



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

**MONDAY, MAY 8, 2023**

**2:00 P.M.**

2180 Milvia Street, 6<sup>th</sup> Floor, Berkeley, CA 94704 – Redwood Room

1404 Le Roy Ave, Berkeley, CA 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/j/1609748748>. 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: **160 974 8748**. 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](mailto: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: April 24, 2023**
- 2. Review and Approve Draft Agenda:**
  - a. 5/23/23 – 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**

## **Unscheduled Items**

- 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 including the concepts referred by Council at the March 14, 2023 meeting**
- 10. Modifications or Improvements to City Council Meeting Procedures (referred by Council at the March 14, 2023 meeting)**
- 11. Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**
- 12. Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)**

## Items for Future Agendas

- Requests by Committee Members to add items to future agendas

### Adjournment – Next Meeting Monday, May 22, 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, May 4, 2023.

Mark Numainville, City Clerk

## **Communications**

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



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

**MONDAY, APRIL 24, 2023**

**2:30 P.M.**

2180 Milvia Street, 6<sup>th</sup> Floor, Berkeley, CA 94704 – Redwood Room

1404 Le Roy Ave, Berkeley, CA 94708 – Teleconference Location

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Ben Bartlett

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# AGENDA

**Roll Call:** 2:32 p.m.

Present: Hahn, Wengraf

Absent: Arreguin

**Public Comment** – 3 speakers

## Review of Agendas

1. **Approval of Minutes: April 10, 2023**  
**Action:** M/S/C (Hahn/Wengraf) to approve the minutes of 4/10/23.  
**Vote:** Ayes – Hahn, Wengraf; Noes – None; Abstain – None; Absent – Arreguin
2. **Review and Approve Draft Agenda:**
  - a. 5/9/23 – 6:00 p.m. Regular City Council Meeting  
**Action:** M/S/C (Hahn/Wengraf) to approve the agenda of 5/9/23 as published in the agenda packet.  
**Vote:** Ayes – Hahn, Wengraf; Noes – None; Abstain – None; Absent – Arreguin
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:** 3 speakers. Discussion held regarding process underway to increase connectivity and meeting infrastructure in city facilities. Requested information on potential ability to broadcast commission meetings.

## Unscheduled Items

9. **Discussion of Potential Changes and Enhancements to the City Council Legislative Process including the concepts referred by Council at the March 14, 2023 meeting**
10. **Modifications or Improvements to City Council Meeting Procedures (referred by Council at the March 14, 2023 meeting)**
11. **Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**
12. **Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)**

## Items for Future Agendas

- **None**

## Adjournment

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

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

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 April 24, 2023.

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Mark Numainville, City Clerk

## Communications

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**DRAFT AGENDA**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, May 23, 2023**  
**6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702  
 TELECONFERENCE LOCATION - 1404 LE ROY AVE, BERKELEY 94708

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](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244).*

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*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.*

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*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. 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 Chochenyo (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. Adding BMC Chapter 13.107, Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards (HARD HATS) Ordinance From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a second reading of Ordinance No. 7,861-N.S. adding Chapter 13.107 to the Berkeley Municipal Code establishing healthcare and apprenticeship standards for private development.  
**First Reading Vote:** Ayes – Taplin, Bartlett, Harrison, Hahn, Robinson, Humbert, Arreguin; Noes – None; Abstain – Kesarwani; Absent – Wengraf.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 2. Appointment of Emergency Standby Officers for City Council District 8 and District 2 From: City Manager**  
**Recommendation:** Adopt a Resolution confirming the appointment of newly nominated standby officers for City Council District 8 and City Council District 2 to serve in the event the elected official is unavailable during an emergency, and rescinding Resolution No. 70,073-N.S.  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 3. Minutes for Approval From: City Manager**  
**Recommendation:** Approve the minutes for the Council meetings of April 11 (regular), April 13 (closed), April 17 (closed) and April 25 (special and regular).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 4. Police Accountability Board – Appointment of New Members From: City Manager**  
**Recommendation:** Adopt a Resolution appointing new members to the Police Accountability Board nominated by Councilmember Humbert and Councilmember Hahn.  
**Financial Implications:** See report  
Contact: Mark Numainville, City Clerk, (510) 981-6900

## Consent Calendar

- 5. Assessments: Telegraph Property Based Business Improvement District**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Telegraph Property Based Business Improvement District (TBID) Annual Report of Fiscal Year (FY) 2023 and proposed budget for FY 2024, and declaring Council's intention to levy an annual assessment for the TBID for FY 2024.  
**Financial Implications:** See report  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 6. Assessments: Berkeley Tourism Business Improvement District**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Annual Planning Report and preliminary budget for Fiscal Year 2024 (FY24) for the Berkeley Tourism Business Improvement District (BTBID) as recommended by the BTBID Owners' Association.  
**Financial Implications:** See report  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 7. Assessments: North Shattuck Property Based Business Improvement District**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the North Shattuck Property Based Business Improvement District (NSBID) Annual Report of Fiscal Year (FY) 2023 and proposed budget for FY 2024, and declaring Council's intention to levy an annual assessment for the NSBID for FY 2024.  
**Financial Implications:** See report  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 8. Assessments: Downtown Berkeley Property Based Business Improvement District**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Downtown Berkeley Property Based Business Improvement District (DPBID) Annual Report of Fiscal Year (FY) 2023 and proposed budget for FY 2024, and declaring Council's intention to levy an annual assessment for the DPBID for FY 2024.  
**Financial Implications:** See report  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530



## Consent Calendar

9. **Contracts: On-Call Fine Art Services Providers for the Public Art Collection**  
**From: City Manager**  
**Recommendation:** Adopt four Resolutions authorizing the City Manager to execute contracts and any amendments with the following companies for on-call fine art services for the City of Berkeley's Public Art Collection, for contract periods of July 1, 2023 through June 30, 2026:
1. Atthowe Fine Art Services, for an amount not to exceed \$200,000.
  2. Kala Art Institute, for an amount not to exceed \$100,000.
  3. Preservation Arts LLC, for an amount not to exceed \$200,000.
  4. ShipArt International (DBA UOVO), for an amount not to exceed \$100,000.
- Financial Implications:** See report  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
10. **Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on May 23, 2023**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.  
**Financial Implications:** Various Funds - \$1,907,987  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
11. **Contract No. 32000164 Amendment: Synthesis Group, Inc. dba Minuteman Press Contract for Citywide Copying & Printing Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend and extend the City's contract with Minuteman Press, Contract No. 32000164, through January 31, 2025, and to approve additional appropriations related for performance of this contract. Original contract term was for three (3) years, with two (2) renewal years. The City is exercising the contractual renewal years.  
**Financial Implications:** \$975,000.  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
12. **Contract for Mail Services and Mail Room Coverage**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a contract with Stella Courier, LLC., for providing mail services to the City's satellite locations, and as-needed mail room coverage.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Consent Calendar

### 13. Notice of Appropriations Limit for Fiscal Year 2024

**From: City Manager**

**Recommendation:** Adopt a Resolution providing notice that: 1) Council will adopt an appropriations limit for Fiscal Year 2024 at its meeting of June 27, 2023; and 2) the amount of the limit and the background material used in its calculation will be available for public review in the City Clerk's Office on or before June 9, 2023.

