bringing together Indigenous activists, scientists, elders, youth, culture-bearers, and scholars to share their knowledge and frontline solutions in dialogue with a dynamic, multicultural audience; and

WHEREAS, organizers also invest in the potential of youth and educators, with a bustling youth scholarship program bringing upwards of 500 youth and mentors to experience the Bioneers Conference annually; and

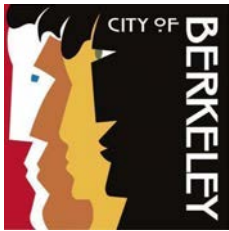
WHEREAS, with the move to the East Bay, Bioneers is excited to be located in such a thriving, progressive, and accessible new home, and the entire event will be within easy walking distance of the Downtown Berkeley BART Station; and

WHEREAS, featuring engaged arts, musical performances, and ample opportunities for connection, Bioneers 2023 will bring hope, inspiration, and movement building to the East Bay.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley hereby co-sponsors the Bioneers Conference and that it has permission to use the City's name and logo in the event's promotional materials and signage naming the City of Berkeley as a co-sponsor solely for the purpose of the City indicating its policy endorsement of the event.

BE IT FURTHER RESOLVED NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$250 per office shall be granted to Berkeley Chamber of Commerce for the purpose of offsetting the cost of city related permit fees (street closure, amplified sound, parking meter, food trucks etc.).





Internal

**CONSENT CALENDAR**

March 21, 2023

Councilmember Sophie Hahn  
City of Berkeley, District 5

**TO:** Honorable Members of the City Council  
**FROM:** Councilmember Sophie Hahn (Author); Councilmember Terry Taplin (Co-Sponsor)  
**SUBJECT:** Budget Referral - Speed Feedback Signs for Arlington Avenue

**RECOMMENDATION**

In support of the City’s Vision Zero Action Plan and Pedestrian Plan goals, refer to the Fiscal Year 2024 Budget Process an allocation of \$40,000 for two Speed Feedback Signs on Arlington Avenue between The Circle and Mendocino Avenue, to encourage slower speeds on a stretch with numerous hidden and mid-block crosswalks.

**FINANCIAL IMPLICATIONS**

The estimate provided by Transportation Department Staff for purchase and installation of two Speed Feedback Signs is approximately \$40,000.

**CURRENT SITUATION AND ITS EFFECTS**

Arlington Avenue is identified in Berkeley’s Vision Zero Action Plan as a High-Injury Street. Current conditions on Arlington Avenue between The Circle and Mendocino Avenue create unsafe conditions for pedestrians that will be improved by the implementation of a variety of traffic calming treatments recommended by the City’s Transportation Division, including the installation of two Speed Feedback Signs. The street is a major thoroughfare and is unusually configured, with single-lane upper and lower tiers divided by a steep median that includes concrete curbs and walls of varying heights, with trees and vegetation that can block sight-lines. Paths from the City’s [paths network](#) cross this segment of Arlington mid-block, and the street curves, rises, and dips along contours of the hill, creating additional visibility challenges at crosswalks.

Transportation Division staff have completed a traffic calming study and prescribed a suite of improvements to support safe crossings for pedestrians, including Speed Feedback Signs. To install two Speed Feedback Signs and support the City’s Pedestrian and Vision Zero plans, staff has provided an estimated cost of approximately \$40,000.

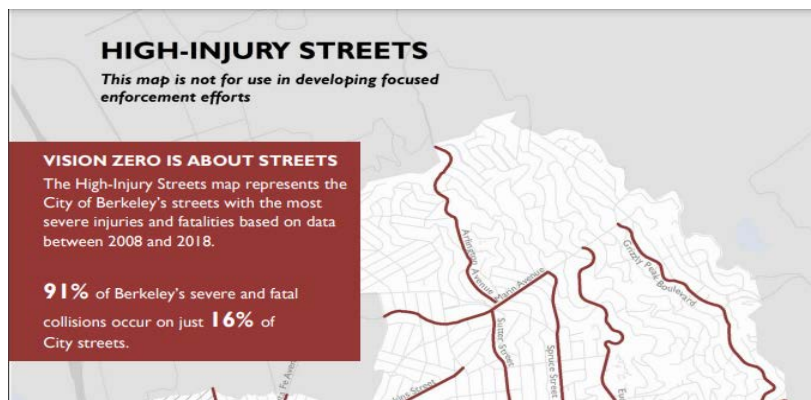
## BACKGROUND

The Arlington is a main thoroughfare originating from The Circle in North Berkeley and stretching for six miles through Kensington, El Cerrito, and Richmond. The segment of Arlington Avenue between The Circle and Mendocino Avenue carries a high volume of traffic, both local and regional. It bisects an area with many families and young children as well as older residents. Over several decades, [Berkeley's network of paths](#) has been significantly improved, and more and more residents, as well as many visitors to Berkeley, use the paths to get to and from work and transit, or for recreation.

Over the years, the Public Works Department and District 5 office have received reports of dangerous conditions from community members living on and around The Arlington. A lack of visibility at pedestrian crossings paired with vehicles regularly driving faster than the speed limit has created an unsafe environment. A formal request for a traffic calming study was submitted in April of 2022.

The Transportation Division recently completed the study and concluded that the average speed of vehicles traveling both north and southbound on this stretch exceed the minimum criteria set by the traffic calming program, indicating that traffic calming is warranted in the area. Transportation Division staff have recommended a variety of immediate safety upgrades including improved signage, repainted crosswalks and other road markings, and reflectors. In addition, staff have recommended installation of two Electronic Speed Feedback signs, which will take longer to achieve due to lack of funds and an existing queue. A companion budget referral is being submitted to obtain funds for the safety upgrades that can be more quickly implemented than feedback signs.

Berkeley's [Vision Zero Action Plan](#) designates Arlington Avenue as a "High-Injury Street," based on data about severe injuries and fatalities.



The Vision Zero Plan includes important goals that are supported by the improvements to Arlington Avenue recommended by Transportation staff including:

- Safety is our highest priority. Human life is more important than speed, convenience, or property. We will evaluate trade-offs and make both proactive and reactive engineering decisions about street design based on this value.
- Traffic deaths and severe injuries are preventable and unacceptable. Using holistic, data-driven, systems-level approach to street design, we will treat fatal and severe collisions as preventable and unacceptable incidents that can and must be addressed.
- People make mistakes. We will design our streets so that mistakes do not result in death or severe injury.
- Slower streets are safer streets. We will design, construct, and operate our streets for slower speeds with the goal of eliminating all fatal and severe collisions, and protecting our most vulnerable street users.
- We will create safer transportation options for people who walk, bike, and take transit. Creating safer and more comfortable transportation options for people to walk, bike, and take transit can make these modes more attractive and reduce the number of car trips in Berkeley. Fewer car trips can mean fewer severe and fatal collisions.

[Berkeley's Pedestrian Plan](#) envisions Berkeley as a model walkable city where traveling on foot or with an assistive device is safe, comfortable, and convenient for people of all races, ethnicities, incomes, ages and abilities. The Plan's goals provide direction for achieving the vision. These goals are:

- Increase safety and comfort for people walking
- Increase equity and transportation choices for all
- Improve public health and environmental sustainability

The pedestrian safety improvements recommended by the Transportation Division support the vision and goals of these City plans.

### OUTCOMES AND EVALUATIONS

Installation of Speed Feedback Signs will support reductions in the speed of traffic, increasing pedestrian and overall safety on Arlington Avenue.

ENVIRONMENTAL SUSTAINABILITY

Pedestrian safety is paramount to encouraging community members to walk to their destinations, which reduces GHG emissions and supports health.

CONTACT PERSON

Sophie Hahn - Council District 5 - 510-981-7150

ATTACHMENTS:

1. Berkeley Traffic Calming Study Arlington





Transportation Division

September 29, 2022

Subject: Neighborhood Request for Physical Traffic Calming Measures

Dear Arlington Avenue Residents,

This correspondence has been prepared in response to the neighborhood request for a traffic calming study and evaluation for physical traffic calming measures on Arlington Avenue between The Circle and Mendocino Avenue in accordance with City Council Resolution No. 64-732-N.S.

**Traffic Calming Criteria:**

We considered the following criteria to determine the feasibility of installation of traffic calming devices:

| <b>Minimum Criteria to Qualify for Traffic Calming</b>                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SHALL meet the following two conditions:</b>                                                                                                 | <b>AND at least <u>one</u> of these conditions:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>1) Any residential street area; AND</p> <p>2) 50% + 1 of households within the petition area defined by City staff support the proposal.</p> | <ul style="list-style-type: none"> <li>- Where the 85<sup>th</sup> percentile speed profile is greater than 5 mph over the speed limit; OR</li> <li>- Proximity to school or park (within two blocks), or senior center (within one block) combined with 85<sup>th</sup> percentile speed profile greater than 3 mph over the speed limit; OR</li> <li>- Mitigate a documented collision pattern (bike, pedestrian, motor vehicle); OR</li> <li>- Where there is a documented problem of a significant or inappropriate number of “through” motor vehicles on the street or in the neighborhood, per ITE volume guidelines for neighborhood streets (2500 vpd average)</li> </ul> |

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**Reported Concerns:**

The residents of Arlington Avenue between The Circle and Mendocino Avenue have the following concerns:

- Speeding
- Pedestrian Safety
- Bicycle Safety

**Existing Conditions:**

- According to the City of Berkeley General Plan, Arlington Avenue within the study area is classified:
  - A north-south collector roadway,
  - A secondary transit route.
- Curbside parking is available on both sides of the street (starting from the first crosswalk which is located 140' north of The Circle);
- There are four ladder crosswalks between Mendocino Avenue and The Circle;
- There is a landscaped middle island along Arlington Avenue between Mendocino Avenue and The Circle;
- Indian Rock Park is 300' away from Arlington Avenue;
- Arlington Avenue contains white traffic edge lines in both directions (NB/SB) that outline and separate the travel lane from the shoulder. The traffic edge lines narrows the travel lane, which is used as a traffic calming measure on this stretch;
- Arlington Avenue contains yellow traffic edge lines in both directions (NB/SB) that outline and separate the existing landscaped middle island from the travel lane;
- There are three W11-2 (crosswalk signs) on Arlington Avenue (NB) within the study area. There are two W11-2 (crosswalk signs) on Arlington Avenue (SB) within the study area;
- There are four AC Transit bus stops within the study area:
  - Two bus stops (NB/SB) located at the intersection of Arlington Avenue and Indian Rock Path.
  - Two bus stops (NB/SB) located at the intersection of Arlington Avenue and Mendocino Avenue.
- To the south of the study area, Arlington Avenue (NB/SB) intersects with The Circle. The following traffic control devices have been installed at the intersection:
  - STOP sign and STOP pavement (right side of the median) on Arlington Avenue (SB) and The Circle;
  - YIELD sign and YIELD pavement (left side of the median) on Arlington Avenue (SB) and The Circle;
  - Triple - 4 crosswalks at the intersection of Arlington Avenue and The Circle;
  - 50' red curb on Arlington Avenue (NB) before Indian Rock Avenue;

- There is a southbound travel lane on Arlington Avenue (right side of the median) for vehicles exiting Indian Rock Avenue (SB);
- Two 50' double yellow centerlines are provided along Arlington Avenue (NB) before Indian Rock Avenue (north of The Circle).
- To the north of the study area, Arlington Avenue forms a three-way intersection with Mendocino Avenue. The following traffic control devices have been installed at the intersection:
  - Ladder crosswalk on Arlington Avenue (left and right side of the median) at the intersection of Mendocino Avenue;
  - Standard crosswalk on Mendocino Avenue at the intersection of Arlington Avenue;
  - W11-2 crosswalk sign at the median (on Arlington Avenue);
  - Red curb markings for pedestrian visibility on Arlington Avenue (south/north of Mendocino Avenue);
  - Landscaped middle island along Arlington Avenue (north/south of Mendocino Avenue);
  - A 30' buffer area across from the red curb marking (south of Mendocino Avenue).
- The speed limit is 25 mph within the study area.

### **Data Collection Summary:**

- Vehicular volume and speed data were collected for a duration of one week from Monday, April 11, 2022 through Sunday, April 17, 2022. Following is a summary of vehicular volume and speed data:

| <b>Location</b>                                          | <b>Direction</b> | <b>Average Daily Traffic (vehicles)</b> | <b>85<sup>th</sup>ile Speed* (mph)</b> |
|----------------------------------------------------------|------------------|-----------------------------------------|----------------------------------------|
| Arlington Avenue between The Circle and Mendocino Avenue | North            | 4300                                    | 33                                     |
|                                                          | South            | 4558                                    | 29                                     |

\*The 85<sup>th</sup> percentile is the speed that 85% of the traffic is traveling at or below. It is a very common tool for monitoring and comparing traffic operations, and for setting speed limits.

- The midblock and intersection reported collision records over the 5-year period (collision data available from July 1, 2016 to June 30, 2021) show that seven (7) collisions were recorded in the study area. Following is the summary of reported collisions:

| Location                                           | Total # of Collisions | Vehicle Involved with                                       | Primary Collision Factor                                           |
|----------------------------------------------------|-----------------------|-------------------------------------------------------------|--------------------------------------------------------------------|
| Arlington Ave/The Circle                           | 1                     | Other motor vehicle                                         | Improper Passing                                                   |
| Arlington Ave/Mendocino Ave                        | 3                     | Fixed Object<br>Fixed Object<br>Other motor vehicle         | Unsafe Speed<br>Driving Under Influence<br>Unsafe Starting/Backing |
| Arlington Ave Between Mendocino Ave and The Circle | 3                     | Parked motor vehicle<br>Other motor vehicle<br>Fixed Object | Driving Under Influence<br>Unsafe Speed<br>Wrong Side of Road      |

### **Summary of Evaluations:**

- Speeding – The speed limit within the study area is 25 mph. The 85<sup>th</sup> percentile speed data collected in the field (31 mph) exceeds the minimum criteria set by the traffic calming program, indicating that traffic calming is warranted in the study area.
- Pedestrian and bicyclist safety – The reported collision records over the 5-year period shows zero (0) collision involving a pedestrian. The reported collision records over the 5-year period shows zero (0) collision involving a bicycle. The collision criterion is not met for the study area.

### **Conclusion:**

Arlington Avenue between The Circle and Mendocino Avenue qualifies for physical traffic calming measures based on the speed criteria established in City Council Resolution No. 64-732-N.S. Staff has determined the following traffic calming option to consider:

- Install radar speed feedback signs in each direction on Arlington Avenue.

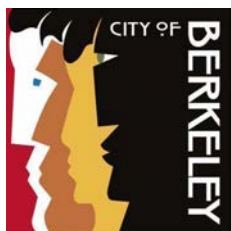
The next step is to hold a virtual neighborhood meeting to present the results of this study and select the most suitable option for the neighborhood. You will be hearing from me within the next few months with proposed dates/times for the meeting. Please take into consideration that I'm currently working on a large queue of traffic calming virtual neighborhood meetings before I get to the one on Arlington Avenue. Once a time is agreed upon, all affected residents will be invited by mail. The traffic calming option that is selected during the meeting will then be included in the Traffic Calming Capital Improvement Projects list during the annual budget process.

We appreciate your time and interest in this matter.

Sincerely,

J. Guillermo Jaramillo  
Assistant Transportation Engineer  
City of Berkeley, Transportation Division  
1947 Center Street, 4<sup>th</sup> Floor  
Berkeley, CA 94704





Internal

**CONSENT CALENDAR**

March 21, 2023

Councilmember Sophie Hahn  
City of Berkeley, District 5

**TO:** Honorable Members of the City Council  
**FROM:** Councilmember Sophie Hahn (Author); Councilmember Terry Taplin  
 (Co-Sponsor)  
**SUBJECT:** Pedestrian Safety Upgrades for Arlington Avenue

**RECOMMENDATION**

In support of the City's Vision Zero Action Plan and Pedestrian Plan goals, refer to the Fiscal Year 2024 Budget Process an allocation of \$35,000 for traffic control measures on Arlington Avenue from The Circle to Mendocino Avenue, to enhance pedestrian safety at hidden crosswalks and where paths cross mid-block, and refresh painted markings that narrow lanes and encourage reduced speeds.

**FINANCIAL IMPLICATIONS**

Cost Estimate is for \$31,000 (See Attachment B); Amount requested is \$35,000 to account for potential adjustments to the program in the field.

**CURRENT SITUATION AND ITS EFFECTS**

Arlington Avenue is identified in Berkeley's Vision Zero Action Plan as a High-Injury Street. Current conditions on Arlington Avenue between The Circle and Mendocino Avenue create unsafe conditions for pedestrians that will be improved by the implementation of a variety of traffic calming treatments recommended by the City's Transportation Division. The street is a major thoroughfare and is unusually configured, with single-lane upper and lower tiers divided by a steep median that includes concrete curbs and walls of varying heights, with trees and vegetation that can block sight-lines. Paths from the City's [paths network](#) cross this segment of Arlington mid-block, and the street curves, rises, and dips along contours of the hill, creating additional visibility challenges at crosswalks.

Transportation Division staff have completed a traffic calming study (Attachment A) and prescribed a suite of improvements to support safe crossings for pedestrians (Attachment B and C). To complete these important safety upgrades and support the City's Pedestrian and Vision Zero plans, staff has requested an allocation of \$35,000.

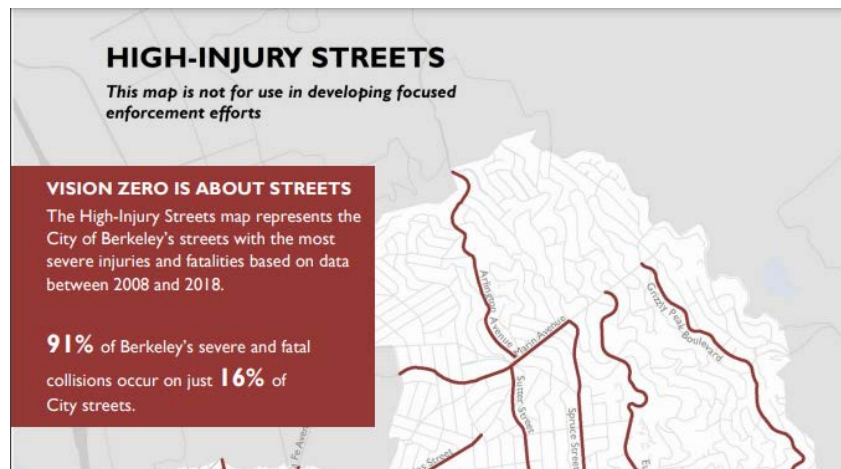
## BACKGROUND

The Arlington is a main thoroughfare originating from The Circle in North Berkeley and stretching for six miles through Kensington, El Cerrito, and Richmond. The segment of Arlington Avenue between The Circle and Mendocino Avenue carries a high volume of traffic, both local and regional. It bisects an area with many families and young children as well as older residents. Over several decades, [Berkeley's network of paths](#) has been significantly improved, and more and more residents, as well as many visitors to Berkeley, use the paths to get to and from work and transit, or for recreation.

Over the years, the Public Works Department and District 5 office have received reports of dangerous conditions from community members living on and around The Arlington. A lack of visibility at pedestrian crossings paired with vehicles regularly driving faster than the speed limit has created an unsafe environment. A formal request for a traffic calming study was submitted by community members in April of 2022.

The Transportation Division recently completed the study and concluded that the average speed of vehicles traveling both north and southbound on this stretch exceed the minimum criteria set by the traffic calming program, indicating that traffic calming is warranted in the area (see Attachment A). Transportation Division staff have recommended a variety of immediate safety upgrades including improved signage, repainted crosswalks and other road markings, and reflectors (see Attachment B and C). Electronic speed feedback signs are being considered for installation, but would take longer to implement than the immediate safety upgrades recommended by Transportation staff. A companion budget referral is being submitted to obtain funds for the speed feedback signs.

Berkeley's [Vision Zero Action Plan](#) designates Arlington Avenue as a "High-Injury Street," based on data about severe injuries and fatalities.





The Vision Zero Plan includes important goals that are supported by the improvements to Arlington Avenue recommended by Transportation staff including:

- Safety is our highest priority. Human life is more important than speed, convenience, or property. We will evaluate trade-offs and make both proactive and reactive engineering decisions about street design based on this value.
- Traffic deaths and severe injuries are preventable and unacceptable. Using holistic, data-driven, systems-level approach to street design, we will treat fatal and severe collisions as preventable and unacceptable incidents that can and must be addressed.
- People make mistakes. We will design our streets so that mistakes do not result in death or severe injury.
- Slower streets are safer streets. We will design, construct, and operate our streets for slower speeds with the goal of eliminating all fatal and severe collisions, and protecting our most vulnerable street users.
- We will create safer transportation options for people who walk, bike, and take transit. Creating safer and more comfortable transportation options for people to walk, bike, and take transit can make these modes more attractive and reduce the number of car trips in Berkeley. Fewer car trips can mean fewer severe and fatal collisions.

[Berkeley's Pedestrian Plan](#) envisions Berkeley as a model walkable city where traveling on foot or with an assistive device is safe, comfortable, and convenient for people of all races, ethnicities, incomes, ages and abilities. The Plan's goals provide direction for achieving the vision. These goals are:

- Increase safety and comfort for people walking
- Increase equity and transportation choices for all
- Improve public health and environmental sustainability

The pedestrian safety improvements recommended by the Transportation Division support the vision and goals of these City plans.

### OUTCOMES AND EVALUATIONS

Implementation of prescribed traffic calming measures will reduce the speed of traffic, enhance the visibility of crosswalks, and increase overall pedestrian safety on the Arlington.