**Financial Implications:** See report

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

### 14. Contract No. 9367 Amendment: Banking Services with Wells Fargo Bank

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to continue the work of de-bundling the banking services with Wells Fargo and exercise a four (4)-year extension through May 31, 2027 for Contract No. 9367, in the amount of \$3,000,000, to ensure business continuity as the City completes the next phase of the ERP implementation which includes accounts receivable/general billing (AR/GB) modules. This will also allow adequate time to continue pursuing the effort to determine alternative banking and related services solutions.

**Financial Implications:** See report

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

### 15. Piggyback Contract – Data Ticket for Administrative Citation Processing

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments which align with the City of Downey's existing contract and any amendments, with Data Ticket to provide Administrative Citation Processing from May 1, 2023 until September 21, 2025 in an amount not to exceed \$100,000 with an option to extend for an additional three (3), one (1) year terms in alignment with the City of Downey contract for a total contract value not to exceed \$300,000 (May 2023 through September 2028).

**Financial Implications:** See report

Contact: David Sprague, Fire, (510) 981-3473, Peter Radu, City Manager's Office, (510) 981-7000

### 16. Approval of the City of Berkeley Community Wildfire Protection Plan

**From: City Manager**

**Recommendation:** Approve the City of Berkeley Community Wildfire Protection Plan (CWPP) as recommended by the Fire Chief.

**Financial Implications:** See report

Contact: David Sprague, Fire, (510) 981-3473

## Consent Calendar

**17. Revenue Grant Agreements: Funding Support from the State of California and Alameda County to Conduct Public Health Services**

**From: City Manager**

**Recommendation:** Adopt two Resolutions authorizing the City Manager or her designee to submit grant agreements to the State of California and Alameda County, to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services and to support the City's public health infrastructure:

1. Tuberculosis Control Program, in the projected amount of \$14,000 for Fiscal Year (FY) 2024 from the State of California.

2. Public Health Infrastructure Program, in the projected amount of \$32,080 for FY 2024 from Alameda County.

**Financial Implications:** See report.

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

**18. Contract: JSI Research and Training Institute, Inc. for California Home Visiting Program Planning Consulting Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract, and any amendments or extensions, with JSI Research and Training Institute, Inc. (JSI) for California Home Visiting Program Planning Consulting Services. The contract will be in an amount not to exceed \$200,000 for the period July 1, 2023 through January 31, 2024.

**Financial Implications:** See report.

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

**19. Contract No: 32300104 Amendment: Village of Love to Operate the Telegraph Neighborhood Sacred Rest Drop-In Center**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager, or her designee to execute an amendment to Contract No. 32300104 with Village of Love to add \$250,000 for a total contract amount not to exceed \$500,000 for services and operations at the Telegraph Neighborhood Sacred Rest Drop-In Center, and extend the contract term through May 31, 2024.

**Financial Implications:** See report.

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

**20. Contract No. 32300144 Amendment: Resource Development Associates for Specialized Care Unit Evaluation**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32300144 with Resource Development Associates (RDA) to add \$85,000 for a not-to-exceed amount of \$235,000.

**Financial Implications:** See report.

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

## Consent Calendar

21. **Contract: Accela, Inc. for Software Maintenance**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a maintenance Contract with Accela, Inc., for software maintenance for a total not to exceed \$299,710 July 1, 2023 to June 30, 2025.  
**Financial Implications:** Various Funds - \$299,710  
Contact: Kevin Fong, Information Technology, (510) 981-6500
22. **Contract: Delta Charter – Bus Transportation Services for Echo Lake Camp and Select Recreation Division Summer Programs**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with Delta Charter to provide bus transportation services for Echo Lake Youth Camp and select Recreation Division summer programs for a not-to-exceed total amount of \$399,000 over a three-year period, beginning June 1, 2023 and ending June 1, 2026, contingent upon annual budget appropriations.  
**Financial Implications:** Various Funds - \$399,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
23. **Contract: Baldoni Construction Services, Inc. for Echo Lake Camp Accessibility Upgrades**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1. Approving the plans and specifications for the Echo Lake Camp Accessibility Upgrades project, Specification No. 23-11590-C; and 2. Accepting the bid of the lowest responsive and responsible bidder, Baldoni Construction Service, 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 Baldoni Construction Service, Inc., for the Echo Lake Camp Accessibility Upgrades project at 7 Echo Lakes Road, Echo Lake, CA 95721, in an amount not to exceed \$436,954, which includes a contract amount of \$364,128 and a 20% contingency in the amount of \$72,826.  
**Financial Implications:** Various Funds - \$436,954  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
24. **Referral Response: Security Assessment of the 1700 and 1600 Blocks of San Pablo Avenue**  
**From: City Manager**  
**Recommendation:** Close the original referral as the recommendations were completed by staff. The assessment did not indicate a need for further security improvements to the Berkeley Inn or immediate area at this time.  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900

## Consent Calendar

- 25. Audit Status Reports: Fleet Replacement Fund Short Millions & Rocky Road: Berkeley Streets At Risk and Significantly Underfunded** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*  
**From: City Manager**  
**Recommendation:** See Policy Committee Recommendation  
*Policy Committee Recommendation: Send the item to City Council with a positive recommendation that Council:*
- 1. Refer to the City Manager to establish a policy that the Public Works Department will be responsible for reviewing, submitting, and approving all departmental requests to Council for adding new vehicles to the fleet to facilitate maximum cost recovery through the vehicle replacement fund, consistency with fleet rightsizing studies, oversight, and timely electrification of the fleet.*
  - 2. Refer to the Budget and Finance Committee to prioritize funding to the vehicle replacement fund to make up the shortfall over time in order to stabilize the fund.*
- Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 26. Contract No. 10986 Amendment: Zero Waste Collaborative for the Solid Waste & Recycling Transfer Station Rebuild Feasibility Study**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10986 with Zero Waste Collaborative (ZWC) for the Solid Waste Transfer Station and Material Recovery Facility Replacement Feasibility Study (Study), to increase the contract by \$100,000 for a total not-to-exceed amount of \$600,000, and extend the current contract term through June 30, 2025.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300
- 27. Purchase Order: 72 Hour, LLC, dba National Auto Fleet Group for Upfitting of Crime Scene Unit Cargo Van**  
**From: City Manager**  
**Recommendation:** Purchase Order: 72 Hour, LLC, dba National Auto Fleet Group for Upfitting of Crime Scene Unit Cargo Van  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300
- 28. Development of Artists Affordable Housing Certification Program**  
**From: Civic Arts Commission**  
**Recommendation:** Refer to the City Manager the further development of an Artists Affordable Housing Certification Program based upon the program guidelines developed and approved by the Civic Arts Commission in May 2022.  
**Financial Implications:** See report  
Contact: Jennifer Lovvorn, Commission Secretary, (510) 981-7530

## Consent Calendar

29. **Contract: AppleOne Employment Services for Temporary Staffing Services**  
**From: Police Accountability Board**  
**Recommendation:** Adopt a resolution authorizing the Director of Police Accountability (DPA) to use the Office of the Director of Police Accountability's (ODPA) salary savings to pay the outstanding balance and limited-term temporary staffing services provided by AppleOne.  
**Financial Implications:** \$100,000  
Contact: Hansel Aguilar, Police Accountability Board, (510) 981-4960

## Council Consent Items

30. **Resolution to Support SB 532**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution in support of Senate Bill 532, introduced by Senator Scott Weiner and coauthored by Assembly Member Phil Ting, and send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Scott Weiner, and Assembly Members Buffy Wicks and Phil Ting.  
**Financial Implications:** Staff time  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
31. **Budget Referral: Vision Zero Improvements at 6th & Addison Intersection**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Refer \$600,000 to the budget process for HAWK (High-intensity Activated crossWalk) beacons and a median refuge island at 6th and Addison Streets.  
**Financial Implications:** None  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
32. **Support for H.R.603 - HEAL Act**  
**From: Councilmember Wengraf (Author), Mayor Arreguin (Co-Sponsor), Councilmember Taplin (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution in support of H.R.603 (Gottheimer) - Holocaust Education and Antisemitism Lessons Act or the HEAL Act and send it to the author, Rep. Josh Gottheimer, with copies to Rep. Kathy Manning, Rep. Barbara Lee and Senator Dianne Feinstein.  
**Financial Implications:** Staff time  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

## Action Calendar

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

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

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

### Action Calendar – Scheduled Public Comment Period

*During this public comment period, the Presiding Officer will open and close a comment period for each Action item on this agenda (excluding any public hearings, appeals, and/or quasi-judicial matters). The public may speak on each item. Those who speak on an item during this comment period may not speak a second time when the item is taken up by Council.*

### Action Calendar – Public Hearings

*Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak 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.*

#### **33. Fee Increase: Condominium Conversion Program Application Fee**

##### **From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion adopt a Resolution to increase the Condominium Conversion Program application fee by \$30 to \$310 per application, and the supplementary application fees for units currently rented by \$40 to \$420 per unit, and applications deferring the mitigation fee by \$95 to \$1,040 per unit.

**Financial Implications:** See report

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

## Action Calendar – Public Hearings

- 34. Fee Increase: Condominium Conversion Program Subordination Fee**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution to increase the \$364 Condominium Conversion Program subordination fee by \$35 to \$399.  
**Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 35. Fee Increase: Below Market Rate (BMR) Housing Monitoring Program**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion adopt a Resolution to increase the annual \$432 per unit fee for the Below Market Rate (BMR) housing monitoring program by \$18 to \$450 per unit.  
**Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 36. Selected Marina Fee Increases**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution approving new fees and increasing current fees for select Marina fees; and rescinding Resolution No. 68,899-N.S. and all amendatory resolutions.  
**Financial Implications:** See report.  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 37. Changes to Selected Parks and Recreation Fees**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution approving new fees and increasing current fees for select parks and recreation facility rentals; and rescinding Resolution No. 70,667-N.S. and all amendatory resolutions.  
**Financial Implications:** See report.  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 38. ZAB Appeal: 469 Kentucky Avenue, Use Permit #ZP2022-0087**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit # ZP2022-0087 to demolish a single-family dwelling and construct a three-story, 3,310 square foot single-family dwelling with a two-car garage, and dismiss the appeal.  
**Financial Implications:** None  
Contact: Jordan Klein, Planning and Development, (510) 981-7400



## Action Calendar – New Business

- 39. Surveillance Ordinance items related to Fixed Surveillance Cameras and Unmanned Aerial Systems (UAS)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Surveillance Ordinance items related to Fixed Surveillance Cameras and Unmanned Aerial Systems (UAS).  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900
- 40. Recommendation on Climate, Building Electrification, and Sustainable Transportation Budget Priorities for Fiscal Year 2023 and 2024** *(Reviewed by the Budget & Finance Committee)*  
**From: Energy Commission**  
**Recommendation:** The Energy Commission recommends that the Berkeley City Council prioritize and include in the City's budget for the Fiscal Years Ending (FYE) 2023 and 2024 several staff positions, pilot projects, investments in electric vehicles and charging infrastructure, and other measures to ensure that the City's budget is aligned with and provides adequate and needed funding to implement the City's adopted Climate Action Plan, Electric Mobility Roadmap, Building Emissions Saving Ordinance, 2019 ban on gas in new construction, and the Existing Buildings Electrification Strategy.  
*Policy Committee Recommendation: No action was taken by the Budget & Finance Committee. Item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.*  
**Financial Implications:** See report  
Contact: Billi Romain, Commission Secretary, (510) 981-7400

## Action Calendar – Policy Committee Track Items

- 41. Addressing Hyundai and Kia Car Thefts**  
**From: Mayor Arreguin (Author)**  
**Recommendation:**  
1. Adopt a Resolution calling on Hyundai and Kia to take immediate action to fix the flaw in their vehicles that make them easy targets of car thefts.  
2. Direct the City Attorney to explore taking legal action against Hyundai and Kia.  
**Financial Implications:** City Attorney's Office time  
Contact: Jesse Arreguin, Mayor, (510) 981-7100

## Action Calendar – Policy Committee Track Items

**42. Contract: Badawi & Associates, Certified Public Accountants for Professional Auditing Services**

**From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution ratifying the Mayor's decision to select Badawi & Associates as the auditing firm to perform annual financial audits of the City's financial statements and perform annual compliance audits required by the Single Audit Act of 1984 (as amended in 1996), for the period of May 22, 2023 through June 30, 2026, in the amount of \$432,525 plus a contingency of \$50,000 for a total of \$482,525; and to authorize the execution of a three-year contract with Badawi & Associates, with an option to extend the contract for two additional years.