ENVIRONMENTAL SUSTAINABILITY

Pedestrian safety is paramount to encouraging community members to walk to their destinations, which reduces GHG emissions and supports health.

CONTACT PERSON

Sophie Hahn - Council District 5 - 510-981-7150

ATTACHMENTS:

- A - Berkeley Traffic Calming Study Arlington
- B - Traffic Calming Estimate Arlington
- C - Arlington Signage and Striping Improvements



Transportation Division

September 29, 2022

Subject: Neighborhood Request for Physical Traffic Calming Measures

Dear Arlington Avenue Residents,

This correspondence has been prepared in response to the neighborhood request for a traffic calming study and evaluation for physical traffic calming measures on Arlington Avenue between The Circle and Mendocino Avenue in accordance with City Council Resolution No. 64-732-N.S.

**Traffic Calming Criteria:**

We considered the following criteria to determine the feasibility of installation of traffic calming devices:

| <b>Minimum Criteria to Qualify for Traffic Calming</b>                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SHALL meet the following two conditions:</b>                                                                                                 | <b>AND at least <u>one</u> of these conditions:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>1) Any residential street area; AND</p> <p>2) 50% + 1 of households within the petition area defined by City staff support the proposal.</p> | <ul style="list-style-type: none"> <li>- Where the 85<sup>th</sup> percentile speed profile is greater than 5 mph over the speed limit; OR</li> <li>- Proximity to school or park (within two blocks), or senior center (within one block) combined with 85<sup>th</sup> percentile speed profile greater than 3 mph over the speed limit; OR</li> <li>- Mitigate a documented collision pattern (bike, pedestrian, motor vehicle); OR</li> <li>- Where there is a documented problem of a significant or inappropriate number of “through” motor vehicles on the street or in the neighborhood, per ITE volume guidelines for neighborhood streets (2500 vpd average)</li> </ul> |

**Reported Concerns:**

The residents of Arlington Avenue between The Circle and Mendocino Avenue have the following concerns:

- Speeding
- Pedestrian Safety
- Bicycle Safety

**Existing Conditions:**

- According to the City of Berkeley General Plan, Arlington Avenue within the study area is classified:
  - A north-south collector roadway,
  - A secondary transit route.
- Curbside parking is available on both sides of the street (starting from the first crosswalk which is located 140' north of The Circle);
- There are four ladder crosswalks between Mendocino Avenue and The Circle;
- There is a landscaped middle island along Arlington Avenue between Mendocino Avenue and The Circle;
- Indian Rock Park is 300' away from Arlington Avenue;
- Arlington Avenue contains white traffic edge lines in both directions (NB/SB) that outline and separate the travel lane from the shoulder. The traffic edge lines narrows the travel lane, which is used as a traffic calming measure on this stretch;
- Arlington Avenue contains yellow traffic edge lines in both directions (NB/SB) that outline and separate the existing landscaped middle island from the travel lane;
- There are three W11-2 (crosswalk signs) on Arlington Avenue (NB) within the study area. There are two W11-2 (crosswalk signs) on Arlington Avenue (SB) within the study area;
- There are four AC Transit bus stops within the study area:
  - Two bus stops (NB/SB) located at the intersection of Arlington Avenue and Indian Rock Path.
  - Two bus stops (NB/SB) located at the intersection of Arlington Avenue and Mendocino Avenue.
- To the south of the study area, Arlington Avenue (NB/SB) intersects with The Circle. The following traffic control devices have been installed at the intersection:
  - STOP sign and STOP pavement (right side of the median) on Arlington Avenue (SB) and The Circle;
  - YIELD sign and YIELD pavement (left side of the median) on Arlington Avenue (SB) and The Circle;
  - Triple - 4 crosswalks at the intersection of Arlington Avenue and The Circle;
  - 50' red curb on Arlington Avenue (NB) before Indian Rock Avenue;

**Neighborhood Request for Traffic Calming Measures**

- There is a southbound travel lane on Arlington Avenue (right side of the median) for vehicles exiting Indian Rock Avenue (SB);
  - Two 50' double yellow centerlines are provided along Arlington Avenue (NB) before Indian Rock Avenue (north of The Circle).
- To the north of the study area, Arlington Avenue forms a three-way intersection with Mendocino Avenue. The following traffic control devices have been installed at the intersection:
    - Ladder crosswalk on Arlington Avenue (left and right side of the median) at the intersection of Mendocino Avenue;
    - Standard crosswalk on Mendocino Avenue at the intersection of Arlington Avenue;
    - W11-2 crosswalk sign at the median (on Arlington Avenue);
    - Red curb markings for pedestrian visibility on Arlington Avenue (south/north of Mendocino Avenue);
    - Landscaped middle island along Arlington Avenue (north/south of Mendocino Avenue);
    - A 30' buffer area across from the red curb marking (south of Mendocino Avenue).
- The speed limit is 25 mph within the study area.

**Data Collection Summary:**

- Vehicular volume and speed data were collected for a duration of one week from Monday, April 11, 2022 through Sunday, April 17, 2022. Following is a summary of vehicular volume and speed data:

| Location                                                 | Direction | Average Daily Traffic (vehicles) | 85 <sup>th</sup> ile Speed* (mph) |
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**Neighborhood Request for Traffic Calming Measures**

| <b>Location</b>                                    | <b>Total # of Collisions</b> | <b>Vehicle Involved with</b>                                | <b>Primary Collision Factor</b>                                    |
|----------------------------------------------------|------------------------------|-------------------------------------------------------------|--------------------------------------------------------------------|
| Arlington Ave/The Circle                           | 1                            | Other motor vehicle                                         | Improper Passing                                                   |
| Arlington Ave/Mendocino Ave                        | 3                            | Fixed Object<br>Fixed Object<br>Other motor vehicle         | Unsafe Speed<br>Driving Under Influence<br>Unsafe Starting/Backing |
| Arlington Ave Between Mendocino Ave and The Circle | 3                            | Parked motor vehicle<br>Other motor vehicle<br>Fixed Object | Driving Under Influence<br>Unsafe Speed<br>Wrong Side of Road      |

**Summary of Evaluations:**

- Speeding – The speed limit within the study area is 25 mph. The 85<sup>th</sup> percentile speed data collected in the field (31 mph) exceeds the minimum criteria set by the traffic calming program, indicating that traffic calming is warranted in the study area.
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**Conclusion:**

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The next step is to hold a virtual neighborhood meeting to present the results of this study and select the most suitable option for the neighborhood. You will be hearing from me within the next few months with proposed dates/times for the meeting. Please take into consideration that I'm currently working on a large queue of traffic calming virtual neighborhood meetings before I get to the one on Arlington Avenue. Once a time is agreed upon, all affected residents will be invited by mail. The traffic calming option that is selected during the meeting will then be included in the Traffic Calming Capital Improvement Projects list during the annual budget process.

We appreciate your time and interest in this matter.

Sincerely,

J. Guillermo Jaramillo  
Assistant Transportation Engineer  
City of Berkeley, Transportation Division  
1947 Center Street, 4<sup>th</sup> Floor  
Berkeley, CA 94704

Fremont Office  
 43650 Osgood Road  
 Fremont, CA. 94539  
 Phone: (510) 656-2840  
 Fax: (510) 656-2397



CL No. 374600  
 DIR No. 1000000306  
 A General Engineering  
 C-13 Fence, Wire, Wood  
 C-32 Highway Improvement  
 Union Contractor / No Minority Status  
 Bond Rate 1.2%

|                                                                    |                                          |
|--------------------------------------------------------------------|------------------------------------------|
| <b>To:</b> City Of Berkeley                                        | <b>Contact:</b> Juan Guillermo Jaramillo |
| <b>Address:</b> 2180 Milvia St # 3<br>Berkeley, CA 94704 ALAMEDA   | <b>Phone:</b> (510) 981-6300             |
|                                                                    | <b>Fax:</b>                              |
| <b>Project Name:</b> ROADWAY THERMOPLASTIC MARKINGS 2022-2024 EW-4 | <b>Bid Number:</b> 56885-4               |
| <b>Project Location:</b> Alameda Co, Berkeley                      | <b>Bid Date:</b> 1/30/2023               |

| Item # | Item Description                                                | Estimated Quantity | Unit | Unit Price | Total Price |
|--------|-----------------------------------------------------------------|--------------------|------|------------|-------------|
| 01     | No Passing Zone (Detail 22)                                     | 120.00             | LF   | \$2.13     | \$255.60    |
| 02     | Left Edge Line (Detail 25A)                                     | 2,360.00           | LF   | \$0.97     | \$2,289.20  |
| 03     | Right Edge Line (Detail 27B)                                    | 2,400.00           | LF   | \$0.86     | \$2,064.00  |
| 04     | Yield Line (24" X 36")                                          | 90.00              | LF   | \$10.97    | \$987.30    |
| 05     | Reflective Pavement Markers                                     | 246.00             | EACH | \$5.87     | \$1,444.02  |
| 06     | Curb Painting (White/Blue/Green/Gray/Red)                       | 400.00             | LF   | \$2.55     | \$1,020.00  |
| 07     | Crosswalk Ladder (Basic 12" Stripes)                            | 1,120.00           | LF   | \$5.49     | \$6,148.80  |
| 08     | Crosswalk Triple Four                                           | 182.00             | LF   | \$12.77    | \$2,324.14  |
| 09     | Stripe 8" Hashing (White/Yellow)                                | 165.00             | LF   | \$3.66     | \$603.90    |
| 10     | Type I 10`                                                      | 2.00               | EACH | \$76.58    | \$153.16    |
| 11     | Type VII                                                        | 1.00               | EACH | \$144.73   | \$144.73    |
| 12     | STOP/ONLY                                                       | 1.00               | EACH | \$178.68   | \$178.68    |
| 13     | Furnish And Install Signs W/Core (Typically 24"x30" Or 30"x30") | 6.00               | EACH | \$440.32   | \$2,641.92  |
| 14     | Furnish & Install W11-1 And W16- 1p Signs W/Core                | 17.00              | EACH | \$529.66   | \$9,004.22  |
| 15     | Posting Of No Parking Signs                                     | 4.00               | HR   | \$197.82   | \$791.28    |
| 16     | Posting Door Notices                                            | 4.00               | HR   | \$223.35   | \$893.40    |

**Total Bid Price: \$30,944.35**

**Notes:**

- NO RETENTION TO BE TAKEN ON CONTRACTS LESS THAN \$5,000.00
- **1 Move- In(s) included. Additional Move- Ins \$3,500.00**
- Chrisp Company reserves the right to withdraw proposal if written acceptance is not received within 30 days of bid date
- Clean, clear and unobstructed access required for Chrisp Co. work
- Final PAY QTYS presented by owner MUST be agreed by Chrisp Co.
- After receiving contract 10 working days written notice required prior to scheduling of work
- EXCLUDE: Special Insurance Requirements, (i.e. Railroad Insurance, \_\_\_\_\_)
- This quotation excludes Primary Liability Insurance greater than \$2,000,000.
- This quotation excludes all work associated with the project SWPP and WPCP.
- ALL Bid items shall NOT be adjusted or removed without written / or verbal permission.
- Retainage percentage on monthly progress payments to be no greater than the percentage retained by the Owner on its payment to the Contractor. If Owner reduces the retainage percentages on payments to the Contractor, the Contractor shall likewise reduce the retainage percentage on payment to Chrisp Company. Full retention to be released no later than thirty, (30) Days after completion of Chrisp Companies work. Excessive or delinquent retainage will be subject to the highest interest rate allowed by law.
- Chrisp Company shall be reimbursed the full amount for bonds upon submission to General Contractor. Retention shall not be held from bond reimbursement.
- THIS QUOTATION IS BASED ON A STANDARD MONDAY THROUGH FRIDAY WORK WEEK. ADDITIONAL COSTS WILL OCCUR FOR WORK PERFORMED ON WEEKENDS
- CHRISP COMPANY WILL USE EXISTING EMPLOYEE POOL TO PERFORM ALL WORK ON THIS PROJECT. IF THERE ARE ANY HIRING GOALS FOR THIS PROJECT THIS WILL BE EXCLUDED
- EXCLUDE: ALL Safety Training, Badging, Drug Testing and Orientation (To be paid at time and material Cal-Trans
- EXCLUDE: REMOVAL OF USA MARKINGS



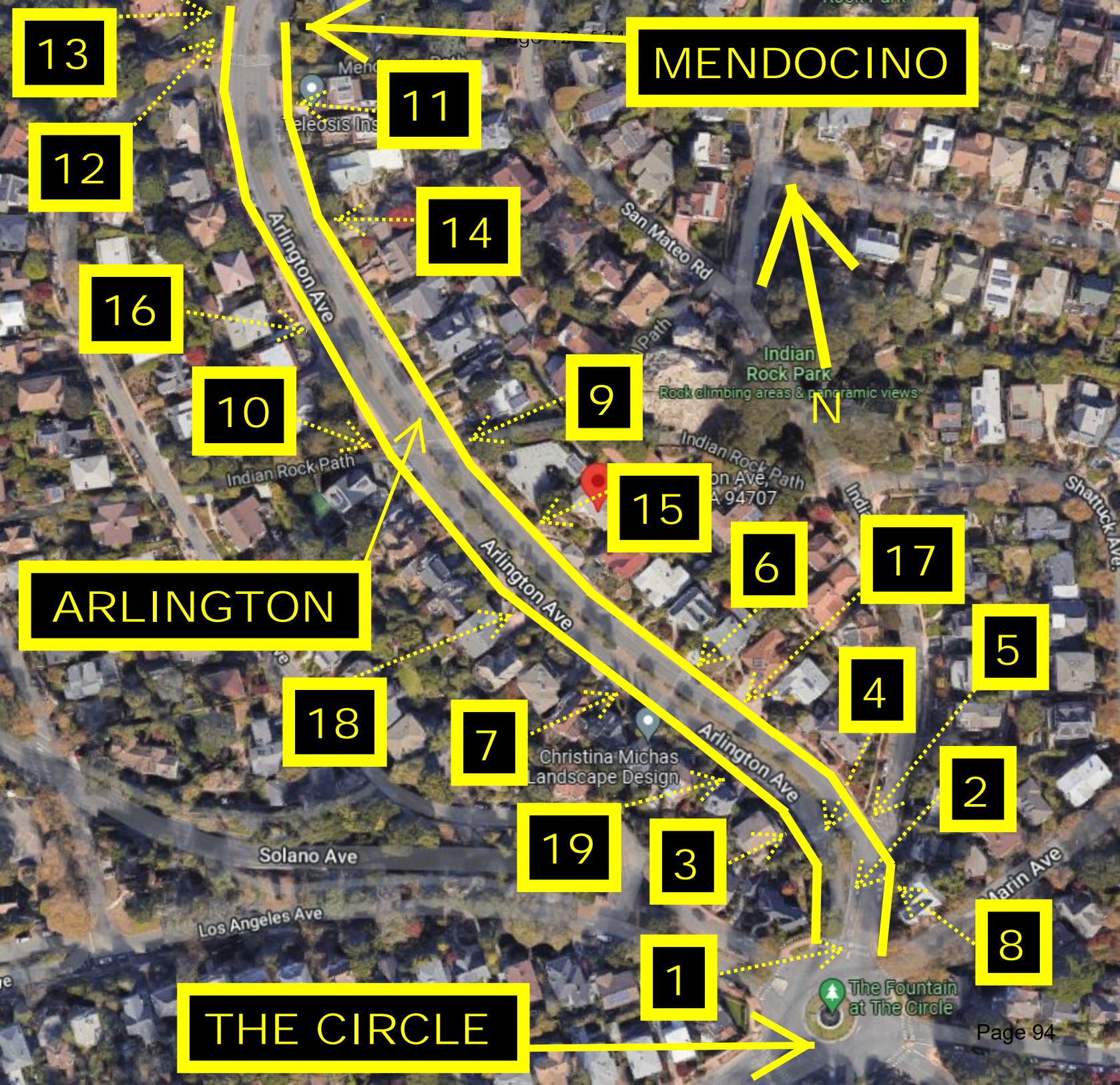
Fremont Office  
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CL No. 374600  
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|                                                                    |                                          |
|--------------------------------------------------------------------|------------------------------------------|
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| <b>Project Location:</b> Alameda Co, Berkeley                      | <b>Bid Date:</b> 1/30/2023               |

|                                                                                                                                                                                                                                          |                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>ACCEPTED:</b><br/>                 The above prices, specifications and conditions are satisfactory and are hereby accepted.</p> <p><b>Buyer:</b> _____</p> <p><b>Signature:</b> _____</p> <p><b>Date of Acceptance:</b> _____</p> | <p><b>CONFIRMED:</b><br/> <b>Chrisp Company</b></p> <p><b>Authorized Signature:</b> _____</p> <p><b>Estimator:</b> Carlos Recinos<br/>                 510-754-7846 crecinos@chrispco.com</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



13

12

16

10

ARLINGTON

18

THE CIRCLE

11

14

9

15

7

19

3

1

MENDOCINO

6

17

4

2

8

5

MENDOCINO

Indian Rock Park  
Rock climbing areas & panoramic views

Christina Michas  
Landscape Design

The Fountain  
at The Circle



- REFRESH ENTIRE CROSSWALK.
- REFRESH MIDDLE YELLOW ISLAND.
- REFRESH WHITE NOSE.

THE CIRCLE

ARLINGTON



LOCATION: THE CIRCLE AND ARLINGTON



- REFRESH DOUBLE YELLOW LINES.
- REFRESH WHITE EDGE LINE.
- REFRESH WHITE ARROWS (3).

INDIAN ROCK



ARLINGTON

LOCATION: ARLINGTON AND INDIAN ROCK





- REFRESH CROSSWALK.
- INSTALL W11-2 AT CROSSWALK
- INSTALL R1-5 (AS SHOWN).
- INSTALL YIELD LINES (AS SHOWN)
- INSTALL REFLECTIVE PAVEMENT MARKERS OUTSIDE OF THE CROSSWALK (2 MARKERS AT THE EDGE OF EACH BAR).

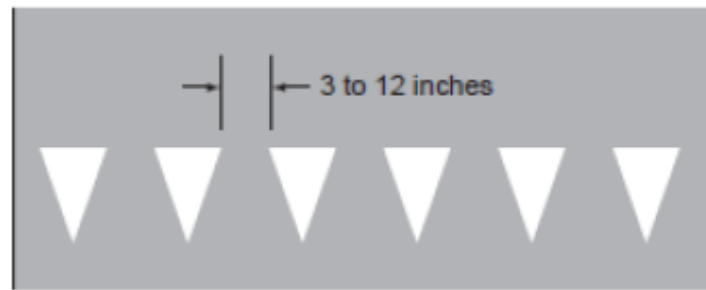


LOCATION: ARLINGTON AND INDIAN ROCK

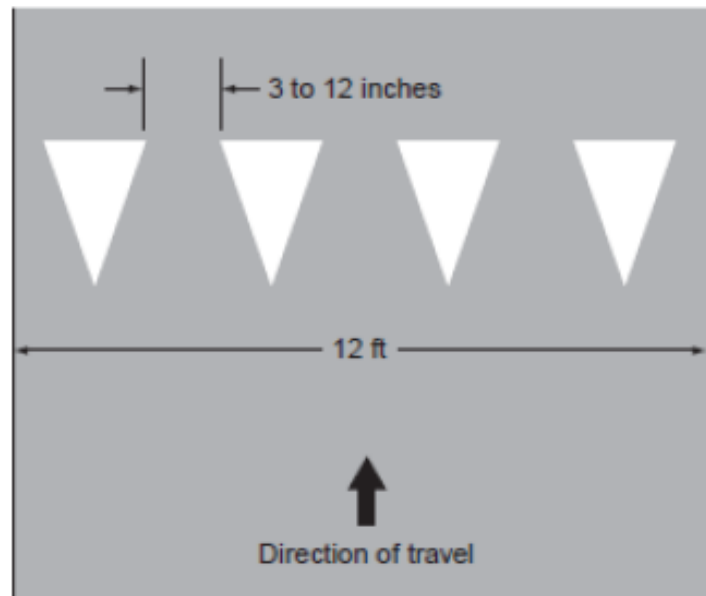
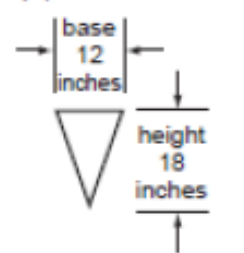




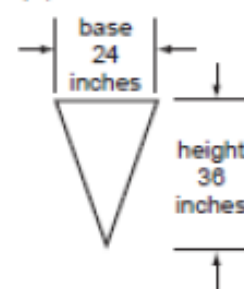
Figure 3B-16. Recommended Yield Line Layouts



(a) Minimum Dimensions



(b) Maximum Dimensions



Notes:  
Triangle height is equal to 1.5 times the base dimension.

Yield lines may be smaller than suggested when installed on much narrower, slow-speed facilities such as shared-use paths.

Figure 3B-17. Examples of Yield Lines at Unsignalized Midblock Crosswalks



~~Note: If Stop Here for Pedestrians signs are used instead of Yield Here to Pedestrians signs, stop lines shall be used instead of yield lines.~~

B - One-way roadway



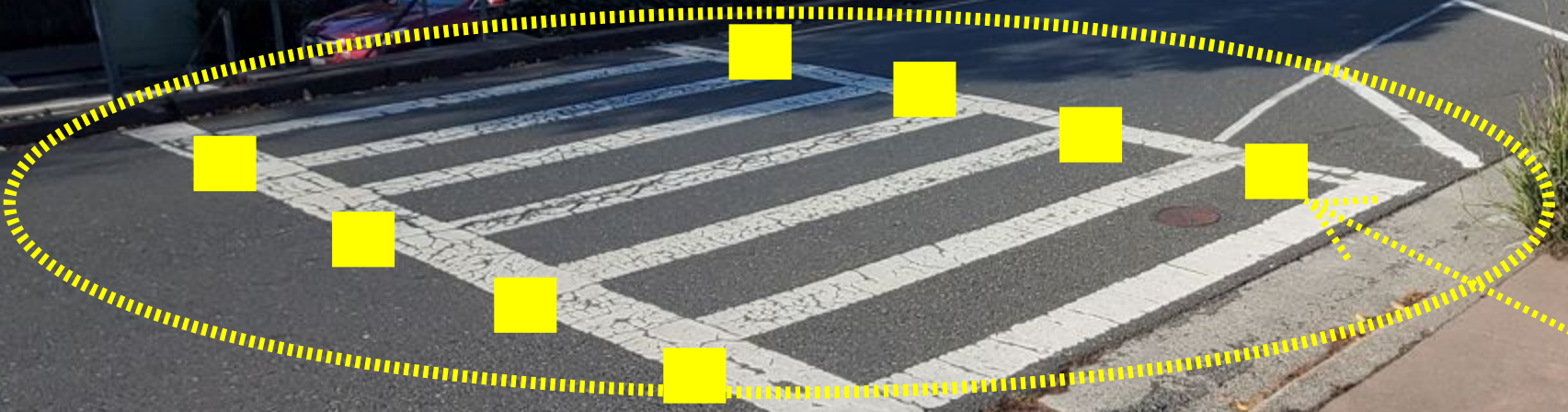
Legend  
→ Direction of travel



- REFRESH CROSSWALK.
- INSTALL W11-2 AT THE EDGE OF CROSSWALK (AS SHOWN).
- INSTALL REFLECTIVE PAVEMENT MARKERS OUTSIDE OF THE CROSSWALK (2 MARKERS AT THE EDGE OF EACH BAR).



ARLINGTON



INDIAN ROCK

LOCATION: ARLINGTON AND INDIAN ROCK



- REFRESH CROSSWALK.
- REFRESH STOP BAR AND STOP LEGEND.

INDIAN ROCK

ARLINGTON



LOCATION: ARLINGTON AND INDIAN ROCK

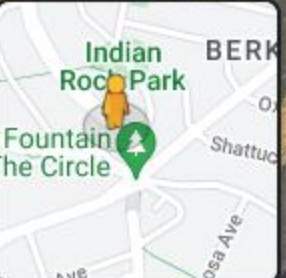


- REFRESH CROSSWALK.
- INSTALL W11-2 AT CROSSWALK
- INSTALL R1-5 (AS SHOWN).
- INSTALL YIELD LINES (AS SHOWN).
- INSTALL 20' OF RED CURB.
- INSTALL REFLECTIVE PAVEMENT MARKERS OUTSIDE OF THE CROSSWALK (2 MARKERS AT THE EDGE OF EACH BAR).



ARLINGTON

LOCATION: ARLINGTON (260' FROM INDIAN ROCK)

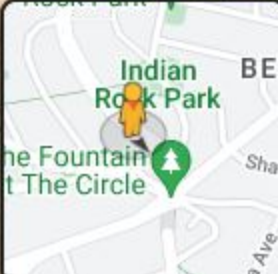




- REFRESH CROSSWALK.
- INSTALL W11-2 AT CROSSWALK
- INSTALL R1-5 (AS SHOWN).
- INSTALL YIELD LINES (AS SHOWN).
- INSTALL REFLECTIVE PAVEMENT MARKERS OUTSIDE OF THE CROSSWALK (2 MARKERS AT THE EDGE OF EACH BAR).



LOCATION: ARLINGTON (280' FROM INDIAN ROCK)





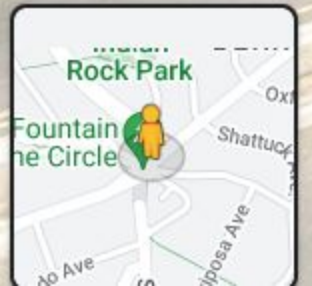
- INSTALL W11-2 AND W16-9P  
- REFRESH RED CURB

INDIAN ROCK



LOCATION: ARLINGTON AND INDIAN ROCK

ARLINGTON



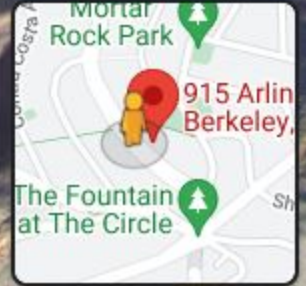


- REFRESH CROSSWALK / RED CURB.
- INSTALL W11-2 AT CROSSWALK.
- INSTALL R1-5 (AS SHOWN).
- INSTALL YIELD LINES (AS SHOWN).
- INSTALL REFLECTIVE PAVEMENT MARKERS OUTSIDE OF THE CROSSWALK (2 MARKERS AT THE EDGE OF EACH BAR).



ARLINGTON

LOCATION: 899 ARLINGTON



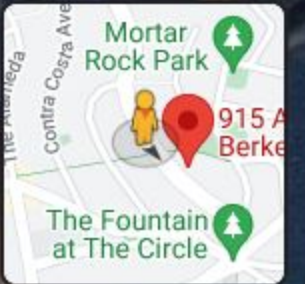


- REFRESH CROSSWALK / RED CURB.
- INSTALL W11-2 AT CROSSWALK.
- INSTALL R1-5 (AS SHOWN).
- INSTALL YIELD LINES (AS SHOWN).
- INSTALL REFLECTIVE PAVEMENT MARKERS OUTSIDE OF THE CROSSWALK (2 MARKERS AT THE EDGE OF EACH BAR).



ARLINGTON

LOCATION: 900 ARLINGTON



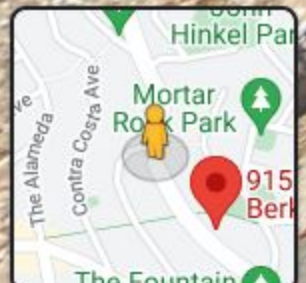


- REFRESH CROSSWALK / RED CURB.
- INSTALL W11-2 AT CROSSWALK.
- INSTALL R1-5 (AS SHOWN).
- INSTALL YIELD LINES (AS SHOWN).
- INSTALL REFLECTIVE PAVEMENT MARKERS OUTSIDE OF THE CROSSWALK (2 MARKERS AT THE EDGE OF EACH BAR).

LOCATION: 863 ARLINGTON



ARLINGTON

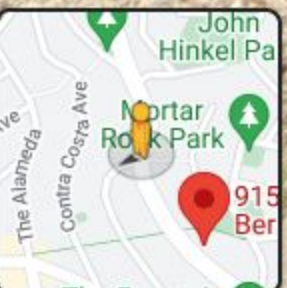




- REFRESH CROSSWALK / RED CURB.
- INSTALL W11-2 AT CROSSWALK.
- INSTALL R1-5 (AS SHOWN).
- INSTALL YIELD LINES (AS SHOWN).
- INSTALL REFLECTIVE PAVEMENT MARKERS OUTSIDE OF THE CROSSWALK (2 MARKERS AT THE EDGE OF EACH BAR).



LOCATION: 852 ARLINGTON

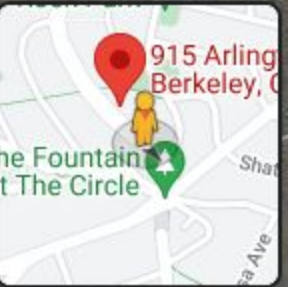


ARLINGTON



- REFRESH WHITE EDGE LINE ALONG ARLINGTON AVE BETWEEN THE CIRCLE AND MENDOCINO AVE (SB/NB).
- REFRESH YELLOW EDGE LINE ALONG ARLINGTON AVE BETWEEN THE CIRCLE AND MENDOCINO AVE (SB/NB).
- REFRESH ALL BUFFER AREAS ALONG ARLINGTON AVE BETWEEN THE CIRCLE AND MENDOCINO AVE (SB/NB).
- REFRESH ALL RED CURBS ON ARLINGTON BETWEEN THE CIRCLE AND MENDOCINO AVE (SB/NB)

LOCATION: ARLINGTON (BETWEEN THE CIRCLE AND MENDOCINO)





- INSTALL W11-2 AND W16-9P

MENDOCINO



LOCATION: ARLINGTON AND MENDOCINO

ARLINGTON



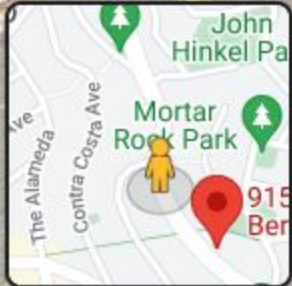


- INSTALL W11-2 AND W16-9P



ARLINGTON

LOCATION: 875 ARLINGTON



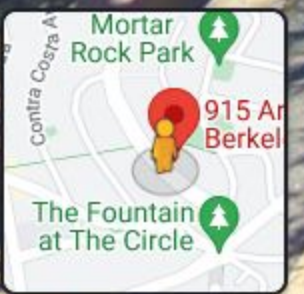


- INSTALL W11-2 AND W16-9P



ARLINGTON

LOCATION: 915 ARLINGTON





- INSTALL W11-2 AND W16-9P

ARLINGTON

LOCATION: 886 ARLINGTON



Mortar Rock Park  
915 A Berke  
The Fountain at The Circle



- INSTALL W11-2 AND W16-9P

ARLINGTON



LOCATION: 973 ARLINGTON



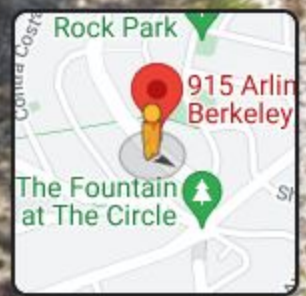


- INSTALL W11-2 AND W16-9P



ARLINGTON

LOCATION: 928 ARLINGTON





- INSTALL W11-2 AND W16-9P



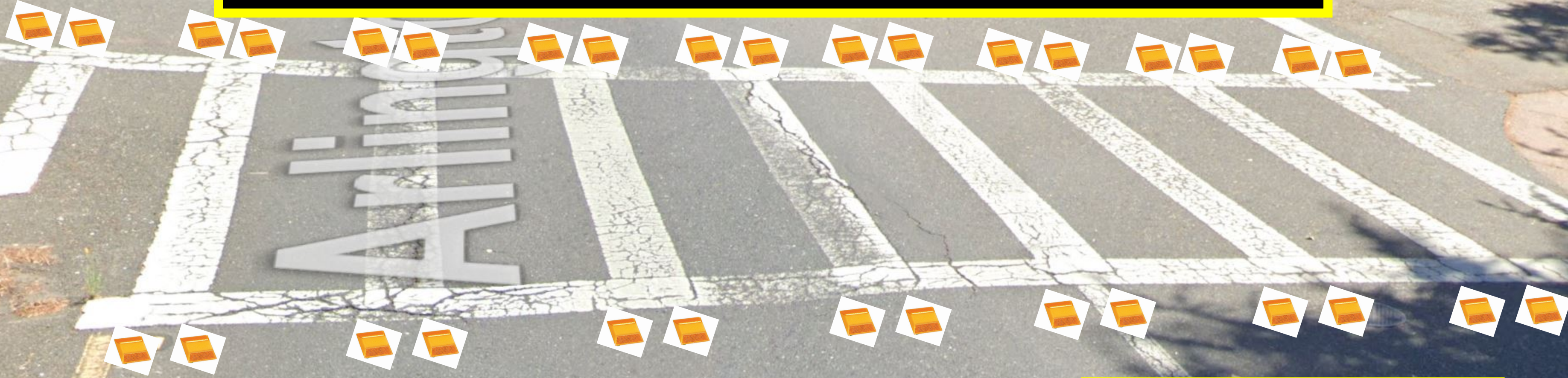
ARLINGTON

LOCATION: 962 ARLINGTON





REFLECTIVE PAVEMENT MARKERS TO BE INSTALLED AT EACH BAR OUTSIDE OF THE CROSSWALK. 2 MARKERS PER BAR. (AS SHOWN). TO BE APPLIED TO ALL CROSSWALKS ALONG ARLINGTON BETWEEN THE CIRCLE AND MENDOCINO AVE



REFLECTIVE PAVEMENT MARKER



852 Arlington Ave  
Berkeley, California  
Google  
Street View - Jun 2022

Mortar Rock Park  
915 Arlington  
Berkeley, CA  
The Fountain  
The Circle

Google





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR

March 21, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf and Councilmember Hahn (co-authors)

Subject: 2023 Virtual Holocaust Remembrance Day Program: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 each from Councilmember Wengraf and Councilmember Hahn, to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf's and Hahn's discretionary Council Office Budgets and all other Councilmembers who would like to contribute, allows the City of Berkeley to invite the community to the City's 20<sup>th</sup> Annual Holocaust Remembrance Day virtual program, created by the community with City Council support. This year's program will be held virtually on April 16th, 2023 from 2:00 – 3:00 PM. Register via Eventbrite to attend.

FINANCIAL IMPLICATIONS

No General Fund impact: up to \$500 is available from contributing Councilmember's Council Office Budget discretionary accounts.

BACKGROUND

The City of Berkeley's Annual Holocaust Remembrance Day program has been supported by the City Council since its inception in 2002. The program has occurred annually, except in the year 2020 when the pandemic hit without enough time to pivot to a virtual program. Berkeley's Holocaust Remembrance Day has become a treasured event for Holocaust survivors, family members and the Bay Area community as the only secular, city-sponsored program in the region. The community program invites attendees to honor those who perished in the Holocaust and those who survived. With rising hate incidents and hate crimes in our region and nation-wide, it is critical that we hear the stories of survivors of the Holocaust and re-affirm our resolve to never forget.

ENVIRONMENTAL SUSTAINABILITY

No impact

CONTACT PERSON

Councilmember Wengraf  
Attachment: 1. Resolution

Council District 6

510-981-7160

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Wengraf and Councilmember Hahn have surplus funds in their office expenditure accounts and will contribute \$500 each, and invite the Mayor and other Councilmembers to join them in contributing; and

WHEREAS, a California nonprofit tax-exempt corporation, The Jewish Community Center of the East Bay, serves as the fiscal sponsor of the Holocaust Remembrance Day program and will receive funds in an amount up to \$500 per contributing Councilmember's discretionary account; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of providing a community program supporting Holocaust survivors, community recognition and education about the Holocaust and unity among Berkeley residents. The grants will provide funds to produce the virtual event.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget, up to \$500 per office, shall be granted to the Jewish Community Center of the East Bay to fund the City of Berkeley's virtual 20<sup>th</sup> Annual Holocaust Remembrance Day program on April 16, 2023.



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
March 21, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmembers Susan Wengraf & Sophie Hahn (co-authors), Mayor Arreguín (co-sponsor), Councilmember Bartlett (co-sponsor)

Subject: Proclamation in Honor of City of Berkeley Holocaust Remembrance Day

RECOMMENDATION

Adopt the Holocaust Remembrance Day Proclamation for the City of Berkeley's 20<sup>th</sup> Annual Holocaust Remembrance Day. The program will take place virtually on Sunday, April 16<sup>th</sup> from 2:00 - 3:00 PM.

FINANCIAL IMPLICATIONS

An allocation of \$6,000 dollars has been approved in the 2023 budget for this event.

BACKGROUND

For the past twenty years, The City of Berkeley has sponsored the Holocaust Remembrance Day program honoring survivors and remembering those who were murdered, those who resisted and those who rescued victims of the Holocaust.

More than 11 million people were targeted for extermination by the Nazis, including 6 million Jews, Roma, Poles, people with physical disabilities, homosexuals, communists, socialists and dissenting clergy.

The 2023 Berkeley Holocaust Remembrance Day theme is "*Remembrance and Resilience*". This year the community will honor Miriam Finder Tasini, retired UCLA professor and practitioner of psychiatry and psychoanalysis and author of *Where Are We Going*, who will speak about her experiences as a young child fleeing from the Nazis. The program will also feature Hannah Weisman, Executive Director of The Magnes Collection of Jewish Art and Life, and musical performances by Aryeh Nussbaum Cohen, operatic countertenor, a unique candle lighting ceremony by survivors and family members, and a performance by young members of the Jewish Community Center of the East Bay.

Holocaust Remembrance Day reminds us of the extreme dangers of letting hate go unchecked. The program is meant to remind us of the horror of the systematic

annihilation of millions of innocent people and at the same time serves to strengthen and renew our belief in the courage and resilience of the survivors and rescuers.

ENVIRONMENTAL SUSTAINABILITY

No direct impact.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Proclamation

## **BERKELEY'S 20<sup>TH</sup> ANNUAL HOLOCAUST REMEMBRANCE DAY**

**Whereas**, the Holocaust was the state-sponsored, systematic genocide of more than six million European Jews by Nazi Germany and its collaborators between 1933 and 1945; and

**Whereas**, the Holocaust was a crime of shocking inhumanity, targeting for persecution and death, Jews and also Roma and Sinti people, those with mental illness and physical disabilities, homosexuals, Slavs, Poles, and members of anti-Nazi networks from throughout Europe; and

**Whereas**, this year's guiding Holocaust Remembrance theme of "*Remembrance and Resilience*" emphasizes the need to remember and acknowledge the atrocities of the past to heal and thrive in the present; and

**Whereas**, false information on the Holocaust continues to deny and trivialize the truth of what took place during the Nazi regime and, for the benefit of past, present and future generations, we must never forget the appalling crimes of the Holocaust; and

**Whereas**, the purpose of Berkeley's Holocaust Remembrance Day is to join together as a community to remember the Holocaust, honoring survivors who chose to rebuild their lives in Berkeley and the Bay Area, and to reflect on the need to respect all people.

**NOW THEREFORE, BE IT RESOLVED** that I, Jesse Arreguín, Mayor of the City of Berkeley, do hereby proclaim April 16, 2023 as

### **Holocaust Remembrance Day**

In the City of Berkeley, in memory of those who perished and in honor of the survivors as well as the rescuers and liberators.

**BE IT FURTHER PROCLAIMED** that the City of Berkeley is committed to never forgetting the events of the Holocaust and to working actively to combat antisemitism, racism, bigotry, and hatred in all forms, and to the promotion of human rights and dignity for all.





CONSENT CALENDAR  
March 21, 2023

LUHED

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Councilmember Bartlett (co-author)

Subject: Incentives for Equitable and Affordable Middle Housing

### RECOMMENDATION

1. Refer to the City Manager and the Planning Commission to study and return to Council potential amendments to the Berkeley Municipal Code and General Plan to further the City of Berkeley's goals for affirmatively furthering fair housing with additional incentives for affordability and ownership opportunities, including first-time homebuyers and households inheriting properties from relatives, in "Middle Housing" zoning categories. At a minimum, consider:
  - a. A local density bonus for on-site affordable housing for Middle Housing, including additional dwelling units, Floor Area Ratio, lot coverage, reduced or waived fees, and ministerial approval for projects with on-site deed-restricted units affordable to Low- and Moderate-Income households, and incentives for first-time homebuyer opportunities. Consider regulating maximum buildable width and/or depth to disincentivize higher-cost dwelling units.
  - b. A density bonus for additional Accessory Dwelling Units in exchange for the inclusion of deed-restricted ADUs on-site affordable to Low- and Moderate-Income households. To the extent feasible, incorporate scope of study with Council's referral to develop an Efficiency Unit Ordinance.
  - c. A density bonus for Middle Housing residential projects in which an owner-occupier receives a minimum of in-kind compensation for the parcel with on-site ownership unit(s) in the project. Consider standard form agreements and other technical assistance.
  - d. Pre-approved designs for bonus-compliant projects.
  - e. Seek to leverage consistency and compatibility with state and regional resources including the Bay Area Housing Finance Authority (BAHFA), MTC/ABAG, AC Boost, and the CA Dream For All program.
2. Refer to the Fiscal Year 25/26 biennial budget process \$250,000 for technical assistance.

### FINANCIAL IMPLICATIONS

\$250,000 or \$125,000 per fiscal year, equivalent of one (1) FTE Senior Planner positions.

Berkeley's 2023 Housing Element Update, Program 30: Accessory Dwelling Units, includes the following provision: "Providing one dedicated ADU planner to respond to questions and offering office hours and other educational programs for those interested in creating ADUs."

### CURRENT SITUATION AND ITS EFFECTS

Developing incentives for affordable and equitable Middle Housing is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

Berkeley made insufficient progress on meeting its state-mandated Regional Housing Need Allocation (RHNA) goals for low- and moderate-income housing in the 2014-2022 RHNA cycle. As recently as the city's 2020 Housing Pipeline Report, the city had only fulfilled 23% of its moderate-income RHNA goals, 21% of its RHNA goals for Very-Low Income households, and a mere 4% for Low-Income households. Berkeley's next RHNA cycle mandates roughly 3 times as many units as the previous cycle's total of 2,959 units across all income tiers.<sup>1</sup>

As of February 17, 2023, the City of Berkeley's Housing Element Update contains Policy H-6, Low Income Homebuyers, under Goal A: Housing Affordability: "Support efforts that provide opportunities for successful home ownership."

The Element also contains Policy H-29, Middle Housing, under Goal E: Affirmatively Furthering Fair Housing: "Promote and facilitate a mix of dwelling types and sizes, particularly infill middle housing in high resource neighborhoods."

Further, the Element includes Policy H-32, under Goal F: Mitigate Governmental Constraints: "Provide incentives where feasible to offset or reduce the costs of affordable housing development, including density bonuses and flexibility in site development standards."