**Financial Implications:** See report

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

**43. Adopting a temporary exemption from the collection of taxes under BMC Chapter 9.04.136(D): Tax Rate for Non-Medical and Medical Cannabis Businesses**

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

**Recommendation:**

1. Adopt a temporary exemption (per 9.04.136(D)) on the collection of the taxes for all non-medical and medical cannabis businesses, retroactive to January 2023 and ending July 2025; Waive any late penalties that may have accrued since January 2023; any and all tax payments already made to the City for Q1 2023 will apply as a credit against a future tax or fee payment to the City; and
2. Refer to the City Manager and Cannabis Commission and/or its successor, the Planning Commission, to analyze and develop an ordinance adjusting local cannabis business tax rates by February 2025 that are in balance with the state cannabis tax rates, with an eye to the ability for the cannabis industry to become a sustainable economic driver for the City of Berkeley.
3. Licensed cannabis businesses in Berkeley will pay the business license tax that applies to their respective area of the market during the moratorium, like retail, manufacturing, etc.

**Financial Implications:** Loss of tax revenue

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

## Action Calendar – Policy Committee Track Items

44. **Referral: Reconnecting Communities Pilot Program proposal to build a Freeway Lid over I-80 to reconnect West Berkeley to the Waterfront**  
**From: Councilmember Robinson (Author), Councilmember Taplin (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor), Councilmember Humbert (Co-Sponsor)**  
**Recommendation:** Refer to the City Manager to assess the viability of transforming the University & I-80 interchange with the goal of removing the I-80 at-grade barrier between the Berkeley Marina and the rest of the City, and to explore related grant opportunities, including but not limited to pursuing a planning grant from the US DOT Reconnecting Communities Pilot Program in the next application cycle or future application cycles. Staff are encouraged to look to successful examples of “freeway lid” projects around the country.  
**Financial Implications:** See report  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

## Information Reports

45. **Audit Recommendation Status – 911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale**  
**From: City Manager**  
Contact: Jennifer Louis, Police, (510) 981-5900
46. **Audit Recommendation Status - Data Analysis of the City of Berkeley’s Police Response**  
**From: City Manager**  
Contact: Jennifer Louis, Police, (510) 981-5900
47. **Audit Recommendation Status - Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities**  
**From: City Manager**  
Contact: Jennifer Louis, Police, (510) 981-5900

## Public Comment – Items Not Listed on the Agenda

## Adjournment

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

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

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be 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:  
<https://berkeleyca.gov/your-government/city-council/city-council-agendas>  
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](mailto: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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Civic Arts Commission

CONSENT CALENDAR  
May 23, 2023

To: Honorable Mayor and Members of the City Council  
 From: Civic Arts Commission  
 Submitted by: Jennifer Lovvorn, Secretary to the Civic Arts Commission  
 Subject: Development of Artists Affordable Housing Certification Program

RECOMMENDATION

Refer to the City Manager the further development of an Artists Affordable Housing Certification Program based upon the program guidelines developed and approved by the Civic Arts Commission in May 2022.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impact of an Artist Affordable Housing Certification Program consists of staff time dedicated to the following activities:

- Developing a program that includes: certification process guidelines, a staffing plan, and forecasting annual proposed costs for the development and implementation of ongoing Artist Affordable Housing Certification Program.
- Maintaining a database of affordable artist live/work units located in Berkeley
- Maintaining a database of certified artists in Berkeley
- Convening a panel of arts professionals and community members to conduct a review for artist certification that might complement an application to low-income live/work housing in Berkeley
- Conducting public outreach workshops for artists interested in becoming certified
- Providing information to building owners and developers interested in listing housing opportunities with the program

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Arts & Culture Plan (adopted 2018) determined that affordable housing for artists was an urgent need. Additionally, there is an opportunity in the City of Berkeley to meet this need by utilizing vacant storefronts, as well as integrating artist housing into new housing developments. These strategies would help the City fulfil the goals for increased low-income housing articulated in the Housing Element (adopted 2023).

Artists affordable housing could play a positive role in supporting Berkeley's cultural resilience, fostering a healthy intergenerational environment in new housing projects, as

well as activating existing vacant storefronts. Artists can provide a cultural environment that nurtures community in Berkeley's overall housing development plans.

### BACKGROUND

Increasing access to affordable housing and affordable spaces for artists and arts organizations was identified as the top goal in the City of Berkeley Arts & Culture Plan approved by City Council in 2018. Affordable living and workspace for artists is a pressing issue for our community, with artists increasingly priced out and unable to live and work in Berkeley.

In response, the Civic Arts Commission generated a report entitled "Affordable Housing for Artists in Berkeley" (Attachment 1) that includes data about the unique housing and space needs of artists based on a survey and focus groups with diverse artists and cultural workers. The report was presented at the December 8, 2021 Civic Arts Commission meeting and it gave rise to important discussions around housing and work-space affordability for artists and was further studied by an ad hoc Artists Affordable Housing Task Force composed of a Civic Arts Commissioner, a local developer, artists, and nonprofit housing professionals which has been working concurrently with the affordable housing for artists assessment (2020-22).

In response to this affordable housing for artists assessment, Council approved a referral (Attachment 2) on January 25, 2022 requesting that the City Manager, Planning Commission, and Housing Advisory Commission "review, consider, and incorporate recommendations [from the assessment of affordable housing needs for artists in Berkeley] to the greatest extent possible, into the Housing Element update and related planning and zoning processes." Consultants hired by the City to assist with the development of the Housing Element requested an artist certification process for affordable housing as a prerequisite for including affordable housing for artists into the upcoming Housing Element. To respond, the ad hoc Artists Affordable Housing Task Force, convened to develop recommendations for an artist certification process, which was further developed by the Civic Arts Commission's Policy Subcommittee. The Artist Certification Process was ultimately approved by the Civic Arts Commission at its May 24, 2022 meeting (Attachment 3).

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental impacts associated with this recommendation.

### RATIONALE FOR RECOMMENDATION

An artist certification process is needed in order to determine whether an individual is eligible for affordable housing specifically designated as live/work space for artists.

### ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

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

CONTACT PERSON

Jennifer Lovvorn, Secretary to the Civic Arts Commission, (510) 981-7533

Attachments:

1. Civic Arts Commission, Affordable Housing for Artists in Berkeley, December 2021.
2. Berkeley City Council, Referral: Affordable Housing for Artists Inclusion in Housing Element, January 25, 2022.
3. Artist Certification Process (Approved), Berkeley Civic Arts Commission, May 24, 2022.

# **affordable housing for artists in Berkeley** **a baseline survey**

Anh Thang Dao-Shah, ph.d.& Asif Majid, ph.d  
creative equity research partners  
December 2021



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## executive summary

This project aims to respond to concerns around housing and art space affordability among artists and arts organizations in Berkeley by answering two key questions:

- 1) What are the trends around local affordability issues that can be addressed through targeted resources and policy solutions?
- 2) What pre-existing housing disparities impact what artists seek in possible affordable housing solutions?