Leveraging both policy frameworks together can more directly mitigate spatial inequalities stemming from local and regional histories of systemic racism and segregation. With rising land costs and varying lot sizes, opportunity site planning for subsidized affordable housing in Berkeley has tended to concentrate along commercial corridors. However, including incentives for additional affordability in Middle Housing could enable greater geographic equity in affordable housing distribution, with no public subsidy needed to break ground.

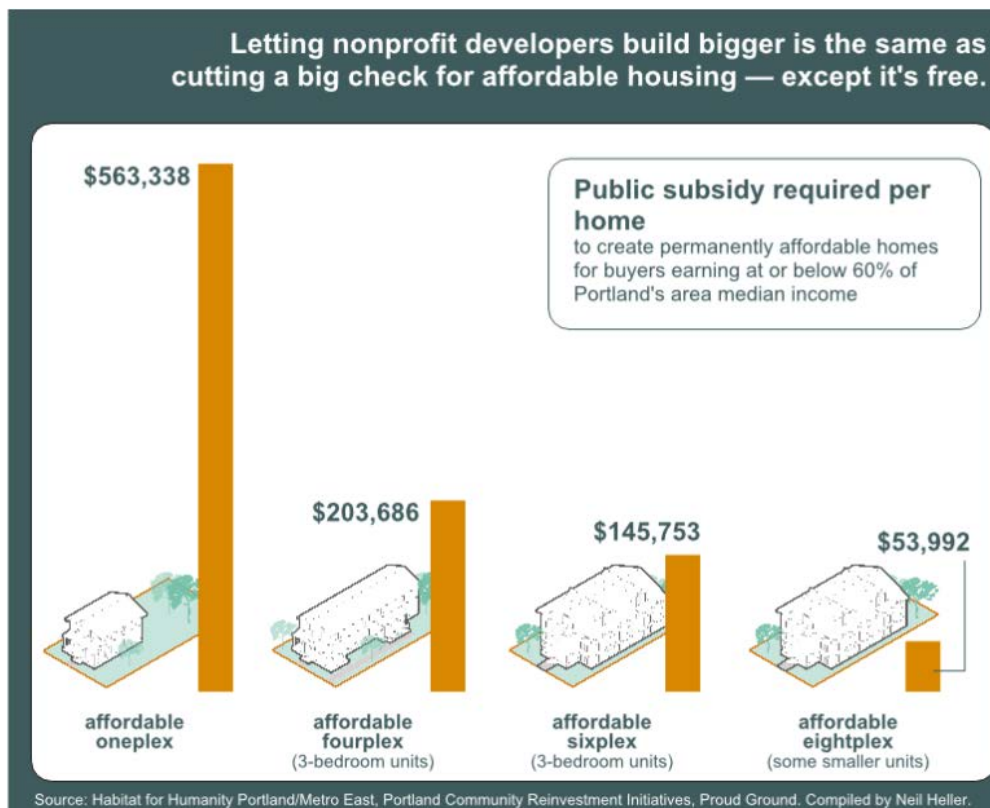
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<sup>1</sup> [https://abag.ca.gov/sites/default/files/draft\\_rhna\\_allocation\\_presentation\\_to\\_exec\\_bd\\_jan\\_21.pdf](https://abag.ca.gov/sites/default/files/draft_rhna_allocation_presentation_to_exec_bd_jan_21.pdf)



## BACKGROUND

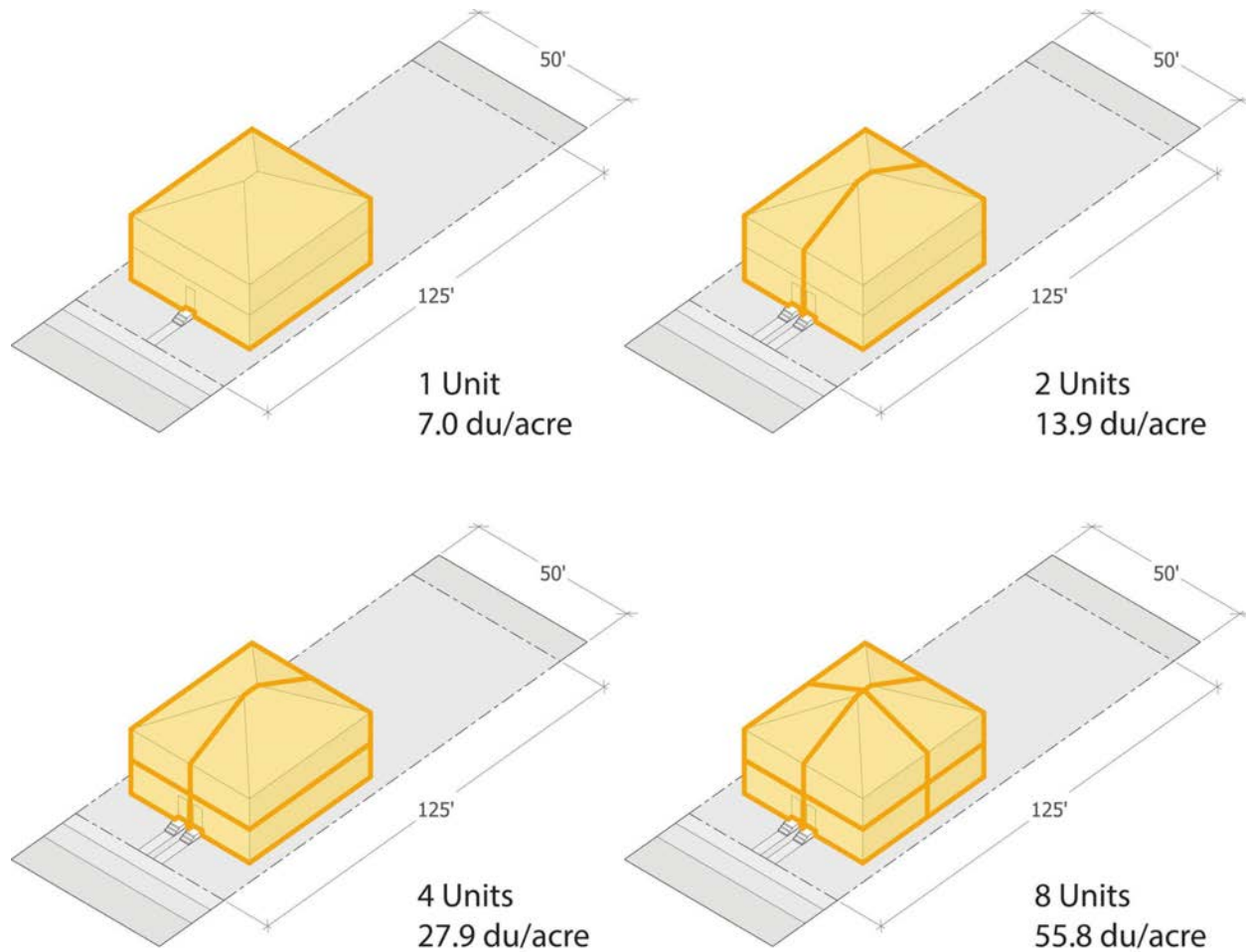
The City of Portland, Oregon adopted its Residential Infill Project (RIP), a package of middle housing zoning reforms, in August of 2020. Portland's residential zones now generally permit four dwelling units per parcel, with a Deeper Affordability density bonus for on-site affordable housing. This reform was strongly supported by Oregon's affordable housing builders, including Habitat For Humanity, which is able to provide more first-time homeownership opportunities to lower-income households in Portland thanks to the additional density and economies of scale.<sup>2</sup> A City of Portland staff report summarized: "These new housing types will complement existing neighborhoods. Smaller in size, they provide more choices for first-time homebuyers, downsizing empty-nesters and middle-wage earners... Conversely, without allowing additional housing types to occur in single-dwelling neighborhoods, one conclusion is certain: When homes are demolished or when vacant sites are developed, the resulting redevelopment will result in only one house (likely large and expensive), when options for two, three or four households could have been built in its stead."<sup>3</sup>



Data visualization from Sightline Institute

<sup>2</sup> Andersen, M. (2020). Do Portland's low-density zones need a deeper affordability option? *Sightline Institute*. Retrieved from <https://www.sightline.org/2020/01/10/do-portlands-low-density-zones-need-a-deeper-affordability-option/>

<sup>3</sup> <https://www.portland.gov/bps/rip/documents/exhibit-b-volume-1-staff-report/download>



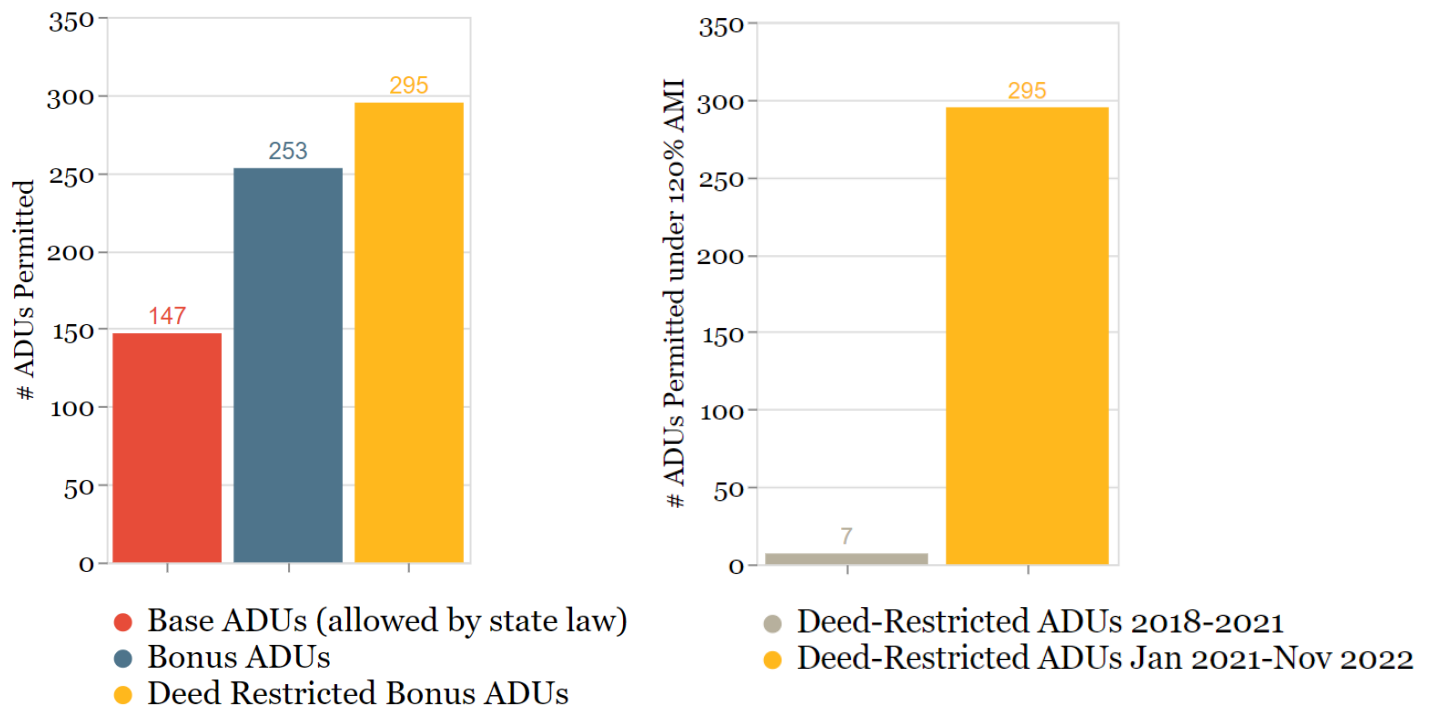
*“The same building envelope accommodates one, two, four, and eight units.” Opticos Design*

The City of San Diego was able to incentivize affordable housing production through a residential density bonus by enabling additional Accessory Dwelling Units in exchange for deed-restricted affordable units, subject to state ADU streamlining provisions under AB-68. Citywide, the bonus allows one additional market-rate ADU in addition to one deed-restricted affordable ADU, with deed restriction periods varying by level of income restriction. Additionally, in Transit Priority areas, the ADU Bonus waives the upper limit on ADUs per project so long as each additional pair of units maintains the 1:1 affordability ratio.

The UC Berkeley Turner Center for Housing Innovation reports that San Diego’s ADU Bonus has permitted 295 deed-restricted affordable ADUs since its passage in 2020, roughly double the amount of ADUs permitted as a “base” project under state law.<sup>4</sup> San

<sup>4</sup> Alameldin, M. & Underriner, Q. San Diego’s Success in Spurring Missing Middle Housing: The Accessory Dwelling Unit Bonus Program. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from <https://turnercenter.berkeley.edu/research-and-policy/san-diego-adu-bonus-program/>

Diego’s ADU Bonus is similar to other “Backyard Infill” programs like the Portland RIP in that it “activates existing space by allowing lower density parcels to increase the number of homes without significantly impacting existing neighborhoods and structures”—reducing a housing development’s potential disruption of “neighborhood character.”



*San Diego ADU Bonus Data. Alameldin & Underriner (2023).*

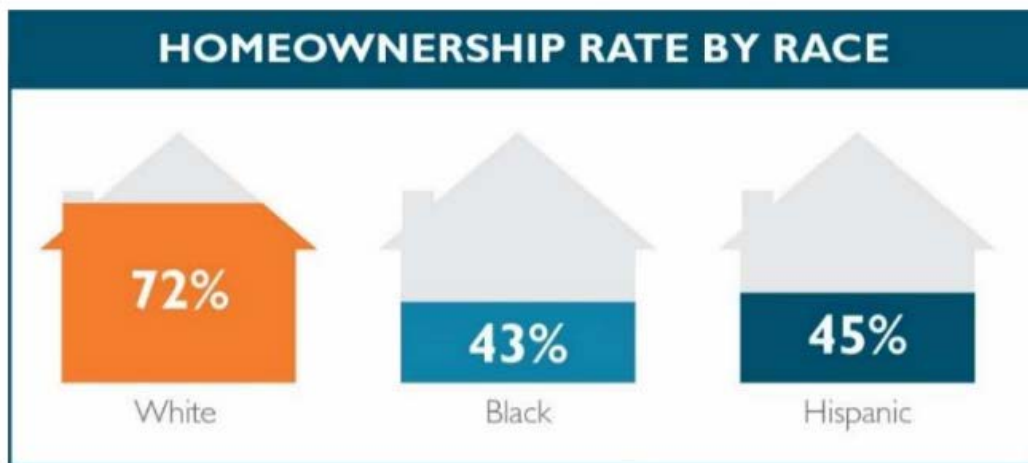
**In addition to affordable rental housing, expanding first-time homeownership opportunities is critical for affirmatively furthering fair housing.**

The racial wealth gap in the United States is primarily driven by inequitable access to homeownership, stemming from systemic exclusion in land use as well as discrimination in lending and appraisals.<sup>5</sup> Subsidies for both supply and demand channels have been historically insufficient while support for American asset wealth primarily in white communities has been more robust and resilient. This has widened the racial wealth gap between white and Black households, and ultimately proved incompatible with universal housing security.

<sup>5</sup> Ray, R. et al. (2021). Homeownership, racial segregation, and policy solutions to racial wealth equity. *Brookings Institution*. Retrieved from <https://www.brookings.edu/essay/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/>

By way of example, the Great Recession of 2008/9 effected a significant transfer of wealth from lower-income Black homeowners<sup>6</sup> targeted with predatory subprime loans to private equity firms<sup>7</sup> buying up large portfolios of "distressed" properties before the economy recovered. This historical pattern of usury and community displacement has further excluded people of color from the fruits of economic recovery and deepens the racial wealth gap.

The California state legislature has recognized the importance of first-time homebuyers in its broader efforts to redress and repair the harms of historically racist institutions, most recently by establishing the CA Dream For All program to provide down payment assistance for first-time homebuyers statewide.



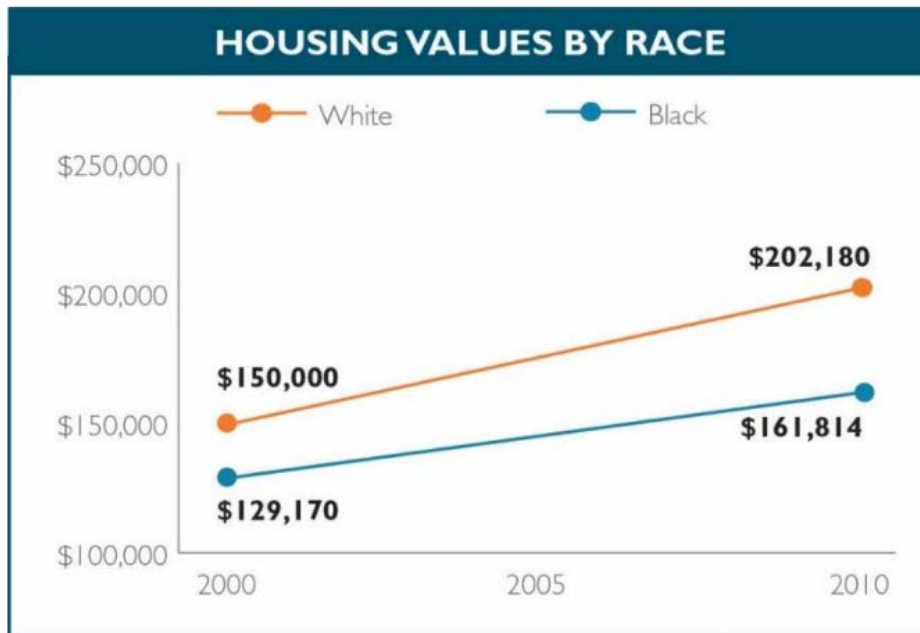
Source: Pew Research Center, 2017

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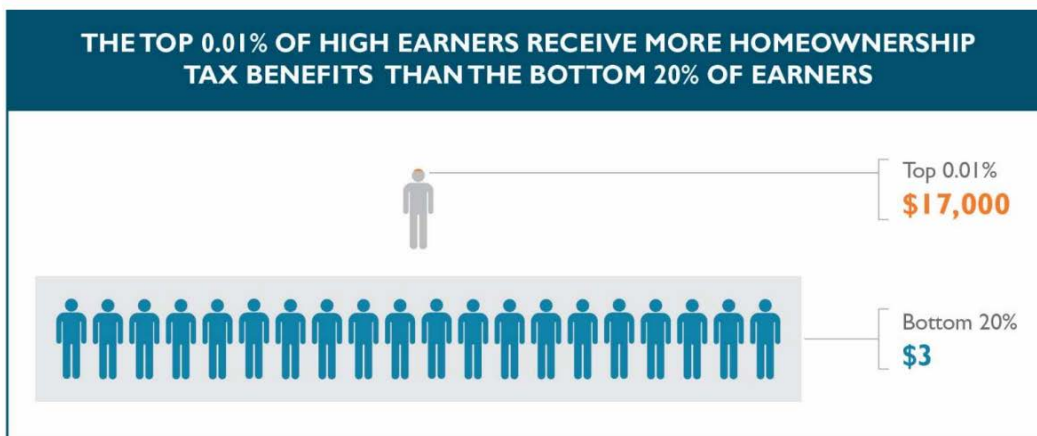
<sup>6</sup> White, G.B. (2015). The Recession's Racial Slant. *The Atlantic*. Retrieved from

<https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/>

<sup>7</sup> Warren, E. & Fife, C. (2020). Families see a looming catastrophe. Private equity firms see dollar signs. *The Washington Post*. Retrieved from <https://www.washingtonpost.com/opinions/2020/08/06/nation-is-facing-housing-crisis-private-equity-firms-just-see-dollar-signs/>



Source: Institute on Assets and Social Policy, 2014



Source: From Upside Down to Right-Side Up, 2014

*How the racial wealth gap manifests in homeownership: The homeownership rate for white Americans was 29% higher than for Black Americans in 2017. White homeowners also have higher property values on average, and the highest-earning homeowners receive the lion's share of tax benefits.*

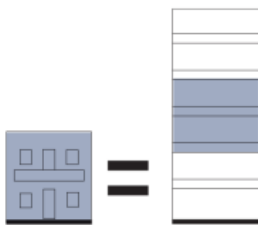
However, high housing costs in Berkeley have significantly limited the efficacy of homeownership assistance programs. AC Boost, Alameda County's Down Payment Assistance loan program, limits its maximum loan amount to \$160k-\$210k for a 0-3% down payment. In AC Boost's first and second funding cycles, out of 17 Berkeley

residents who submitted complete applications, 3 have purchased homes in neighboring cities, but not in Berkeley.<sup>8</sup>

Because condominiums offer significantly more affordable prices for first-time homebuyers compared to single-family homes, the Berkeley City Council recently updated its Affordable Housing Mitigation Fee to eliminate the discrepancy between ownership and rental units that disincentivized condo construction.

Encouraging equitable condominium ownership models can strengthen the City's efforts to reduce displacement and promote community-based generational wealth-building and accommodating growing families in historically disadvantaged areas. Neighbors adjacent to new development often anecdotally report that they fear the pressure to "sell out" to highly capitalized institutional investors, or otherwise lament the erosion of familiar community bonds. Thus, one policy mechanism for consideration is incentivizing a "land for housing" or "flats-for-land" swap in which an owner-occupier can cash in part of their home equity without displacement by receiving condominium units on-site as partial compensation from a developer for their property.

Modern flats-for-land exchanges emerged as equity financing in lieu of a public housing program in postwar Greece, after two world wars and a civil war left the state without resources and banks without credit lines to build housing for a rapidly growing urban population. Under the *antiparochi* system, homeowners in Athens, Thessaloniki, and other cities sold their land to developers with partial compensation provided with a deed to one or several units in the resulting *polikatoikia* apartment buildings. This increased housing available for migrants and refugees as well as employment opportunities in the construction sector. Research has found that the "flats-for-land" model enabled substantially increased housing supply and GDP per capita in postwar Greece.<sup>9</sup>



*Antiparochi* illustration<sup>10</sup>

<sup>8</sup> <https://berkeleyca.gov/sites/default/files/documents/2022-11-03%20Item%2026%20Budget%20Referral%20Down%20Payment%20Assistance.pdf>

<sup>9</sup> Petris, P., et al. (2020). The "flats-for-land" system in Greece: An idiosyncratic equity financing mechanism in the post-War period, *The Journal of European Economic History*, ISSN 2499-8281, Associazione Bancaria Italiana, Roma, Vol. 49, Iss. 2, pp. 175-202. Retrieved from <https://www.econstor.eu/bitstream/10419/231559/1/49-2020-2-175-202.pdf>

<sup>10</sup> *CoHab Athens*. Antiparochi. Retrieved from <https://cohabathens.org/portfolio/antiparochi-land-for-flat/>



While statewide construction defect reform<sup>11</sup> would likely be needed to further increase the scale of condominium construction in California, the City of Berkeley could study incentives and provide technical assistance for similar exchanges.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

In an analysis of 252 California Cities, Durst (2021) finds that “each additional affordable housing incentive is associated with a 0.37 percentage point decrease in the share of workers who commute more than 30 minutes.”<sup>12</sup>

AC Boost’s down payment assistance fund includes incentives to reduce Vehicle Miles Traveled (VMT) while mitigating displacement by encouraging home purchases close to jobs and public transit. According to Wheeler et al (2018), the urban core of the San Francisco Bay Area (including Berkeley) contains some of the lowest carbon emissions per capita in California, making urban infill housing a key policy lever for cities to reduce carbon footprints by reducing VMT per capita.<sup>13</sup> Preventing displacement from Berkeley also prevents increased emissions from households who otherwise may be priced out to areas with higher per capita emissions.

### CONTACT PERSON

|                        |                    |              |
|------------------------|--------------------|--------------|
| Councilmember Taplin   | Council District 2 | 510-981-7120 |
| Councilmember Bartlett | Council District 3 | 510-981-7130 |

### ATTACHMENTS

1. City of Portland Ordinance 190093, Adopted August 12, 2020
2. Build Small Coalition Letter Re: Residential Infill Project 2.0 (4/14/2022)
3. City of San Diego Staff Report - Housing Legislation Code Update to the Municipal Code and Local Coastal Program (9/9/2020)

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<sup>11</sup> Parolek, D. (2020). *Missing middle housing: Thinking big and building small to respond to today’s housing crisis*. Island Press.

<sup>12</sup> Durst, N. J. (2021). Residential Land Use Regulation and the Spatial Mismatch between Housing and Employment Opportunities in California Cities. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from

<http://californialanduse.org/download/Durst%20Residential%20Land%20Use%20Regulation%202020.pdf>

<sup>13</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.

## **ORDINANCE No. 190093 As Amended**

Amend the Comprehensive Plan, Comprehensive Plan Map, Zoning Map, Title 33 Planning and Zoning, and Title 30 Affordable Housing, to revise the Single-Dwelling Residential designations and base zones. (Ordinance; amend Code Title 33, Title 30 and amend the Portland Comprehensive Plan and zoning maps)

The City of Portland Ordains:

Section 1. The Council finds:

### General Findings

1. Portland is expected to grow by more than 100,000 households by the year 2035.
2. The cost of housing in Portland is rising. The average cost of rent in Portland increased by 5 percent or more between 2012 and 2016, and by 2 percent in 2017. Between 2011 and 2018, the median home sale price citywide rose 60 percent — or more than \$150,000. As of 2018, the median home sale price exceeded \$475,000 in more than half the neighborhoods in the city. In order to afford the median price home in Portland today, families must earn 130% to 160% of the median family income.
3. In addition, the city's history of racially discriminatory decision-making and public policies have contributed to today's racial disparities in homeownership rates and wealth attainment and has resulted in geographic racial segregation in Portland.
4. For these reasons, the ability for many households to gain entry into many of the city's single-dwelling neighborhoods is increasingly out of reach.
5. At the same time, the city is becoming more diverse, the overall population is aging, and the number of people per household is getting smaller.
6. The Comprehensive Plan includes policies directed toward encouraging more housing choices to accommodate a wider diversity of family sizes, incomes and ages (Policy 4.15); encourage development and preservation of small resource-efficient and affordable single-family homes in all areas of the city (Policy 4.18); expanding housing choice in all of Portland's neighborhoods (Policy 5.4); encouraging middle housing—multi-unit or clustered residential buildings that provide relatively smaller, less expensive units (Policy 5.6); and encouraging a variety of ownership opportunities and choices (Policy 5.43).
7. Nearly half of the city's land area is zoned for single-dwelling residential development, however, apartments are the predominant housing type being built in Portland—74 percent of all units built in 2016.
8. Portland's single-dwelling zoning currently allows up to two dwelling units per lot—one house and one accessory dwelling unit, or in some cases, a duplex on a corner. And yet, due to the high cost of land, the size of dwelling units continues to increase, and the price of the units is higher than most Portlanders can afford.
9. In 2015, the Bureau of Planning and Sustainability began the Residential Infill Project with the goal of responding to these trends and changing demographics. Then-Mayor Charlie Hales appointed a Stakeholder Advisory Committee (SAC) to assist the Bureau of Planning and Sustainability in developing a plan to amend the city's single-dwelling



zoning code to alleviate the rising cost of housing and reduce the size of new houses. The SAC met 14 times between September 2015 and October 2016.

10. The Residential Infill Project Concept Plan was released for public review on June 15, 2016. City Council held public hearings on the concept plan in November 2016 and passed Resolution No. 37252 on December 7, 2016 endorsing the concepts in the plan.
11. The Residential Infill Project Proposed Draft was released for public review on April 2, 2018.
12. On April 2, 2018 notice of the proposed draft was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.
13. On April 4, April 9, and April 11, 2018 notice of the proposed draft was mailed to all property owners potentially affected by proposed zoning map and code changes as required by ORS 227.186.
14. On May 8, 2018 and May 15, 2018, the Planning and Sustainability Commission held public hearings on the proposed draft. In addition, the Commission held 2 briefings and 9 work sessions before voting to forward the Residential Infill Project to City Council on March 12, 2019.
15. The Residential Infill Project Recommended Draft was released for public review on August 2, 2019.
16. On October 9, 2019 a revised notice of the recommended draft was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-045.
17. On December 12, 2019 notice of the January 15, 2020 and January 16, 2020 City Council public hearings was mailed to those who presented oral and written testimony at the Planning and Sustainability Commission public hearing. In addition, the City emailed notice of the hearing to its Residential Infill Project email list.
18. The Residential Infill Project amendments allow up to six dwelling units per lot (based on lot sizes and affordability level) in the R7, R5 and R2.5 zones, and allows the units to be arranged in multiple configurations including a single structure with up to six dwelling units or a combination of a primary and accessory structure.
19. The amendments provide opportunities for a wider variety of housing options and can reduce the cost of a single unit by roughly half the cost of a single new house.
20. The amendments encourage additional regulated affordable housing units.
21. The amendments also include a cap on house size by limiting the amount of floor area allowed per lot in the R7, R5 and R2.5 zones. The cap is intended to ensure that:
  - Additional development in these zones is compatible with existing development; and
  - Additional dwelling units are affordable to a wider cross-section of Portland residents because smaller dwelling units are often less expensive than larger units.
22. The Residential Infill Project also rezones approximately 7,000 lots from R5 to R2.5. The rezoned lots are narrow, platted lots—generally 2,500 square feet in size—that are substandard for the R5 zones. The rezoning is intended to increase opportunities for

homeownership as dwelling units on these lots are generally smaller and therefore less expensive.

23. The amendments also help the city to comply with the following:
- House Bill 2001, which the Oregon State Legislature passed on August 8, 2019, and requires cities with a population greater than 10,000 to allow duplexes on any lot zoned for single-family dwellings; and
  - Senate Bill 534, which the Oregon State Legislature passed on July 23, 2019, and requires local governments to allow single-family dwellings on residential lots platted and zoned for such uses.
24. The Findings of Fact Report, attached as Exhibit A, includes additional findings demonstrating consistency with the Statewide Planning Goals, Metro Urban Growth Management Functional Plan, and the City of Portland *2035 Comprehensive Plan*.
25. The amendments to Title 30 are necessary to extend the Deeper Housing Affordability FAR Density Program to the single-dwelling zones to support the Affordable Fourplexes and Multi-dwelling Structures Residential Infill Option.

NOW, THEREFORE, the Council directs:

- a. Adopt amended Exhibit A, dated July 2020, as additional findings.
- b. Amend the Portland Comprehensive Plan as shown in Exhibit B, Residential Infill Project As-Amended Draft, dated July 2020.
- c. Adopt the commentary in Exhibit B, Residential Infill Project As-Amended Draft, dated July 2020, as legislative intent and further findings.
- d. Amend Title 33, Planning and Zoning, of the Municipal Code of the City of Portland, as shown in Exhibit B, Residential Infill Project As-Amended Draft, dated July 2020, but excluding the amendments to Section 33.110.212 (When Primary Structures are Allowed), Chapter 33.675 (Lot Consolidation), Chapter 33.676 (Lot Confirmation), and the amendments to the lot-related and lot line-related definitions in 33.910 (Definitions).
- e. Amend Section 33.110.212 (When Primary Structures are Allowed), Chapter 33.675 (Lot Consolidation), Chapter 33.676 (Lot Confirmation), and the lot-related and lot line-related definitions in Chapter 33.910 (Definitions) as shown in Exhibit B, Residential Infill Project As-Amended Draft, dated July 2020.
- f. Amend the Portland Comprehensive Plan Map as shown on Exhibit C.
- g. Amend the official Zoning Map as shown on Exhibits D and E.
- h. Amend Title 30, Affordable Housing Preservation and Portland Renter Protections, of the Municipal Code of the City of Portland, as shown in Exhibit B, Residential Infill Project, As-Amended Draft, dated July 2020.

Section 2. Directives b, d, f, g, and h shall be in full force and effect on August 1, 2021. Directives a, c, and e shall be in full force and effect 30 days after final passage by City Council.

Section 3. If any section, subsection, sentence, clause, phrase, diagram or drawing contained in this ordinance, or the map, report, inventory, analysis, or document it adopts or amends, is held

to be deficient, invalid or unconstitutional, that shall not affect the validity of the remaining portions. The Council declares that it would have adopted the map, report, inventory, analysis, or document each section, subsection, sentence, clause, phrase, diagram and drawing thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, phrases, diagrams or drawings contained in this Ordinance, may be found to be deficient, invalid or unconstitutional.

Passed by the Council: **August 12, 2020**

Mayor Ted Wheeler

Prepared by: Morgan Tracy

Date Prepared: December 12, 2019

**Mary Hull Caballero**


Auditor of the City of Portland

By *CPhillips*

Deputy

Agenda No.  
**ORDINANCE NO. 190093 As Amended**  
 Title

Amend the Comprehensive Plan, Comprehensive Plan Map, Zoning Map, Title 33 Planning and Zoning, and Title 30 Affordable Housing, to revise the Single-Dwelling Residential designations and base zones. (Ordinance; amend Code Title 33, and Title 30 and Portland Comprehensive Plan and zoning maps)

|                                                                                                                                                                |                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| <b>INTRODUCED BY</b><br>Commissioner/Auditor:<br><b>Mayor Wheeler</b>                                                                                          | CLERK USE: DATE FILED <u>JAN 07 2019</u>                                                            |
| <b>COMMISSIONER APPROVAL</b>                                                                                                                                   | Mary Hull Caballero<br>Auditor of the City of Portland                                              |
| Mayor—Finance & Administration - Wheeler                                                                                                                       | By: <br>Deputy    |
| Position 1/Utilities - Fritz                                                                                                                                   |                                                                                                     |
| Position 2/Works -                                                                                                                                             |                                                                                                     |
| Position 3/Affairs - Hardesty                                                                                                                                  |                                                                                                     |
| Position 4/Safety - Eudaly                                                                                                                                     | <b>ACTION TAKEN:</b>                                                                                |
| <b>BUREAU APPROVAL</b>                                                                                                                                         | JAN 15 2020 <b>Continued to January 16, 2020 at 5:00 p.m. Time Certain</b>                          |
| Bureau: Planning and Sustainability<br>Bureau Head: Andrea Durbin                                                                                              | JAN 16 2020 <b>Continued to January 29, 2020 at 2:00 pm Time Certain</b>                            |
| Prepared by: Morgan Tracy<br>Date Prepared: 12/12/19                                                                                                           | JAN 29 2020 <b>Continued to February 12, 2020 at 2:00 pm Time Certain</b>                           |
| Impact Statement<br>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>                                                       | FEB 12 2020 <b>CONTINUED TO</b> MAR 12 2020 <b>2 P.M. TIME CERTAIN</b>                              |
| Portland Policy Document<br>If "Yes" requires City Policy paragraph stated in document.<br>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | MAR 12 2020 <b>Rescheduled to date to be determined</b>                                             |
| <b>City Auditor Office Approval:</b><br>required for Code Ordinances                                                                                           | <b>June 3, 2020 Continued to June 11, 2020 at 2:40 p.m. Time Certain</b>                            |
| <b>City Attorney Approval:</b><br>required for contract, code, easement, franchise, comp plan, charter                                                         | <b>June 11, 2020 Rescheduled to June 18, 2020 at 2 p.m. Time Certain</b>                            |
| Council Meeting Date <b>January 15, 2020</b>                                                                                                                   | <b>June 18, 2020 Continued to July 9, 2020 at 2:00 p.m. Time Certain</b>                            |
|                                                                                                                                                                | <b>July 9, 2020 Continued to August 5, 2020 at 2:00 p.m. Time Certain As Amended</b>                |
|                                                                                                                                                                | <b>August 5, 2020 Passed to Second Reading August 12, 2020 at 9:45 a.m. Time Certain As Amended</b> |

|                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>AGENDA</b>                                                                                                                                                                        |
| <b>TIME CERTAIN</b> <input checked="" type="checkbox"/><br>Start time: <u>2:00 pm</u><br><b>Total amount of time needed: 3 hours</b><br>(for presentation, testimony and discussion) |
| <b>CONSENT</b> <input type="checkbox"/>                                                                                                                                              |
| <b>REGULAR</b> <input type="checkbox"/><br><b>Total amount of time needed:</b> _____<br>(for presentation, testimony and discussion)                                                 |

| FOUR-FIFTHS AGENDA | COMMISSIONERS VOTED AS FOLLOWS: |      |
|--------------------|---------------------------------|------|
|                    | YEAS                            | NAYS |
| 1. Fritz           | 1. Fritz                        | X    |
| 2.                 | 2. Vacant                       |      |
| 3. Hardesty        | 3. Hardesty                     | X    |
| 4. Eudaly          | 4. Eudaly                       | X    |
| Wheeler            | Wheeler                         | X    |

Members of the Build Small Coalition  
Re: Residential Infill Project 2.0

April 14, 2022

Dear Mr. Mayor and Portland City Commissioners,

Firstly, everyone who has worked on RIP1 and/or RIP2 should be proud: Portland has exhibited extraordinary leadership, spurring reforms statewide and around the country. Since RIP1 passage, many cities and multiple other states have introduced legislation (re)legalizing “missing” middle housing types. We specifically wish to thank both BPS and the utility bureaus in advance for their continued work to help with the collective goal of making middle housing development a reality.

While we understand the more limited scope of RIP2 relative to the HB 2001 deadline, **we encourage this Council to consider whether we are poised to deliver on the promises of RIP1 and address our ongoing housing crisis.** We must do everything in our power to both prevent the housing shortage from becoming more acute, while doing all we can to open up below-market rental and homeownership opportunities in ALL our neighborhoods.

We have gained new information since RIP1 went into effect, and we should apply those lessons with this update. **A few minor changes should be considered to improve rules and incentives, with a laser focus on affordable housing production.** The recommendations below are focused on the viability of recently-legalized middle housing options, and on improving performance of rules and incentives for regulated-affordable homes:

**Summary of key changes for affordability:**

- Achieve FAR (home size) parity and improve viability of four-plexes,
- Create feasible development paths for affordable 5- to 6-plexes, and
- Fully implement SB 458 to remove barriers for affordable, fee-simple attached homes.

**1. Graduate FAR for four-plexes: allow up to 0.8 FAR (from 0.7)**

- a. Maintain bonus of additional 0.1 FAR (to 0.9) if regulated affordable

Narrative: Floor Area Ratio (or “living area”) in single-dwelling zones is currently graduated according to the number of homes, giving +0.1 FAR for duplexes above single-detached homes, and an additional +0.1 FAR for triplexes and above. Permitting an additional +0.1 FAR for four-plexes above triplexes would greatly increase feasibility of more 2- and 3-bedroom, family sized homes. Four-plexes carry some additional benefits with them: Unlike duplexes and triplexes, four-plexes must meet Fair Housing Act requirements for accessibility of ground-floor homes. Land and fixed costs are also shared among more units, further lowering *price per home*. *While we appreciate that one goal of the FAR limits is to keep plex units relatively small and inexpensive, the lack of FAR for four-plexes may have the unintended consequence of making other redevelopment options, such as*

*a comparatively expensive single- detached home, more compelling than a plex of any type:* As of February 8, permits under RIP1 had only yielded 16 four-plexes compared with 80 single-detached homes with no ADUs.

2. **Ensure that development standards for qualifying five-to-six-unit projects meeting affordability standards are feasible - both stacked and side-by-side.** To qualify a project must be either:
  - 50% or more homes at 60% MFI rental/ 80% MFI ownership, or
  - 100% of units at 100% MFI ownership, *permanently* up to 120% MFI
  - a. Create standards for **affordable two-story side-by-side “townhome-style” plexes.** This would yield some three-bedroom but mostly two-bedroom homes:
    - i. 1.2 FAR
    - ii. 65% lot coverage
    - iii. 5 foot front setbacks (5 foot setbacks all round)
    - iv. 48 sf outdoor space per unit, overlapping with setbacks,
  - b. Create standards for **affordable three-story, smaller footprint “townhome-style” plexes.** This would yield up to six three-bedroom homes:
    - i. 1.4 FAR
    - ii. 60% lot coverage
    - iii. 10 foot front setback
    - iv. Unchanged outdoor space, and
  - c. Improve standards for affordable five-to-six-plex stacked flats (only development type allowed currently). This would yield more affordable three-bedroom homes:
    - i. Increase FAR to 1.4 (currently 1.2)
    - ii. Other standards remain unchanged

Narrative: We should be tailoring our code to maximize affordable rental and first-time homeownership opportunities, and to accommodate differences in physical ability and household size. These standards will allow flexibility, on a standard lot, for nonprofit organizations working to meet community-specific needs and preferences - whether they be one’s own front door in a townhome or a fully physically accessible stacked flat. Portland did a *potentially* revolutionary thing in legalizing up to six homes with an aggressive affordability requirement. To realize its full benefit, and to serve as many income-qualifying households as we can, we must ensure that development standards are suitable and flexible. Portland must also invest in lasting affordability, or our efforts will be lost too soon given the market trends. This is especially important to Portland’s stated commitments to equity and to addressing the racial disparity gap in homeownership.

3. **Create a path for affordable attached homes, mirroring the development standards in #2(a)&(b) per historical PSC Amendment 5.** For only those attached home projects that meet the affordability requirements identified for five-to-six-plexes:
  - a. Adjust minimum lot sizes for each attached house to 800 sf
  - b. Increase allowed density to match minimum lot sizes,
  - c. Reduce minimum lot depth to 50 feet, and
  - d. Incorporate any other small adjustments to match #2(a)&(b).



Narrative: In addition to the innovative “deeper affordability bonus” for five- and six-plexes, we recommend permitting analogous five to six unit attached home projects that meet the same affordability levels. These projects are most likely to occur on corner lots where each home can meet street frontage requirements, creating opportunities for first-time homeownership and having one’s own front door - priorities explicitly expressed by community members accessing these homes. This suggestion, together with #2 above and #4 below, also helps fulfill the stated goals of historical PSC Amendment 5, creating a fee-simple path for affordable five-to-six home projects. The concept was supported by the PSC, who directed staff to keep working on it.

4. **Fully implement SB 458 to permit expedited Middle Housing Land Divisions (MHLDs) for all attached house projects**, including both market-rate and affordable (per the development standards proposed in #2 above).

Narrative: SB 458 clearly requires that townhouses be eligible for middle housing expedited land divisions, in addition to duplexes, triplexes, four-plexes and cottage clusters. Springfield, Eugene, and many other cities are proposing to make townhouses eligible for middle housing land divisions, regardless of the fact that townhouses can already use the existing subdivision and partition process. Implementing the expedited process for a townhouse project consisting of up to six units on an existing lot would be significant in reducing time and costs for townhouse creation. The express intent of SB 458 is to allow a path to facilitate easier land divisions for middle housing types, and HB 2001 clearly defines a townhouse as middle housing. *In the midst of a housing crisis, why wouldn’t we do everything that we can to facilitate more efficient paths for affordable homeownership where feasible?*

Attached homes in Portland are also known as “Townhouse Projects” according to the State. To quote OAR 660-046-0020 ““Townhouse Project” means one or more townhouse structures constructed, or proposed to be constructed, together with the development site where the land has been divided, or is proposed to be divided, to reflect the Townhouse property lines and any commonly owned property.”