As in other parts of the Bay Area, narratives of concern around affordability in the arts ecosystem in the past decade are often anecdotal. The sector lacks comprehensive data that could inform system change solutions. To that end, this report is based on a survey and focus groups with a diverse group of artists and cultural workers in Berkeley to provide systematic data around the unique housing and space needs of artists. It seeks to better position Berkeley's arts community to participate in the City's current affordable housing efforts and help improve the safety of local arts spaces, without causing further artist displacement.

### *key findings*

#### **Artists are highly educated, yet have low income**

Berkeley's artists and artists/cultural workers who responded to the survey are highly educated (88% have a Bachelor's degree or higher). Yet, 60% of that same group has lower, very low, or extremely low income.

#### **Artists and cultural workers have multiple forms of employment**

Only 32% of all respondents reported that they are employed full time. Others indicated that they cobble together different types of part-time and short-term contract work, as well as self-employment, in order to make ends meet.

#### **Artists are rent burdened**

Artists and artists/cultural workers disproportionately rent their living space (71%). Of those who rent, 77% are rent burdened or severely rent burdened, based on the California's Department of Housing and Community Development definitions.

#### **Artists have a unique need for flexible live/work spaces**

Responding artists and artists/cultural workers indicated, at a rate of 82%, that they do their creative work in their living space. Of those respondents, over half (56%) practice artistic disciplines that require extra ventilation.

### *recommendations*

- **create policies that prioritize artists for new affordable housing**
- **designate some of Berkeley's upcoming affordable housing funding from measure O for units specific to artists**
- **consult artists when designing new policies for live/work spaces**
- **develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline**
- **pilot a guaranteed basic income program for qualifying artists**

## introduction

### *why this project?*

This project was initially conceptualized in 2019 in response to concerns around housing and art space affordability among artists and arts organizations in Berkeley. It was motivated by two events.

First, the [2018 Arts and Culture Plan Update for the City of Berkeley](#) identified -- as a primary goal -- the need to increase access to affordable housing and spaces for artists, cultural workers, and arts organizations. The cultural plan specified a number of action steps towards this goal, including undertaking a data-informed assessment of current art space affordability challenges and displacement risks in Berkeley, as well as the development of strategies to protect and create affordable spaces for Berkeley artists, cultural workers, and arts organizations based on the assessment's findings.

Second, in November 2018, the voters of Berkeley approved two bond measures totaling \$135 million to fund affordable housing in Berkeley. Berkeley City Council subsequently began the development of an affordable housing framework ([Housing for a Diverse, Equitable and Creative Berkeley](#)) to guide Berkeley's affordable housing policies, programs, and projects through 2030. This framework explored wide array of affordable housing for artists and other creative workers. In July 2019, the Council referred this policy document to various Commissions for further development. However, the pandemic caused this work to be temporarily put on hold.

As elsewhere in the Bay Area, concerns around the arts ecosystem's affordability over the past decade are mostly anecdotal, arising when a major artist or arts organization imminently faces the loss of their living and work space. These stories, while important, inadequately inform systems change solutions aimed at addressing structural concerns.

To that end, this project's goal is to develop an assessment that provides systematic data around the unique housing and space needs of artists and cultural workers. This will better position the arts community to participate in Berkeley's ongoing affordable housing efforts and help improve art space safety in Berkeley without causing further displacement of artists. Two key questions guided this project from the beginning:

- 1) What are the trends around local affordability issues that can be addressed through targeted resources and policy solutions?**
- 2) What pre-existing disparities could impact possible affordable housing solutions for artists?**

This second question is key to ensure the solutions we suggest do not unintentionally impact some groups more than others.

In April 2020, the COVID-19 pandemic brought a pause to the assessment project and

raised new affordability questions, as the arts community dealt with the consequences of regular lockdowns. While some local, state, and federal measures -- such as the eviction moratorium and extension of unemployment benefits to independent contractors -- helped prevent widespread displacement during the pandemic's height, the new normal brought new concerns as artists and cultural organizations continue to struggle with canceled events, lower venue capacity, and overall uncertainty.

These questions brought new urgency to the project, as well as the need to methodologically pivot and narrow the project's focus. Instead of focusing on both housing needs of artists and space needs of arts organizations as originally envisioned, this project focused on understanding the affordable housing and workspace needs of individual artists and cultural workers to ensure timely recommendations that would allow for participation in ongoing affordable housing efforts. This shift also allowed for the inclusion of additional questions that sought to understand both the short-term impact of the pandemic and the ongoing challenges that would inform long-term strategies to address affordability issues in Berkeley.

### ***methodology and data limitations***

In order to collect data directly from artists and cultural workers during the ongoing pandemic, an online survey was issued in September 2021 through the Berkeley Civic Arts Program. The survey was open for four weeks and was accompanied by a robust outreach strategy, including outreach and reminder emails through the Civic Arts Program's and City of Berkeley's mailing lists and social media channels, the direct networks of a number of arts organizations represented by members of an ad-hoc advisory group, and posting on other community-serving digital platforms like Nextdoor. A list of all survey questions is found in Appendix B.

In addition to quantitative data, this project relies on the insights of artists, cultural leaders, and the City's affordable housing experts to provide context to the affordability crisis and housing needs. Research staff conducted three focus group meetings with 21 community stakeholders, who formed an ad-hoc community advisory group.

Members of the advisory group were selected to provide different perspectives on the historic and current landscape of arts and culture in Berkeley with a specific focus on housing needs for artists and cultural workers. With research staff, the advisory group helped design survey questions, reviewed preliminary findings, and brainstormed potential solutions. A list of the advisory group participants is provided in Appendix A.

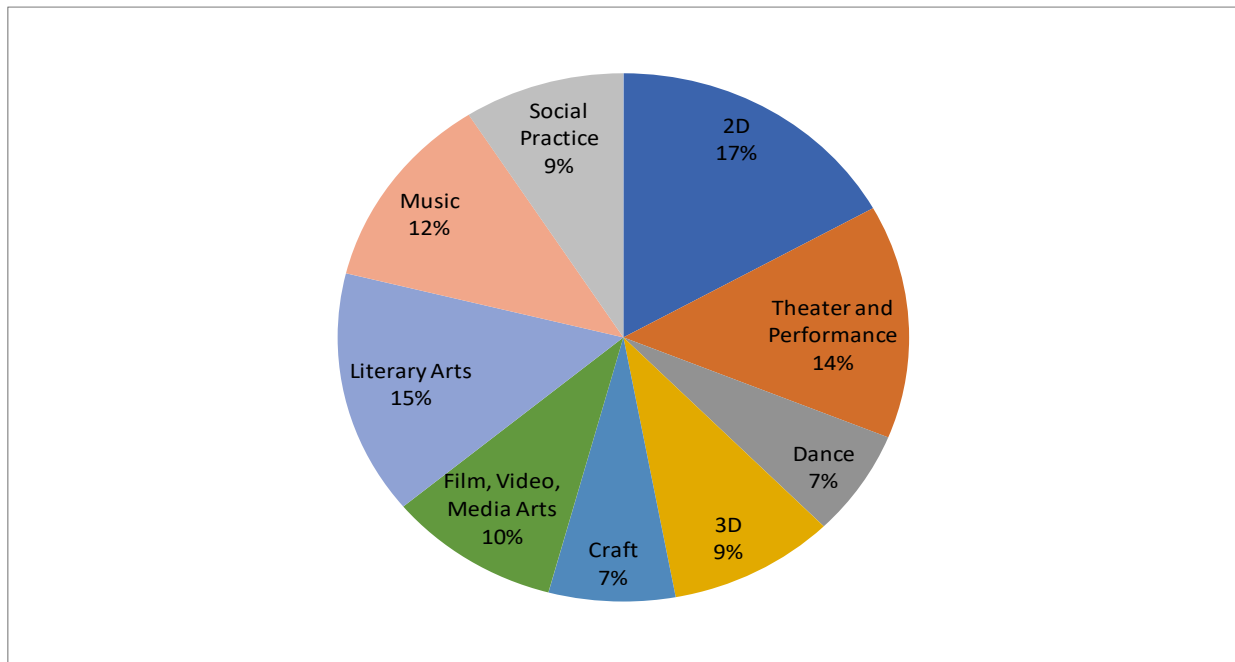
Any survey of artists must contend with the fact that there is no baseline dataset regarding the number of artists in a given community, due to the various ways artists can be defined. The most common way to define a professional group is to use IRS data that classifies someone's profession based on the income they earn from their main profession. Artists' main sources of income, however, often do not come from artwork; income sources are diverse and cross-sectoral. The same can be said for cultural workers. Plus, an artist's level of engagement with an art practice is not limited to paid opportunities. Income is thus an inadequate defining criterion. Through this survey's

grassroots and community-centered approach, this project provides a snapshot of the needs of the arts and culture sector and should be understood as baseline data that should be supplemented with ongoing and long-term data collection and analysis.

## survey results

### who responded?

A total of 163 artists and cultural workers responded to the survey. This constitutes 0.14% of Berkeley's population, based on data from the 2020 census. For comparison, in a similar study in 2015 in San Francisco, which involved a six-week survey and multiple in-person outreach events, 560 artists and cultural workers responded to the survey. That constituted 0.07% of San Francisco's population, based on 2010 census data. In other words, the Berkeley survey had double the response rate.



Of the Berkeley survey respondents, **48% identified as artists, 15% identified as cultural workers, and 37% identified as both artists and cultural workers.** In total, 32% of respondents do not currently reside in Berkeley, while 39% have lived in Berkeley for more than 10 years.