**Summary of additional code improvements:**

- Adjust ADU size allowances for fairness to smaller homes and for visitability,
- Adjust cottage cluster standards for better site layout and flexibility,
- Improve strategies to preserve existing homes while adding new ones,
- Allow for shared stormwater and single tap into main for sewer and water, and
- Calculate lot coverage based on pre-dedication lot size.

5. **Adjustments to ADU size for visitability and fairness for smaller homes:**
- a. Allow a visitable (or fully accessible) ADU up to 900 sf of living area,
  - b. Calculate ADU size from combined duplex living area, not larger of two, and
  - c. Improve “ADU fairness” by allowing up to 800 sf or up to size of the primary house.

Narrative: While the new “detached duplex” option creates a valuable new path for fee simple homeownership, it doesn’t eclipse the need to refine ADU standards, providing flexibility to meet different needs: (a) Given the extra sf needed for a visitable ADU, increasing the size to 900 sf will ensure that other spaces in the home are not impacted by the visitable requirement. *The 900 sf building size also complements the PSC’s amendment allowing a 900 sf footprint for accessory*

*structures. Together, this makes a two bedroom, one-story, fully accessible ADU much more feasible.*

(b) There are many smaller duplexes throughout Portland with potential to add an ADU. We propose that the livable sf of the duplex (both units combined) be used to calculate the maximum size of the ADU in order to increase preservation of existing homes. This will ensure that an ADU is in proportion to the combined existing duplex structure. (c) In order not to penalize owners of smaller homes, make maximum ADU size 800 sf or that of the primary home, whichever is smaller. This is still smaller than many jurisdictions (e.g. Seattle (1,000 sf), San Diego (1,200 sf), and Corvallis (900 sf or 85% of primary, whichever is less)) but can still accommodate two bedrooms. If not possible, then increase ADU size up to 85% of the main house (vs.75% allowed currently) or 800 sf.

6. **Adjust “cottage cluster” standards for better site flexibility, and label “cluster housing”** for greater accuracy per statewide middle housing definitions:
  - a. Allow up to 50% of cottages to be attached
  - b. Set maximum number of units relative to site size (instead of blanket 16 unit cap)
  - c. Allow small clusters (four or fewer) on lots under 5,000 sf

Narrative: a) Allowing some cottages to be attached allows for much greater flexibility in layout and design, including considerations such as terrain, local context, large tree preservation, and more. b) While we understand the regulatory complexities surrounding density, a blanket cap makes less sense than a graduated approach proportional to site area. c) Finally, allowing tiny cottage clusters on smaller lots echoes recently-reduced minimum lot sizes for other middle housing types.

7. **Improve strategies to preserve existing homes by building behind them.**

- a. Allow attached duplexes and triplexes to be built behind the existing house.

8. **Allow for shared stormwater and private sewer lateral with multiple connections (single tap into main) for sewer & water.**

Narrative: Allowing for a shared private sewer lateral with a single connection to the main within an easement, with each middle housing unit tapping into the shared lateral, avoids the expense (and lack of street frontage) that would be associated with individual laterals/connections for each unit. Many attached- and courtyard-style homes being built now already do this.

9. **Calculate lot coverage based on pre-dedication lot size** to match how FAR is calculated.

Thank you for your ongoing work and dedication to housing our full community, affordably.

Signed, *(continued on next page)*

Preston Korst, Habitat for Humanity

Diane Linn, Proud Ground Community Land Trust

Douglas MacLeod and Madeline Kovacs, UrbanRoost Development LLC

Alexis Biddle, 1000 Friends of Oregon

Elizabeth Decker, JET Planning

Kol Peterson, Accessory Dwelling Strategies

Eric Thompson, Oregon Homeworks

Neil Heller, Neighborhood Workshop  
Shane Boland, Owen Gabbert LLC  
Jill Cropp, Studio Cropp Architecture  
Annie Fryman, Abodu  
Sean Heyworth and Mike Mitchoff, Portland Houseworks  
John Miller, BackHome ADU  
Garlynn Woodsong, Woodsong Associates  
Dirk Knudsen, Dirk Knudsen Real Estate  
Joe Wykowski, Community Vision





The City of San Diego

Staff Report

DATE ISSUED: 9/9/2020  
TO: City Council  
FROM: Planning  
SUBJECT: Housing Legislation Code Update to the Municipal Code and Local Coastal Program

Primary Contact: Kelley Stanco Phone: (619) 236-6545  
Secondary Contact: Brian Schoenfisch Phone: (619) 533-6457

Council District(s): Citywide

OVERVIEW:

The Housing Legislation Code Update Package addresses California State housing law requirements, including a number of bills passed at the end of 2019. These include changes to State density bonus, housing for the homeless, and accessory dwelling unit laws, along with other miscellaneous housing laws. The Housing Legislation Code Package will provide amendments to the City's Municipal Code and Local Coastal Program that are required to implement and comply with State law, as well as additional amendments tailored to address local needs.

PROPOSED ACTIONS:

Approve the proposed Housing Legislation Code Update to the Municipal Code and Local Coastal Program.

DISCUSSION OF ITEM:

The Land Development Code (LDC) provides the City's regulations for the development and use of property within the City of San Diego and provides information on zoning, subdivisions, grading and other related land use activities. The LDC is updated regularly through comprehensive updates that promote in-fill development and streamline the permitting process, and through single-issue or topic-specific updates as needed.

The California state legislature passed a number of land use and housing laws in 2019 that became effective January 1, 2020. These laws primarily address accessory dwelling units, affordable housing, and supportive housing for the homeless, as well as requirements to preserve dwelling units and "protected dwelling units" affordable to very low- and low-income households. Local implementation of these laws is mandatory and amending the LDC to reflect the requirements of these laws will provide clarity for staff, applicants, decision-makers and the public at large. Additionally, while reviewing the applicable state laws and drafting the proposed LDC amendments, staff identified some areas where the LDC is no longer in conformance with the latest state law provisions and the Housing Legislation Code Update package addresses those issues. Lastly, where permitted, the package also includes adaptations and incentives to address local housing needs.

The Housing Legislation Code Update Package is grouped into four issue areas: Housing for the Homeless, Affordable Housing Regulations, Accessory Dwelling Units and Junior Accessory Dwelling Units, and Miscellaneous Housing Items. A brief summary of the proposed amendments is provided below.

## I. Housing for the Homeless

The following LDC amendments address items related to housing for the homeless:

- Low Barrier Navigation Centers

Assembly Bill (AB) 101, passed in 2019, requires local jurisdictions to permit Low Barrier Navigation Centers that connect individuals experiencing homelessness with transitional housing by-right in mixed-use and commercial zones that permit multi-family. The Housing Legislation Code Update Package would amend the LDC to define Low Barrier Navigation Centers as a new Separately Regulated Residential Use and permit them, by-right, as a Limited Use in all zones required by AB 101.

- Emergency Shelters

Senate Bill 2, passed in 2007, requires local jurisdictions to identify a zone or zones where emergency shelters are allowed by-right without a conditional use or other discretionary permit. The zones which permitted emergency shelters as a by-right use were located primarily within the Midway-Pacific Highway Community, which was rezoned with the recent comprehensive update to the Community Plan. The Housing Legislation Code Update Package would amend the Community Commercial (CC) base zone tables to permit emergency shelters by-right as a Limited Use in all CC zones in order to provide adequate capacity in compliance with SB 2.

- Transitional Housing and Permanent Supportive Housing

AB 2162, passed in 2018, requires local jurisdictions to permit Transitional Housing Facilities (THF) and Permanent Supportive Housing (PSH) by-right in all zones that permit multi-family development. The City implemented the requirements of AB 2162 in 2019 with the 12<sup>th</sup> Update to the LDC, Phase 1; however, staff has subsequently identified several zones that were inadvertently excluded. The Housing Legislation Code Update Package would amend the RM Base Zone Use Table to permit THF in the RM-5-12 zone; the Industrial Base Zone Use Table to permit THF by-right as a Limited Use in the IP-3-1 base zone and clarify that THF and PSH are subject to the requirements of footnote 15 related to residential development; and the Mixed-Use Base Zone Use Table to permit THF and PSH by-right as Limited Uses.

## II. Affordable Housing Regulations (AHR)

The following LDC amendments address items related to the City's Affordable Housing Regulations:

- Density Bonus for 100% Affordable Projects (Pre-Density Bonus)

AB 1763, passed in 2019, requires local jurisdictions to provide a new density bonus program that grants a density bonus of 80% outside of Transit Priority Areas (TPAs) and an unlimited bonus within TPAs to projects that construct at least 100% of the pre-density bonus units as affordable to very low income and low income households, except that 20% may be reserved for moderate income households. Eligible projects are also required to receive 4 incentives and within TPAs, 3 additional stories or 33' in height. Waivers are not permitted with this program. The Housing Legislation Code Update Package would amend

the City's Affordable Housing Regulations to provide this required incentive, with a local adaptation to allow 5 incentives as opposed to 4 in accordance with the City's more permissive allowances for incentives.

- Density Bonus for 100% Affordable Projects (Total Project)

This proposed amendment is not mandated by state law; rather, this amendment is a local adaptation of AB 1763 intended to provide a similar bonus to projects within TPAs that are fully affordable to very low, low, and moderate income households. The Housing Legislation Code Update Package would amend the City's Affordable Housing Regulations to provide an unlimited density bonus, 5 incentives, and an additional 3 stories or 33 feet to projects within TPAs that provide 100% of the total pre-density bonus and post-density bonus units as affordable to very low, low, and moderate income households in any combination.

- Density Bonus for Lower Income Student Housing

SB 1227, passed in 2017, requires a local jurisdiction to provide a density bonus of 35% to projects that provide 20% of the pre-density bonus units as affordable to lower income students, as defined by the bill. The Housing Legislation Code Update Package would amend the City's Affordable Housing Regulations to provide this required incentive, with a local adaptation to allow 2 incentives where none are provided by state law in accordance with the City's more permissive allowances for incentives.

- Micro Unit Density Bonus

This proposed amendment is not mandated by state law; rather, this amendment provides regulatory relief for an existing City density bonus program for micro units, which must average no more than 600 square feet with no dwelling unit exceeding 800 square feet. The Housing Legislation Code Update Package would amend the City's Affordable Housing Regulations to eliminate the requirement that micro unit density bonus projects comply with height and setback requirements, and would allow use of the program within the Downtown Community Planning Area once a project either maximizes the use of other bonus programs or earns a 3.0 FAR through other bonus programs, whichever is less, ensuring that other FAR Bonus programs specific to Downtown continue to be utilized.

- Density Bonus on FAR-Based Density Sites

This proposed amendment is not mandated by a modification to state law; rather, it is a correction to the City's regulations to clarify how density bonuses are calculated within zones where the density is controlled by floor area ratio, including Downtown and the recently adopted mixed-use base zones. The Housing Legislation Code Update Package would amend the City's Affordable Housing Regulations to clarify the method by which density bonuses are calculated for FAR-based density zones where the adopted land use plan includes an allowable density range in dwelling units per acre (i.e. the mixed use zones) and those that include only a maximum FAR (i.e. Downtown). Additionally, the amendments will clarify that incentives cannot be used to increase floor area ratio in such zones, which would result in an additional density bonus.

Within Downtown, the proposed amendments would change how affordable housing density bonuses are calculated, since Downtown only regulates intensity through FAR limits and not dwelling units/acre. Currently, such bonuses are based on the Base Maximum FAR permitted in Figure H of the Centre City Planned District Ordinance (CCPDO). Under the



proposed change, the density bonus would be calculated based on the actual project's FAR up to the Maximum FAR permitted in Figure L of the CCPDO. For instance, if a project with a Base Maximum FAR of 6.0 earned an additional 4.0 FAR from other FAR bonus programs provided Downtown to achieve a total 10.0 FAR, then the bonus for affordable housing would be added on top of the 10.0 FAR rather than the 6.0 FAR. This can result in the production of additional affordable and market rate units, as illustrated in this table utilizing the Affordable Housing Regulations:

|                             | FAR  | UNITS | AFFORDABLE UNITS |
|-----------------------------|------|-------|------------------|
| <b>EXISTING REGULATIONS</b> |      |       |                  |
| BASE MAXIMUM FAR            | 6.0  | 180   |                  |
| MAXIMUM FAR                 | 10.0 | 300   |                  |
| AHR BONUS (60%)             | 3.6  | 108   |                  |
| TOTAL                       | 13.6 | 408   | 27               |
| <b>PROPOSED REGULATIONS</b> |      |       |                  |
| MAXIMUM FAR                 | 10.0 | 300   |                  |
| AHR BONUS (60%)             | 6.0  | 180   |                  |
| TOTAL                       | 16.0 | 480   | 45               |

- Miscellaneous AHR Clean-Up Items

The Housing Legislation Code Update Package would amend the City's Affordable Housing Regulations to provide additional clean-up items to ensure compliance with state density bonus law, including minor language edits and updates to the parking table.

### III. Accessory Dwelling Units and Junior Accessory Dwelling Units

The following LDC amendments address items related to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs):

- Replacement of the Companion Unit, Junior Unit and Movable Tiny Homes Regulations with New Accessory Dwelling Unit and Junior Accessory Dwelling Unit Regulations in Order to Implement New State ADU and JADU Legislation

Several bills were passed at the end of 2019 which addressed ADUs and JADUs, including AB 68, AB 587, AB 881, and SB 13. In addition to providing increased allowances for ADUs in conjunction with multiple dwelling unit development, prohibiting the requirement of replacement parking when garages or carports are converted to ADUs or JADUs, prohibiting the rental of ADUs and JADUs for less than 31 days, and requiring local jurisdictions to permit at least 1 ADU on a premises regardless of maximum lot coverage, maximum floor area ratio, or minimum opens space requirements, the state legislation also required local ADU and JADU ordinances to be reviewed by the California Department of Housing and Community Development (HCD) for consistency with the state regulations. In order to best align our local regulations with state regulations, the Housing Legislation Code Update Package proposes to strike the existing "Companion Unit, Junior Unit and Movable Tiny Houses" regulations in Section 141.0302 in their entirety, and replace them with new "Accessory Dwelling Unit and Junior Accessory Dwelling Unit Regulations that fully comply with and exceed the requirements of state law. As part of this overhaul of the existing regulations, the local defined terms "companion unit" and "junior unit" will be

replaced with “Accessory Dwelling Unit (ADU)” and “Junior Accessory Dwelling Unit (JADU)”, respectively, and their definitions will be aligned with state law. The new regulations will exceed the requirements of state law in regard to setbacks, by allowing ADUs to encroach into interior side and rear yard setbacks up to the property line, where state law allows the City to require a 4-foot setback in these locations. HCD reviewed the initial draft of the new regulations, and the proposed amendments reflect comments and edits received by HCD. Lastly, the recently adopted Movable Tiny Houses, which do not fall within the state ADU laws, will be pulled out and established as their own Separately Regulated Residential Use.

- Affordable ADU Incentives

AB 671, passed in late 2019, requires local jurisdictions to incentivize the construction of deed-restricted affordable ADUs, without specific parameters or direction as to what those incentives should be. The Housing Legislation Code Update Package would include in the Accessory Dwelling Unit and Junior Accessory Dwelling Unit regulations a new affordable ADU incentive that would allow the construction of 1 additional ADU for every ADU deed-restricted to very low, low, or moderate income households for a period of 15 years. Outside of TPAs the number of bonus ADUs is limited to 1, and within TPAs there is no limit on the number of bonus ADUs permitted.

- ADU and JADU Parking

State law, specifically Government Code Section 65852.2(d), prohibits the City from requiring parking for ADUs in any of the following instances:

- within one-half mile walking distance of public transit;
- within a designated historic district;
- when the ADU is part of the proposed or existing primary residence or an accessory structure (i.e. if it is attached to an existing structure);
- when on-street parking permits are required but not offered to the occupant of the ADU;
- when there is a car share vehicle within one block of the ADU.

If the above don't apply, then State law allows the City to require parking that does not exceed 1 space per ADU or per bedroom, whichever is less (Gov Code Section 65852.2(a)(1)(D)(x)). Due to the highly limited circumstances in which the City is allowed to require parking, and given the City's desire to encourage both the construction of ADUs and JADUs and use of alternative mobility options, the Housing Legislation Code Update Package will exceed the requirements of state ADU and JADU law by simply eliminating parking requirements for ADUs and JADUs.

#### IV. Miscellaneous Housing Items

The following LDC amendments address miscellaneous housing items:

- Employee Housing (6 or Fewer)

California Health and Safety Code Section 17021.5(b) requires Employee Housing for 6 or fewer employees to be permitted by-right in all zones that permit single-family. The Housing Legislation Code Update Package would amend the LDC to permit Employee

Housing (6 or Fewer) by-right as a Limited Use in all zones that permit single dwelling units.

- Residential Development Consistent with the Land Use Plan

This proposed amendment is not mandated by state law; rather, this amendment was identified by staff as a means to provide regulatory relief and streamline the permitting process. The Housing Legislation Code Update Package would amend the General Rules for Base Zones to allow residential and residential mixed-use development that exceeds the allowable density of the base zone but complies with the density identified in the adopted land use plan to be permitted by-right with a construction permit, rather than through a Planned Development Permit process. The amendment would allow sites to develop in accordance with the density planned and mitigated for through the land use planning process. This streamlining provision also requires clean-up amendments to the regulations related to Neighborhood Development Permits, Site Development Permits, Planned Development Permits, and Affordable, In-Fill Development and Sustainable Buildings.

- Dwelling Unit Protection Regulations

SB 330, known as the Housing Crisis Act of 2019, requires local jurisdictions to ensure that the number of dwelling units present on a site is not reduced as a result of a single-family, multi-family, residential mixed-use (with at least 2/3 residential), transitional housing, or permanent supportive housing project. It further requires that “protected dwelling units” affordable to very low income and low income households (including both deed-restricted units and units occupied by such households without a deed-restriction in place) be replaced with deed-restricted units affordable to very low income and low income households. The legislation also includes provisions for relocation assistance and right of first refusal in limited circumstances. The Housing Legislation Code Update Package would amend the LDC to include a new Division 12 in Chapter 14, Article 3 entitled the “Dwelling Unit Protection Regulations.” The Dwelling Unit Protection Regulations implement the dwelling unit and protected dwelling unit replacement provisions of SB 330 precisely, with no additional regulations or requirements. The new division would sunset on January 1, 2025, consistent with the sunset of SB 330.

The Housing Legislation Code Update Package was presented to stakeholder groups that included City staff in implementing departments, land development professionals, housing advocates, community planning representatives, and members of the public who participated in the meetings. The actions taken by these stakeholders and the Planning Commission are as follows:

- Housing Legislation Code Update Package Ad Hoc Working Group: In 2019, in accordance with Charter Section 43(b), the Technical Advisory Committee (TAC) and its subcommittee, the Code Monitoring Team (CMT) were disbanded as a recommending body with a vote presented to decision makers. Instead, the Technical Advisory Committee (TAC) modified its operational framework to become a monthly Ad Hoc Committee for a one-year period advising the Development Services on a variety of process improvements. Additionally, members of the former CMT are invited to serve on project-specific, temporary citizens' working groups to advise the Planning Department on LDC updates.

The Housing Legislation Code Update Package Ad Hoc Working Group was formed in early June 2020, and the proposed package of amendments was reviewed at virtual workshops on June 12<sup>th</sup>



and 26<sup>th</sup>. The working group discussed the items in the Housing Legislation Code Update Package and provided feedback on the amendment language as presented. Understanding that the majority of the proposed amendments are mandated by state law, comments were limited and minor and have been incorporated into the package wherever possible. Consistent with the group's function as an Ad Hoc Working Group, no vote or action was taken.

- Community Planners Committee (CPC): On July 28, 2020 the Housing Legislation Code Update Package was presented to the Community Planners Committee. The CPC voted 19-5-5 to recommend approval of all proposed amendments with the exception of two: 1.) a proposed development incentive for multi-family development within transit priority areas on sites less than 0.5 acre (this item has subsequently been withdrawn); and 2.) the elimination of parking requirements for all ADUs and JADUs. On August 25, 2020 the CPC discussed the elimination of parking requirements for all ADUs and JADUs and voted 14-8-4 to recommend approval of the amendment as proposed.
- The Downtown Community Planning Council: On July 15, 2020 the Downtown Community Planning Council (DCPC) reviewed the Housing Legislation Code Update and tabled discussion of the item to their August meeting. On August 19, 2020 the DCPC voted 20-0-0 to recommend approval of the proposed amendments.
- The Planning Commission: On August 27, 2020 the Planning Commission reviewed the Housing Legislation Code Update to the Municipal Code and Local Coastal Program and recommended that the City Council adopt the update as presented by a vote of 6-0-1 with Commissioner Austin recusing. While not part of the motion, a request from Commissioner Whalen that the maximum size of an Accessory Dwelling Unit be included in the defined term has been incorporated into the proposed amendments.

The Housing Legislation Code Update Package implements California state housing and land development laws and includes several local adaptations and provisions that address local needs to streamline housing construction. The proposed amendments have been reviewed by stakeholders, including CPC and DCPC, and the Planning Commission, and all recommending bodies have supported adoption of the amendments as proposed. Therefore, staff recommends that the City Council approve the proposed Housing Legislation Code Update to the Municipal Code and Local Coastal Program.

City Strategic Plan Goal(s)/Objective(s):

Goal #3: Create and sustain a resilient and economically prosperous City. Objective #1: Create dynamic neighborhoods that incorporate mobility, connectivity, and sustainability. Objective #4: Prepare and respond to climate change. Objective #7: Increase the net supply of affordable housing.