**31%** of respondents identified as LGBTQIA+

**62%** of respondents identified as female

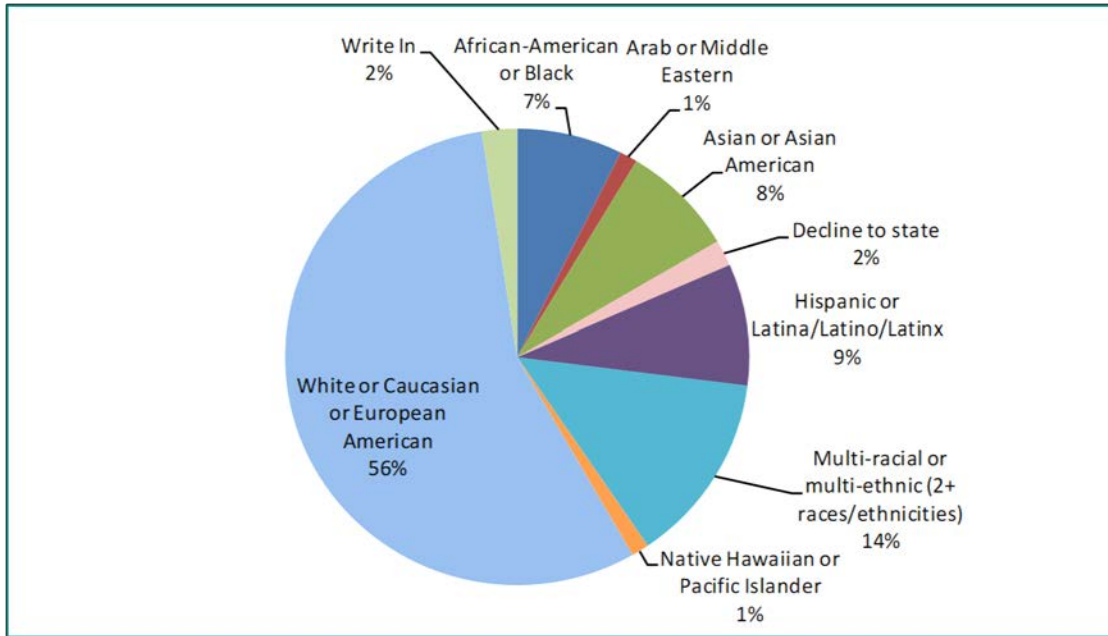


Figure 2: Race and ethnicity of survey respondents

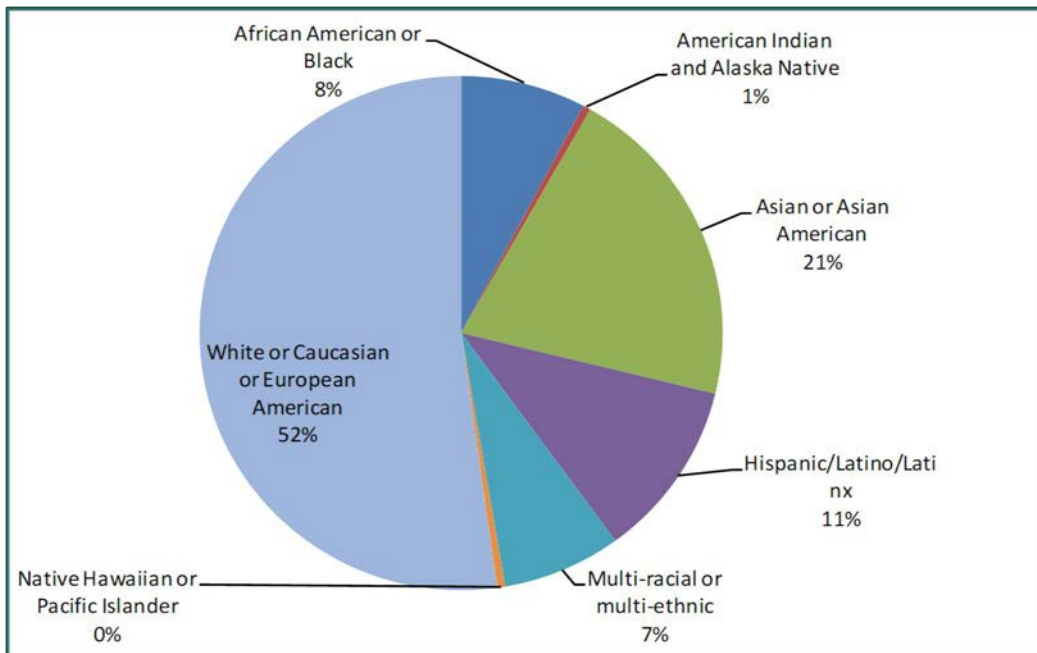


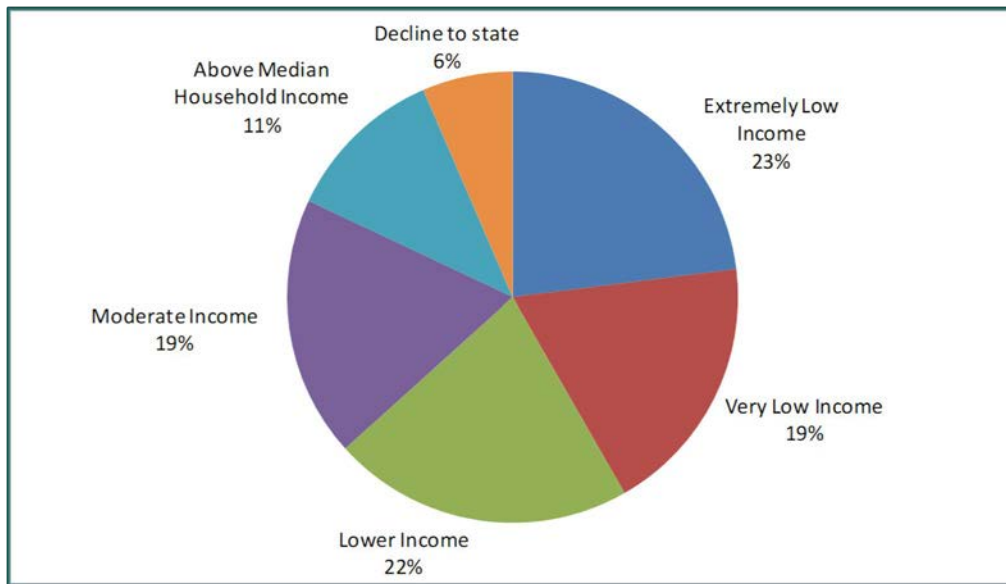
Figure 3: Race and ethnicity of City of Berkeley residents

## key findings

### *Artist respondents are highly educated, yet have low income*

Of those respondents who identified as artists or as both artists and cultural workers, 88% reported having a Bachelor’s degree or higher. Of that same group, 60% reported an annual household income of \$69,000 or less. According to the [California Department of Housing and Community Development, in Alameda County for a single individual in 2019](#) (when this project and survey were first developed), annual household income of \$26,050 or below constitutes extremely low income, between \$26,051-\$43,400 is defined as very low income, and between \$43,401-\$69,000 is defined as lower income. Per these categories, 60% of those who identified as artists or both artists and cultural workers have lower, very low, or extremely low income. [In 2021, the upper threshold for the lower income category has risen to \\$76,750](#), meaning that artists are now even further behind financially than they were two years ago.

While low income is prevalent across the group, this rate is significantly higher among BIPOC respondents. Of respondents who identified as non-White, 72%, reported having lower, very low, or extremely low income, compared to 55% among those who identified as White or Caucasian. Due to the small number of participants, we are unable to make comparison between different groups who identify as non-White.



**Figure 4a: Income categories for all artist respondents**

| <i>Income Category</i> | <i>Income Range</i> | <i>Percentage of Artist Respondents</i> |
|------------------------|---------------------|-----------------------------------------|
| Extremely Low          | ≤ \$26,050          | 21%                                     |
| Very Low               | \$26,051-\$43,400   | 16%                                     |
| Low                    | \$43,401-\$69,000   | 23%                                     |



|                  |                   |     |
|------------------|-------------------|-----|
| Median           | \$69,001-\$78,200 | 17% |
| Moderate         | \$78,201-\$93,850 | 18% |
| Decline to State | n/a               | 5%  |

Figure 4b: Income ranges for artist respondents

### ***Artists and cultural workers have multiple forms of employment***

Only 32% of all respondents reported that they are employed full-time. Others indicate that they engage in a patchwork of different types of part-time and short-term contract work, as well as self-employment, in order to make ends meet. Examples of employment that respondents are undertaking include: being a self-employed artist for one’s own or another’s art practice, being employed part time/doing regular work for pay as either a cultural worker or otherwise, doing contract work as a cultural worker or something other than a cultural worker, and undertaking unreported work for cash.

### ***Artist respondents report being rent burdened, but are not immediately concerned with losing their housing***

Among respondents who identify as artists and as both artists and cultural workers, 71% of respondents rent. Of those who rent, 77% are rent burdened or severely rent burdened. According to the [US Department of Housing and Urban Development](#), a household or individual that spends more than 30% of their monthly household income on rent is rent burdened. Severely rent burdened households or individuals spend more than 50% of their monthly household income on rent.

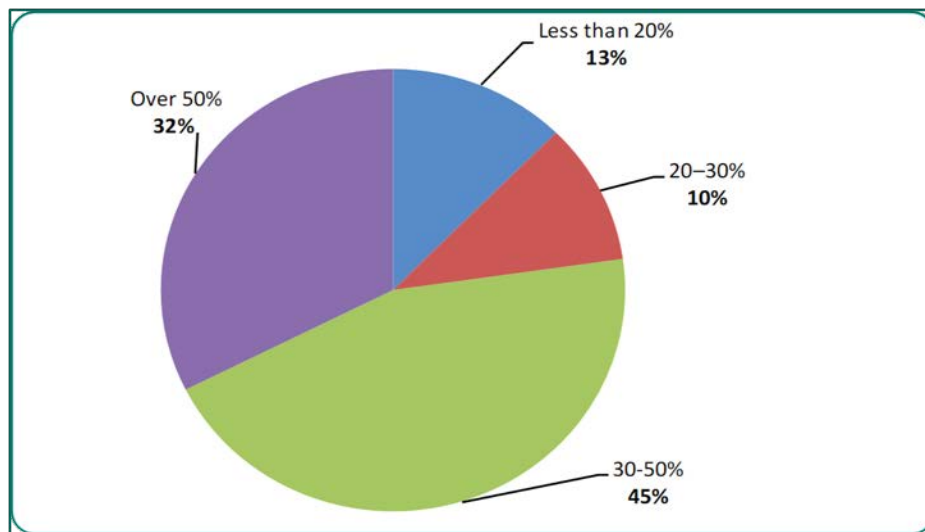


Figure 5: Respondents’ percentage of monthly household income spent on rent

While studies have shown that rent burden and extremely low income decrease the health and overall wellbeing of all those impacted, for artists this burden can

fundamentally change the way they engage with their artistic practice. Qualitative comments provided by the respondents highlighted having to scale back on their practice in order to earn the income they need to pay rent. This means they are unable to focus on developing their creative practice. As one respondent, a musician, explained:

The cost of living in the Bay Area fundamentally changes how I am able to grow in my craft. Since we are all hustling to pay rent at this level, rehearsals must be paid, limited and without a "post gig hang" - something I find central to collaborating with others. This limits how much performing I can do with others, which limits how much I can grow, experiment and contribute in my craft.