Fiscal Considerations:

None. Costs associated with implementation of this ordinance would be covered by project applicants.

Charter Section 225 Disclosure of Business Interests:

N/A; there is no contract associated with this action.

Environmental Impact:

The CEQA and Environmental Policy Section of the Planning Department has reviewed the Housing Legislation Code Update amendments and conducted a consistency evaluation pursuant to CEQA Guidelines Section 15162. Implementation of this project's actions would not result in new significant direct, indirect, or cumulative impacts over and above those disclosed in the previously certified Environmental Impact Report (EIR) for the 2008 General Plan EIR No. 104495/SCH No. 2006091032, certified by the City Council on March 10, 2008, Resolution No. R-303473; the 2020 Addendum to the 2008 General Plan EIR No. 104495/SCH No. 2006091032 for the General Plan Housing Element Update, certified by the City Council on June 18, 2020, Resolution No. R-313099; and the following documents, all referred to as the "CAP

FEIR": FEIR for the City of San Diego Climate Action Plan (CAP) (EIR No. 4106603/SCH No. 2015021053), certified by the City Council on December 15, 2015 (City Council Resolution R-310176), and the Addendum to the CAP, certified by the City Council on July 12, 2016 (City Council Resolution R-310595). The 2008 General Plan EIR and CAP FEIR are both "Program EIRs" prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168.

Previous Council and/or Committee Actions:

This item will be heard at the Land Use and Housing Committee prior to Council.

Key Stakeholders and Community Outreach Efforts:

Key Stakeholders include neighborhood and community planning groups, residents, visitors and property owners.

Mike Hansen

Department Director

Erik Caldwell

Deputy Chief Operating Officer, Smart & Sustainable Communities







Kate Harrison  
Councilmember, District 4

CONSENT CALENDAR

March 21, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison (Author) and Mayor Arreguín

Subject: Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code to Establish a Labor Peace Policy Minimizing Labor/Management Conflict in Berkeley Marina Zone

RECOMMENDATION:

Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code (BMC) to Establish a Labor Peace Policy minimizing labor/management conflict in Berkeley Marina Zone.

CURRENT SITUATION AND RATIONALE FOR RECOMMENDATION

The City of Berkeley owns a number of recreational, hospitality and food services properties in the Berkeley Marina and Waterfront. In maintaining these properties, the City has multiple interests, including providing superior facilities for residents and visitors, generating steady income from rents and fees supporting operations, supporting a harmonious labor and business environment, and supporting the Marina Fund.

The City is in the process of finalizing an exclusive negotiation agreement for former HS Lordships Restaurant property located at 199 Seawall Dr, Berkeley, CA 94710. It is in the public interest to avoid high profile and disruptive labor disputes that may arise between tenants, businesses, workers, and labor groups associated with this property and other properties in the Marina Zone.

In recent years, throughout the state of California and elsewhere in the United States, there has been an increase in labor disputes in the hospitality industry. In 2018 workers at HS Lordships restaurant walked out in the middle of brunch in protest of the severance offered by HS Lordships owners. Last year, workers at the DoubleTree Hotel joined nationwide protests to draw attention to the fact that they have been working without a contract since 2018 and their desire for better pay and healthcare benefits.

Through adopting a Labor Peace Agreement requirement for businesses operating in the Marina, Berkeley can protect its proprietary interest by preventing service and

revenue disruptions while simultaneously facilitating a policy that has contributed to mutually beneficial relations between management and labor in other jurisdictions.

### BACKGROUND

Berkeley is a world-class tourist destination, welcoming more than a million visitors annually. The Marina, often recognized as the crown jewel of Berkeley, offers multiple parks, recreation facilities, and restaurants and hotel accommodations. The City Berkeley holds in trust pursuant to the Public Trust Tidelands grant from the State of California property along and near the City's waterfront known as the Berkeley Marina Zone, a major tourist hub and destination. The City leases its real property along and near the Marina Zone facilities to Hospitality Operation companies, and in so doing faces the same risks and liabilities as private businesses participating in management of similar facilities. As a result, the City has an ongoing proprietary interest in the management and use of that Marina real property and harbor facilities and must make prudent business decisions, as would any private business, to ensure efficient and cost-effective management of its business concerns, and to maximize public benefit and minimize risk.

The City's Marina Fund operates as an enterprise fund and therefore funds its activities outside of the general fund through fees, grants, and rents. The City has a strong interest in ensuring that operations and amenities continue to run smoothly to the benefit of residents and visitors alike.

This ordinance is intended to maximize the returns and minimize the risk to the City's proprietary interest resulting from possible conflict between employers leasing, and operating hospitality operations on City property, and labor organizations, arising out of union organizing campaigns, labor negotiations, and disruption that may be caused by such conflict. Experience of public entities and private employers demonstrates that union organizing drives and union efforts to secure representation rights and an initial collective bargaining agreement can deteriorate into protracted and acrimonious conflict. Such conflict threatens the City's proprietary interest when private employers enter into leases to use City property, and labor conflict could jeopardize base rent payments or rent payments calculated on a percentage of sales. That threat is most acute during the period when a labor organization (1) seeks to gain recognition as the collective bargaining representative for employees and (2) if recognized, seeks a first contract with the employer.

The sole purpose of this ordinance is to protect the City's proprietary interest in the hospitality operation leases. This ordinance is not proposed to: favor any particular procedure for determining employee preference, or lack of preference, regarding labor organization representation, or the outcome of any such procedure; skew such procedures to favor or hinder any party; interfere with the negotiation, terms, or scope of a first contract, if applicable; or express or implement any generally applicable policy regarding private sector labor/management relations, or regulate those relations in any way.

Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code to Establish a Labor Peace Policy Minimizing Labor/Management Conflict in Berkeley Marina Zone

Other jurisdictions, including the Oakland Airport, BART, Port of San Francisco, the San Francisco International Airport, and Asilomar State Beach have all implemented Labor Peace Agreement policies at their respective properties requiring businesses to execute a Labor Peace Agreements to prevent disruptive management and labor disputes.<sup>1</sup>

Hotel Labor Peace in California State Parks and other Public Properties

**Asilomar Conference Center-** A 313-room hotel and conference center that is part of Asilomar State Beach. Workers there are members of UNITE HERE Local 483 and are covered by a collective bargaining agreement that guarantees labor peace. The [RFP in 2008](#) for a new concessionaire to operate the facility included a requirement to retain these workers, ensuring continued labor peace.



**SFO Grand Hyatt-** SFO has a labor peace policy that applies to food service as well as hotels under airport leases. The Grand Hyatt at SFO was developed in 2019 under this policy and had a labor peace agreement. Workers are members of UNITE HERE Local 2 and covered by a collective bargaining agreement.



**Bay Area Rapid Transit-** BART has a [labor peace policy](#), passed in 2021, which states that “The District shall not execute any lease, Lease Disposition and Development Agreement (LDDA), or other contract or agreement providing for the development of a Hotel Development Project in which the District has a proprietary interest, unless and until the project applicant, developer, or owner, and any operator or manager of the hotel that has been selected, has signed a Labor Peace Agreement covering any Hospitality Operations at the project.”



The proposed ordinance specifies that the City will not execute hospitality operations leases or make substantial amendments providing for the use, development, or operation of a hospitality operation within the Marina Zone in which the City has a proprietary interest, unless and until the project applicant, developer, or owner, and any operator or manager of the hospitality operation has provided evidence that it has entered into a Labor Peace Agreement. This requirement also applies to any future

<sup>1</sup> [Labor Peace Agreement Policy - Port of Oakland; Labor Peace Agreement Policy for Transit Oriented Development Hotel Operations](#) – BART; [Labor Peace Policy - Port of San Francisco; Labor Peace/Card Check Rule](#) – SFO.



Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code to Establish a Labor Peace Policy Minimizing Labor/Management Conflict in Berkeley Marina Zone

subcontractor, tenant, sub-lessee, or manager that operates the Hospitality Operation. The ordinance ensures that these requirements are express components of any request for proposal, request for qualifications, or other similar solicitation for a hospitality operation projects in the Marina Zone.

FISCAL IMPACTS OF RECOMMENDATION

City Attorney staff time will be necessary to implement the respective requirements in leases, requests for proposals, and other documents.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140

Attachments:

1. Draft Ordinance Adding BMC 2.102

ORDINANCE NO. –N.S.

ADDING CHAPTER 2.102 TO THE BERKELEY MUNICIPAL CODE  
TO ESTABLISH A LABOR PEACE POLICY MINIMIZING LABOR/MANAGEMENT  
CONFLICT IN BERKELEY MARINA ZONE

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

Section 1. That Chapter 2.102 of the Berkeley Municipal Code is added to read as follows:

**Chapter 2.102**

**LABOR PEACE POLICY - MINIMIZING LABOR-MANAGEMENT CONFLICT IN  
BERKELEY MARINA ZONE**

**Sections:**

**2.102.010 Findings and Purpose.**

**2.102.020 Definitions.**

**2.102.030 City of Berkeley—Labor Peace Policy**

**2.102.040 Procedures to Minimize Disruption Caused by Labor/Management  
Conflict.**

**2.102.050 Applicability and Exemptions.**

**2.102.060 Prospective Effect.**

**2.102.070 Preemption.**

**2.102.080 Severability.**

**2.102.010 Findings and Purpose.**

The Council of the City of Berkeley finds and declares as follows:

- A. Berkeley is a world-class tourist destination, welcoming more than a million visitors annually. The City Berkeley holds in trust pursuant to the Public Trust Tidelands grant from the State of California property along and near the City's waterfront known as the Berkeley Marina Zone, a major tourist hub and destination. The City leases its real property along and near the Marina Zone facilities to Hospitality Operation companies, and in so doing faces the same risks and liabilities as private businesses participating in management of similar facilities. As a result, the City has an ongoing Proprietary Interest in the management and use of that Marina real property and harbor facilities and must make prudent business decisions, as would any private business, to ensure efficient and cost-effective management of its business concerns, and to maximize benefit and minimize risk.
- B. This Chapter is intended to maximize the returns and minimize the risk to the City's Proprietary Interest resulting from possible conflict between Employers leasing, and operating Hospitality Operations on City property, and Labor Organizations, arising out of union organizing campaigns, labor negotiations, and disruption that may be caused by such conflict. Experience of public entities and private employers demonstrates that union organizing drives and union efforts to secure representation rights and an initial collective bargaining agreement can deteriorate into protracted and acrimonious conflict. Such conflict threatens the City's Proprietary Interest when private employers enter into leases to use City property, and labor conflict could jeopardize base rent payments or rent payments calculated on a percentage of sales. That threat is most acute during the period when a Labor Organization (1) seeks to gain recognition as the collective bargaining representative for Employees and (2) if recognized, seeks a First Contract with the Employer.
- C. The sole purpose of this Chapter is to protect the City's Proprietary Interest in the Hospitality Operation Leases. This Chapter is not enacted to: favor any particular procedure for determining employee preference, or lack of preference, regarding Labor Organization representation, or the outcome of any such procedure; skew such procedures to favor or hinder any party; interfere with the negotiation, terms, or scope of a First Contract, if applicable; or express or implement any generally applicable policy regarding private sector labor/management relations, or regulate those relations in any way.

**2.102.020 Definitions.**

"Demand for Recognition Period" means the period during which the Labor Organization seeks recognition as the collective bargaining representative of the Employees.

"Economic Action" means concerted action initiated or conducted by a Labor Organization, or Employees acting in concert with a Labor Organization, at the Employees' worksite, to bring economic pressure to bear on an Employer, as part of a campaign to organize Employees or prospective Employees of that Employer, or in attempting to secure a First Contract, if applicable. "Economic Action" includes such activities as striking, picketing, or boycotting. "Economic Action" does not include a lawsuit to enforce this Chapter.

"Employee" means anyone performing work for an Employer for compensation relating to Hospitality Operations on a full-time, part-time, seasonal, or temporary basis,



including those made available to work for the Employer through a temporary service, staffing agency, or similar agency.

“Employer” means any person or entity, including a subcontractor, with Employees engaged in Hospitality Operations.

“Hospitality Operations Lease” means a lease, sublease, license, sublicense, or other means of granting the right to a Hospitality Operation to use Marina Zone property, in which the City receives rent, a flat fee, or a charge. An “Hospitality Operations Lease” must be for a term of at least 12 months.

“Hospitality Operation” shall mean any hotel or motel operation, conference center, restaurant, bar, or other food and beverage service operation meeting the criteria specified in Section 2.102.050.

“Hospitality Operations” means any work done by Employees at or relating to a Hospitality Operation under a Hospitality Operation Lease.

“First Contract” means the first enforceable contract entered into between an Employer and a Labor Organization setting one or more terms or conditions of employment.

“First Contract Period” means, if a Labor Organization is recognized as the collective bargaining representative of Employees, the period between such recognition and execution of a First Contract.

“Labor Organization” means any organization of any kind, or any agency or employee representation committee, in which Employees participate and which exists for the purpose, in whole or part, of dealing with Employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of employment.

“Labor Peace Agreement” shall mean a binding and enforceable agreement with any Employer and a Labor Organization that represents or seeks to represent Hospitality Operations workers, as described more fully in Section 2.102.040.

“Marina Zone” shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

“Proprietary Interest” means any nonregulatory arrangement or circumstance in which the City has a financial or other nonregulatory interest including any of the following:

- (1) through a lease of real property that is owned by the City and used for the Hospitality Operation, the City receives ongoing revenue, excluding government fees, tax revenue, or assessment revenue, or similar fees and revenues, except for tax revenue under the circumstances specified in paragraphs (2) and (3) of this subsection;
- (2) the City receives ongoing revenue from the Hospitality Operation to repay loans provided by the City to assist in the development or operation of the project;
- (3) the City receives ongoing revenue from the Hospitality Operation to pay debt service on bonds provided by the City to assist in the development of the project;
- (4) the City has assets at risk because it has agreed to underwrite or guarantee the development of the hospitality operation or loans related to the hospitality operation; or
- (5) the City has an ongoing economic and non-regulatory interest at risk in the financial success of a Hospitality Operation which is likely to be adversely affected by labor-management conflict, except that no interest shall be considered economic and non-

regulatory if it arises from the exercise of regulatory or police powers such as taxation (except as set forth in paragraphs (2) and (3) of this subsection), zoning, or the issuance of permits or licenses.

“Parties” means an Employer and Labor Organization that has requested to be, or has been, recognized as the collective bargaining representative of Employees.

“Pre-existing Lease” means any Hospitality Operation Lease entered into before the effective date of this Chapter.

“Subcontract” means any agreement between the authorized tenant, licensee, or other user under a Hospitality Operation Lease and another person or entity that contemplates or permits that other person or entity to operate or manage all or a portion of the Hospitality Operations.

“Subcontractor” means the person or entity that operates or manages all or a portion of Hospitality Operations under a Subcontract.

“Substantial Amendment” means an amendment to, or the City’s discretionary renewal or extension of:

(1) A lease of Marina Zone property entered into before the effective date of this Chapter that did not include Hospitality Operations but is expanded to include Hospitality Operations; or

(2) A Pre-existing Lease that provides for, or permits, any of the following:

(i) A new term that extends the duration of the lease beyond that provided in the Pre-existing Lease;

(ii) The right to construct improvements to support or serve Hospitality Operations, if not previously allowed under the Pre-existing Lease;

(iii) Rent credits or potential rent credits to a Marina Zone Hospitality Operation tenant that may be applied against 25% or more of the fixed rent under the Pre-existing Lease during the period in which the rent credits may be used; or

(iv) Rent credits or potential rent credits to a Marina Zone Hospitality Operation tenant that may be applied against 50% or more of the remaining percentage or participation rent (not including any portion of the rent), if any, under the Pre-existing Lease during the period in which the rent credits may be used.

### **2.102.030 City of Berkeley—Labor Peace Policy**

A. The City shall not execute Hospitality Operations Lease or Substantial Amendment providing for the use, development, or operation of a Hospitality Operation within the Marina Zone in which the City has a proprietary interest, unless and until the project applicant, developer, or owner, and any operator or manager of the Hospitality Operation has provided evidence that it has entered into a Labor Peace Agreement covering the Hospitality Operations as specified pursuant to Section 2.102.040.

B. Each such Hospitality Operations Lease or other contract or agreement shall further require that any future Subcontractor, tenant, sub-lessee, or manager that operates the Hospitality Operation shall be required to enter into a Labor Peace Agreement as specified under Section 2.102.040.

C. The City shall make these requirements express components of any request for proposal, request for qualifications, or other similar solicitation for a Hospitality Operation projects.

### **2.102.040 Procedures to Minimize Disruption Caused by Labor/Management Conflict.**

A. An Employer who receives a written request by a Labor Organization to enter into a Labor Peace Agreement shall:

- (1) Inform the City Manager, within five business days of receiving the request, that a Labor Organization seeking to represent its Employees has requested the Employer to enter into a Labor Peace Agreement required by this Chapter;
- (2) Enter into a Labor Peace Agreement, with the Labor Organization as to the Employees it seeks to represent, containing the following provisions:
  - (i) The Labor Organization, on behalf of itself and its members, agrees not to engage in Economic Action against the Employer during the Demand for Recognition Period, and should the Labor Organization be recognized, the First Contract Period;
- (3) Upon the City Manager's request, promptly provide to the City Manager a report attesting to the status of the Employer's compliance with the requirements of this Section 2.102.040, including a statement by any Labor Organization that has requested that the Employer enter into a Labor Peace Agreement certifying the accuracy of the Employer's report; and
- (4) Include as a material term in any Subcontract a provision requiring the Subcontractor(s) to comply with this Chapter. This provision shall be a material and mandatory term of such Subcontract, and shall state: "Berkeley Municipal Code Chapter 2, commencing at Section 2.102.040, which applies to [Subcontractor], incorporated herein by reference. To the extent [Subcontractor] employs Employees in Hospitality Operations within the scope of Berkeley Municipal Code 2.102.040, [Subcontractor] hereby agrees as a material condition of this subcontract to enter into and abide by a Labor Peace Agreement with a Labor Organization or Organizations that represents, or seeks to represent, [Subcontractor's] Employees, if and as required by Chapter 2, and to otherwise fully comply with the requirements of that Chapter."

B. In the event that an Employer is unable to negotiate a Labor Peace Agreement with a Labor Organization within thirty (30) days, it may file a request with the Berkeley City Council to be excused from such obligations with respect to that Labor Organization. The Employer may be relieved of and excused from its obligations under this Section 2.102.040(A) with respect to the subject Labor Organization if the Council finds, after holding the noticed hearing, that forcing the Employer to adhere to the requirements of this Section 2.102.040(A) would be detrimental to the City's Proprietary Interests because: a. the Employer has attempted in good faith to reach a Labor Peace Agreement with the subject Labor Organization, and b. the Labor Organization has (i) refused to negotiate in good faith to reach a Labor Peace Agreement or (ii) placed condition(s) on Labor Peace Agreement that are arbitrary and capricious, in light of practices at other, similar venues that are subject to governmental labor peace requirements.

D. The City Manager shall include in every Hospitality Operation Lease a provision requiring the tenant, and any Employers operating under the Hospitality Operation Lease, to comply with the requirements of this Chapter and all other applicable laws.

### **2.102.050 Applicability and Exemptions.**

A. This Chapter shall not apply to any Employer that does not employ employees in a Hospitality Operation. The City Manager shall determine the applicability of an exemption under this subsection

A. on a case-by-case basis. Any Employer claiming an exemption must submit a written request, including the evidentiary basis for the exemption, to the City Manager within five



business days of receiving a request to enter into a Labor Peace Agreement. The Employer shall have the burden of proving that an exemption is applicable.

B. This Chapter shall not apply to an Employer if:

(1) The City has no Proprietary Interest in the Hospitality Operation Lease under which the Employer operates a Hospitality Operation, or a Hospitality Operation Lease in which the City's cumulative investment, or the present value of its expected revenues, is less than \$100,000;

(2) The Employer operates under a Pre-existing Lease. This exemption applies to an Employer for the duration of such Pre-existing Lease unless the Pre-Existing Lease is subject to a Substantial Amendment after the effective date of this Ordinance;

(3) The Employer is a signatory to valid and binding collective bargaining agreement(s) covering all of its Employees at the Marina Zone property;

(4) The Employer is a governmental agency, and the law would prohibit application of this Chapter;

C. Nothing in this Ordinance shall require or compel an employee to be a member of any labor organization, nor shall it require the developer, operator or any tenant, subcontractor, or sub-tenant of a Hospitality Operation to recognize a labor organization as the bargaining representative for its employees or to enter into a collective bargaining agreement with any labor organization.

**2.102.060 Prospective Effect.**

This Chapter is intended to have prospective effect only. This Chapter shall be interpreted to avoid violating any laws that prevent the City from impairing obligations under any Pre-existing Lease.

**2.102.070 Preemption.**

Nothing in this Chapter shall be interpreted or applied so as to create any right, power, or duty in conflict with any Federal or State law.

**2.102.080 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

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



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR

March 21, 2023

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson (Author)  
 Subject: Referral: On-Street Secure Bike Storage

RECOMMENDATION

Refer to the City Manager to develop and return to Council with a plan to create on-street secure bike parking in multi-family residential and commercial districts across the City in parking spots previously reserved for car storage. Take associated actions, including:

1. Determining recommended locations for installation that take into consideration factors such as equity priority neighborhoods; transit connections; bicycle network connections; areas with high percentages of tenants; access to destinations such as schools, community centers, employment centers, and businesses; and public input.
2. Developing and issuing a Request for Proposal for an operator to install and maintain on-street bike lockers, including lockers that can accommodate bikes of varying shapes and sizes.
3. Pursuing available grant opportunities to fund initial costs and ongoing maintenance.

CURRENT SITUATION

The City of Berkeley does not currently maintain or contract with an operator to maintain secure bike parking facilities. Bike parking in Berkeley is provided through a number of mechanisms:

- Short-term and long-term bicycle parking requirements for new construction and building expansions, both non-residential and residential.<sup>1</sup>
- City-installed bike racks (placed on sidewalks) and corrals (placed in on-street parking spots), which can be requested by residents, workers, and businesses.<sup>2</sup>
- Secure parking facilities at Downtown Berkeley, Ashby, and North Berkeley BART, the Berkeley Marina, and the Berkeley Caltrain station, operated by BikeLink.<sup>3</sup>
- Secure bike cages on the UC Berkeley campus for use by UC affiliates, operated by UC Berkeley Parking & Transportation.<sup>4</sup>

<sup>1</sup> <https://berkeley.municipal.codes/BMC/23.322.090>

<sup>2</sup> <https://berkeleyca.gov/city-services/getting-around/walking-and-biking/bike-parking>

<sup>3</sup> <https://www.bikelink.org/maps>

<sup>4</sup> <https://pt.berkeley.edu/SecureBikeCages>

- Other non-City-owned bike racks, including in BART stations, on the UC Berkeley campus, and on private property.

Policy D-2 of the City’s Bicycle Plan states that the City should “continue to expand citywide bike parking supply including short-term and long-term facilities for both commercial and residential land uses.” This includes regularly reviewing and updating parking specifications and requirements that provide “long-term parking for maximum security and weather-protection, per City specifications for high-capacity bicycle racks, bicycle cages, bicycle rooms, and other secure enclosures.”<sup>5</sup> BART’s draft Berkeley-El Cerrito Access Plan recommends expanding bike parking at BART stations and increasing secure bike parking options to accommodate larger bikes, such as tandem and cargo bikes.<sup>6</sup>

### BACKGROUND

Secure bike parking refers to parking facilities that shield bicycles from theft, damage, and inclement weather. Ideal for longer-term parking needs, secure end-of-trip facilities complement other aspects of the bicycle ecosystem such as the low-stress bicycle network; bike education programs; maintenance and repair shops; and short-term parking. Oonee (Figure 1) and BikeLink (Figure 2) lockers are examples of secure bike parking solutions that have been implemented in cities across the country, including in the Bay Area. These lockers are efficient uses of the public right of way, turning a parking space for one car into parking for as many as six bicycles.

Figure 1: Oonee Mini Pod<sup>7</sup>



<sup>5</sup> [https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Bicycle-Plan-2017\\_Ch2\\_GoalsPoliciespdf.pdf](https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Bicycle-Plan-2017_Ch2_GoalsPoliciespdf.pdf)

<sup>6</sup> [https://www.bart.gov/sites/default/files/docs/221213\\_BECCAP\\_Public\\_Review\\_Draft\\_clean.pdf](https://www.bart.gov/sites/default/files/docs/221213_BECCAP_Public_Review_Draft_clean.pdf)

<sup>7</sup> <https://www.oonee.us/mini>



Figure 2: BikeLink Locker<sup>8</sup>

In the Bay Area, most secure bike parking facilities are operated through BikeLink, a bicycle parking system deployed by Berkeley-based company eLock Technologies. Rates for locker use typically vary from \$0.03-\$0.05 per hour, and with the help of external grants, cities such as Oakland, Fremont, San Jose, and Santa Clara have been able to offer the first several hours of locker use for free. The system is accessed with a secure BikeLink card or app. Additionally, riders can connect their Clipper card to their BikeLink account, allowing them to pay using Clipper at specified locations.

Studies show that secure bike parking is important for increasing bicycle mode share.<sup>9</sup> One study found that the presence of secure parking results in the same effect on the attractiveness of a trip as a decrease of 26.5 minutes spent cycling in mixed traffic. Bicyclists broadly prefer higher-security parking options that deter theft. This is especially true for younger bicyclists, for whom a bicycle represents a higher proportion of their income, and for women.

Bicyclists park their bikes for the longest period of time at home; however, there has been less of a focus on residential bike parking than on bike parking near transit or work.<sup>10</sup> Residents of single-family homes have more options for bike parking than residents of multi-floor, multi-family buildings. While the City requires new construction to include bike parking, older multi-family buildings do not always provide bike parking for their tenants. A tenant in these buildings must either park their bike at a nearby City-owned bike rack (not always available), affix it to a pole or staircase (prohibited behavior that can create access issues), or carry it up multiple flights of stairs to store indoors (requires that they be able-bodied and have a large enough apartment). This additional

<sup>8</sup> <https://www.sjpl.org/bike-lockers>

<sup>9</sup> <https://eprints.whiterose.ac.uk/143013/1/Bicycle%20parking%20paper%20revision3%20final.pdf>

<sup>10</sup> <https://eprints.whiterose.ac.uk/143013/1/Bicycle%20parking%20paper%20revision3%20final.pdf>

burden and potential for theft may act as a deterrent to purchasing a bike for many tenants. On-street bike lockers in multi-family residential neighborhoods would give tenants more options for safely parking their bikes.

The rise in popularity of electric bikes creates an additional need for secure bike parking. E-bikes weigh between 40 and 80 pounds in part due to the additional weight of the battery, which is much heavier than traditional bikes. This makes it more difficult for a resident of a multi-floor building to carry it up stairs. E-bikes are also more expensive than traditional bikes, increasing the importance of parking facilities that reduce theft. The availability of secure bike storage in residential areas, along with bike theft, were concerns that community members raised to Waterside Workshops as they were conducting outreach for the Berkeley E-Bike Equity Project funded through the Berkeley Climate Equity Fund.

Lastly, e-bikes come in varying shapes and sizes that allow them to act as car replacements. Cargo bikes that are longer and have more luggage baskets and/or seats make it possible to transport families, groceries, and other heavy loads. E-tricycles provide a more stable and comfortable alternative to a two-wheel e-bike that can be appealing to seniors. Adaptive bikes and trikes such as handcycles, recumbents, and wheelchair carrier bikes make bicycling possible for people with a range of physical disabilities. Secure bike parking that accommodates these non-traditional bikes will make bicycle-based transportation and recreation accessible and practical for a broader range of Berkeley residents.

#### FINANCIAL IMPLICATIONS

Initially, staff time. This item refers to staff the development of a secure bike storage plan. Through the development of that plan, staff are encouraged to develop costing estimates and make funding recommendations to council for the implementation of the plan.

#### ENVIRONMENTAL SUSTAINABILITY

Secure bike storage is an important strategy to increase residents' mode share by bicycle. Replacing car trips is essential to local greenhouse gas reductions.

#### CONTACT PERSON

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



Disaster and Fire Safety Commission

INFORMATION CALENDAR

March 21, 2023

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: 2022 Disaster and Fire Safety Commission Work Plan

INTRODUCTION

As directed by the City Council, the Disaster and Fire Safety Commission (DFSC) hereby submits its workplan for 2022.

CURRENT SITUATION AND ITS EFFECTS

On September 28, 2022, the Disaster and Fire Safety Commission passed a motion to submit the attached annual commission work plan with final revisions on “cohorts” by Commissioner Bedolla. Motion: N. Rader; Second: W. Bradstreet; Vote: 7 Ayes: Bedolla, Rader, Dean, Bradstreet, Simmons, Degenkolb, Stein; 0 Noes; 1 Absent: Cutler; Abstain:

BACKGROUND

On July 19, 2016, the City Council approved a consent item that directs Berkeley Commissions, with the exception of the Board of Library Trustees, the Zoning Adjustments Board, and the Design Review Committee, to submit a workplan to the City Council at the beginning of each fiscal year.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

POSSIBLE FUTURE ACTION

Not applicable.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Not applicable.

CONTACT PERSON

Keith May, Assistant Fire Chief, Berkeley Fire Department, 510-981-5508

Attachments:

1: 2022 Disaster and Fire Safety Commission Work Plan



## Berkeley Disaster and Fire Safety Commission WORK PLAN – FY 2022-2023

### Mission Statement

The Disaster and Fire Safety Commission serves as the public oversight body for Berkeley’s Measure GG and Measure FF funds, charged with reviewing the budget on a regular basis to ensure that the funds are spent in accordance with the intent of the voter approved measures, recommending the appropriate annual increase to the tax rate, and recommending new programs and policy positions requiring Measure GG and Measure FF funding. The ultimate goal of the Commission is to increase community safety, resilience, and education for community disaster preparedness. The Commission also reviews and makes recommendations on items referred by the City Council or other Commissions.

### Summary of FY 2022-2023 Work Plan Activities

| <b>GOAL</b>                              | <b>Activities</b>                                                                                                                                                                                         | <b>Expected Outcomes</b>                                                                                                                                                                                                                                                                     | <b>Commissioners</b>                                                                                                |
|------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| <b>1. Plan &amp; Budget Oversight</b>    | a) Review BFD materials on a quarterly basis<br>b) Meet monthly as Finance ad hoc working group with FD to review monthly materials<br>c) Track financial issues related to FF & GG with the City Council | a) Budget development plan<br>b) Provide input of quarterly budget<br>c) Provide annual budget recommendation City Council on FF & GG<br>d) Provide recommendation to City Council on annual GG increases<br>e) Provide City Council recommendation for midyear program corrections (ad hoc) | Rotating group of commissioners (based on availability) on a quarterly basis hosted by Chair / Chief                |
| <b>2. Home hardening</b>                 | a) Lead review of monthly inspection report<br>b) Review sessions with Fire Marshal<br>c) Listening sessions with Building Department                                                                     | a) Provide recommendation to City Council on annual inspection program targets<br>b) Provide recommendation to City Council on building code modifications for Fire Safety (ad hoc)                                                                                                          | <ul style="list-style-type: none"> <li>• <b>P. Degenkolb</b></li> <li>• W. Bradstreet</li> <li>• S. Dean</li> </ul> |
| <b>3. Wildland-urban interface (WUI)</b> | a) Participate in and promote CWPP process<br>b) Provide input to CWPP consultant<br>c) Review vegetation management program                                                                              | a) Provide monthly report and input to CWPP working group team & report to commission<br>b) Provide recommendation to City Council on CWPP report or additions/edits to report<br>c) Provide recommendation to City Council on vegetation management program                                 | <ul style="list-style-type: none"> <li>• <b>N. Rader</b></li> <li>• JL. Bedolla</li> <li>• T. Simmons</li> </ul>    |

Berkeley Disaster and Fire Safety Commission  
WORK PLAN – (FY 2022-2023)

| <b><u>GOAL</u></b>           | <b><u>Activities</u></b>                                                                                                                                                                                                                                                                                                              | <b><u>Expected Outcomes</u></b>                                                                                                                                           | <b><u>Commissioners</u></b>                                                                                    |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| <b>4. Safe passages</b>      | a) Review previous safe passages program and its component parts (parking restrictions, red curb, notification alerts, evacuation planning)<br>b) Meet with community members for intake<br>c) Absorb CWPP report                                                                                                                     | a) Restart of Safe Passages Program<br>b) Formation of team/committee to develop plan<br>c) Provide recommendation to City Council on draft revised Safe Passages program | <ul style="list-style-type: none"> <li>• <b>JL. Bedolla</b></li> <li>• K. Cutler</li> <li>• A Stein</li> </ul> |
| <b>5. Community Outreach</b> | a) Work with FD on educating the public on disaster and fire safety programs<br>b) Coordinate / alert commission of potential outlets for information<br>c) Follow / facilitate / support meetings with community groups<br>d) Follow to conclusion external emergency speaker system<br>e) Track Commission recommendations / status | a) Provide recommendation to City Council on mid-program changes to current communications plan<br>b) Provide City Council recommendation into annual communications plan | <ul style="list-style-type: none"> <li>• <b>S. Dean</b></li> <li>• A. Stein</li> <li>• T. Simmons</li> </ul>   |





### Upcoming Worksessions and Special Meetings

*start time is 6:00 p.m. unless otherwise noted*

| Scheduled Dates |                                                                                                                     |
|-----------------|---------------------------------------------------------------------------------------------------------------------|
| Mar 14          | 1. Annual Crime Report (4:00 p.m.)                                                                                  |
| Mar 21          | 1. Civic Arts Grantmaking Process & Capital Grant Program (4:00 p.m.)<br>2. Civic Center Vision Project (4:00 p.m.) |
| Apr 18          | 1. Hopkins Corridor Plan                                                                                            |
| May 16 (WS)     | 1. Fire Facilities Study Report                                                                                     |

### Unscheduled Workshops and Special Meetings

None

### Unscheduled Presentations (City Manager)

None

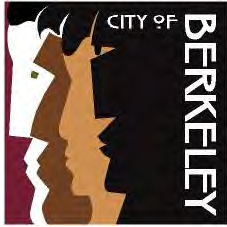
|    |                                                                                                                                                                                                                                                                                                                                               |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | <b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                      |
| 1. | <b>17. City Policies for Managing Parking Around BART Stations</b> <i>(Referred to the Agenda &amp; Rules Committee for scheduling on November 29, 2022.)</i><br><b>From: City Manager</b><br>Contact: Liam Garland, Public Works, (510) 981-6300<br><br><i>(Note: schedule with tentative special meeting in May 2023 on Ashby BART TOD)</i> |

| CITY CLERK DEPARTMENT                                                       |                      |                       |                   |
|-----------------------------------------------------------------------------|----------------------|-----------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br>BEFORE THE CITY COUNCIL |                      |                       |                   |
| Address                                                                     | Board/<br>Commission | Appeal Period<br>Ends | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                                            |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Public Hearings Scheduled</b>                                            |                      |                       |                   |
| 469 Kentucky Avenue (single family dwelling)                                | ZAB                  |                       | 5/23/2023         |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                   |
| 1205 Peralta Avenue (conversion of an existing garage)                      |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Notes</b>                                                                |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |

3/1/2023







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: *DWR* Dee Williams-Ridley, City Manager

Subject: Commission Meetings During COVID-19 Emergency

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

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

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

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

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

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

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

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.

Design Review Committee  
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Personnel Board  
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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.

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Transportation Commission  
Youth Commission  
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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 31, 2022

To: Agenda & Rules Committee

From: Dee Williams-Ridley, City Manager

Subject: Return to In-Person City Council Meetings and Status of Meetings of City Legislative Bodies

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This memo provides an update regarding the return to in-person meetings by the City Council and other legislative bodies.

On October 19, 2022 the Agenda & Rules committee discussed the return to in-person meetings and recommended that the City Council return to in-person meetings starting with the December 6, 2022 meeting. The in-person meetings of the City Council will continue to allow for remote participation by the public.

Governor Newsom announced that he will end the statewide emergency declaration for COVID-19 on February 28, 2023. Rescinding the emergency declaration will end the exemptions to the Brown Act that were codified in AB 361. These exemptions allowed for remote participation by members of the legislative bodies without the need to notice the remote participation location or make the remote location accessible to the public.

In the past legislative session, AB 2449 was signed into law to extend the Brown Act exemptions in AB 361, but only for certain circumstances and for a limited duration of time. The provisions of AB 2449 are cumbersome and complicated and do not provide any long-term extension of the Brown Act exemptions used during the statewide declared emergency. A summary of AB 2449 is attached to this memo.

After February 28, 2023, if a member of the City Council participates remotely, but does not qualify for the exemptions in AB 2449, the remote location will be listed on the agenda, and the remote location must be available to the public.

### **Hybrid Meetings of the City Council**

Since the start of the pandemic in March of 2020, the City Council has held six hybrid meetings from the Boardroom. These hybrid meetings allowed for in-person participation and virtual participation for the public and the City Council. The meetings



were successful from a technology and logistics standpoint and a regular return to hybrid meetings should be manageable from a staff and meeting management perspective. Resources and processes will be continuously evaluated by staff throughout the transition to a regular hybrid meeting structure.

For the hybrid meetings staff developed meeting protocols for members of the public in attendance and the City Council. With the changing public health conditions related to COVID-19, these meeting protocols need to be reviewed and revised prior to the December 6 meeting. The current version of the protocols that were last used in June 2022 are attached for review.

City staff will continue to test the Boardroom technology with the IT Department, BUSD IT, and Berkeley Community Media to ensure smooth functionality. Communication with the public about the return to in-person (hybrid) meetings will be sent out through multiple channels in advance of December 6.

### **Status of Other Legislative Bodies**

City boards and commissions have been meeting virtual-only during the state declared emergency. When the state declared emergency expires on February 28, 2023, these bodies will return to in-person only meetings.

With over 30 commissions, there are approximately 350 commission meetings per year. Often there are multiple commissions meeting on the same day. The City does not currently have the videoconference infrastructure in place to provide for hybrid meetings for commissions. In addition, in a hybrid setting it is more difficult to manage and conduct meetings while attempting to provide meaningful participation by commissioners and the public. City staff will communicate with commission secretaries and commissioners to facilitate the transition back to in-person meetings. Staff will also analyze the costs for expanding videoconference capabilities throughout the City.

City Council policy committees may have the potential to meet in a hybrid format after February 28, 2023. In order to accommodate hybrid meetings, the videoconference capabilities in 2180 Milvia will need to be significantly expanded. This analysis is currently underway.

For both commissions and policy committees, the videoconference aspect of the meeting is for the public only. The members of the legislative bodies will be at the physical meeting location as previously discussed.

PM/  
Encl.:  
CC:

## **Summary of AB 2449 (Att. 1)**

### **Current Law**

Under current law [AB 361 (R. Rivas), Chapter 165, Statutes of 2021], The exemptions included in AB 361 only apply during a declared state of emergency as defined under the California Emergency Services Act. (Gov. Code §§ 52953(e)(1), (e)(4).) In addition, one of the following circumstances must apply:

- State or local officials have imposed or recommended measures to promote social distancing.
- The legislative body is meeting to determine whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- The legislative body has determined that, as a result of the emergency, meeting in person presents imminent risks to the health or safety of attendees.

With the lifting of the State of Emergency, the provisions of AB 361 cannot be met, and therefore localities must return to pre-pandemic Brown Act provisions.

### **Recently Enacted Legislation on Remote Meetings**

The State legislature recently enacted, and the Governor signed AB 2449 (Rubio) [Chapter 285, Statutes of 2022] which provides under incredibly limited circumstances, the ability to have a minority amount of a Brown Act body members participate remotely. The measure is slated to sunset January 1, 2026.

### **General Requirements**

1. A quorum of the council must participate in person at its public meeting site within the boundaries of the jurisdiction (e.g., city hall/council chambers).
2. A member who wishes to participate remotely must have either “just cause” or “emergency circumstances.”

“Just cause” is defined as:

- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires the councilmember to participate remotely.
- A contagious illness that prevents a member from attending in person.
- A need related to a physical or mental disability not otherwise accommodated under the ‘reasonable accommodation’ provisions of the Americans with Disabilities Act.
- Travel while on official business of the legislative body or another state or local agency.

“Emergency circumstances” is defined as “a physical or family medical emergency that prevents a member from attending in person.”

### **Procedures and Limitations**

A. When using the ‘Just cause’ exception:

1. The elected/appointed official must provide a general description of the circumstances relating to their need at the earliest opportunity possible, including at the start of the meeting.
2. A councilmember may not appear remotely due to “just cause” for more than two meetings per calendar year.

B. When using the 'emergency circumstances' exception:

1. The elected/appointed official must give a general description of the emergency circumstances, but the member is not required to disclose any medical diagnosis, disability, or personal medical information.
2. The governmental body must take action to approve the request prior to the remote participant being able to participate in any further business.

C. In all circumstances the following must occur:

1. The elected/appointed official must disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.
2. The member must participate through both audio and visual technology (e.g., the member must be on-screen).

D. Limited use despite narrow circumstances:

1. A member cannot attend meetings remotely for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

## 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. 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.

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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:

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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).

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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.

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.

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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.

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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.
- 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).

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. 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.

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 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. 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 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.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SCR5](https://leginfo.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  
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RE: Transition Period Prior to Repeal of COVID-related Executive Orders

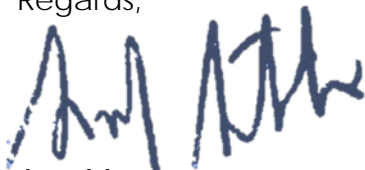
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

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  
Number: 2021-58

June 4, 2021

### 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

### 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.

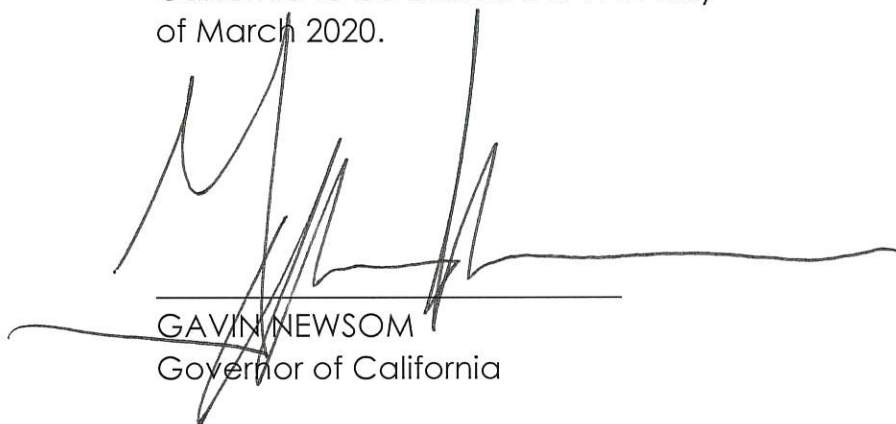
All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

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





No Material  
Available for  
this Item


There is no material for this item.

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