Over the long term, the lack of opportunities for artists to devote time and energy to their practice can lead to the abandonment of artistic practice altogether.

Despite respondents' high rent burden and low income, those identifying as artists and as artists/cultural workers do not indicate concerns around losing their housing in the near future.

Only 9% of respondents reported that they were evicted due to no-fault causes in the last 2 years. No-fault eviction is defined as evictions that take place when leases are not renewed without the tenant having violated any regulations as long as a notice to move out is sent to the tenant within the required time period. Landlords might choose to evict tenants who are paying rent on time and complying with regulations due to owner move in or the need to retrofit a building. In the last decade, as the affordability crisis has intensified throughout the Bay Area, no-fault eviction has often been used to let go of long-term tenants who are protected from rent increases to bring in new tenants who are charged at market rate. In the survey issued to San Francisco artists, about 30% of respondents reported that their leases were not going to be renewed due to no fault of their own.

Only 6% of respondents had to rely on the eviction moratorium during the pandemic. In total, only 9% of respondents are uncertain or very uncertain that they will be able to retain housing after the moratorium ends (20% were neither certain nor uncertain). Though seemingly at odds with other findings, this sentiment could be attributed to three factors.

First, Berkeley has strong renter protection policies. Qualitative survey responses show that many respondents who rent are aware of and rely on rent control, which helps keep their rent affordable. This is especially true with respondents who have resided in Berkeley for more than five years. Not concerned with immediate loss of housing does not mean that existing housing needs are met, however. As one respondent explained:

The only reason I am able to remain in the Bay Area is because I have been in the same unit for a decade and we have rent control - the other apartments in my building go for over twice what we're paying. [...] If I ever wanted to leave this apartment (and I do), I would have to leave the area entirely, because I can't afford anything else.

The gap between existing housing and respondents' needs is especially acute for those working in artistic disciplines that have specific space requirements like extra ventilation.

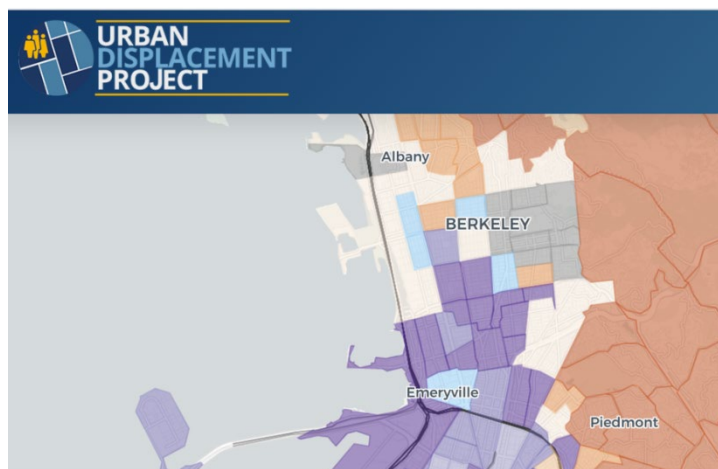
Second, the fact that the majority of respondents engage in multiple forms of employment means that they have multiple sources of income beyond their artistic practices to rely on for rental needs. However, as discussed above, in the long-term, the high burden of rent and reliance on other means of employment to make ends meet will impact artists' abilities to sustain their art. As one artist wrote:

*My housing is over 2/3 of my income, leaving little to nothing for anything over basic living expenses.*

Lastly, the timing of the survey suggests that those who are currently still residing in Berkeley are the ones who managed to weather the wave of displacement that took place in the last decade through the two factors described above and we have not captured the concerns of those who already had to leave as displacement was taking place. According to the [Urban Displacement Project](#), by 2018, almost all of Berkeley, except the immediate area surrounding University of California, Berkeley was experiencing ongoing and advanced gentrification, with a few areas already becoming exclusive and three areas in North Berkeley marked as low income and susceptible to displacement. South Berkeley area between Ashby Avenue and Emeryville border was in an advance gentrification stage with displacement having taken place between 2000 and 2018.

For comparison, the study in San Francisco took place in 2015, in the middle of the biggest wave of gentrification in the broader Bay Area. In that study, more than 1/3 of respondents expressed immediate concerns about loss of housing due to rent increase, end of lease term or fear of no-fault eviction.

Notably, South Berkeley also had high percentage of BIPOC population (between 50% and 70%). This data confirms that, like in the rest of the Bay Area, BIPOC communities are more susceptible to early displacement and the survey respondents' demographic reflects these changes in the population.



## ***Artists have a unique need for flexible, live/work space***

Of responding artists and artists/cultural workers, 82% reported that they make their art where they live, with 56% of this group requiring extra ventilation for their art.

This finding reflects the way that affordability challenges can fundamentally change an artist's practice. For artists needing extra ventilation, this could mean a choice between maintaining their own health and practicing their art, particularly if there is no adequate separation between where artists sleep, cook, and eat and where artworks are being stored, produced, or left to dry. The need for flexible and affordable live/work space has pushed artists to make choices to live in dangerous conditions that can have fatal consequences. As one artist respondent explained:

It's really hard to find space to train that is affordable. I need at least 20' ceilings, ideally 30'. There were many affordable live/work warehouse conversions with this kind of ceiling height pre-Ghostship but many of these affordable spaces were affordable due to slumlord and very DIY situations, which often meant common housing needs like sealed roofs, consistent mail/package delivery, heating, bedroom windows/egress, were not guaranteed. The tragedy at Ghostship has led cities around the Bay Area to tighten up their policies around DIY spaces to prevent similar situations. However, without intentional creation of spaces that meet the needs of practicing artists, such policies do not solve the root cause problem that have caused artists to seek out those spaces in the first place.

## recommendations

### ***Create policies that prioritize artists for new affordable housing***

Artists are an important part of the fabric of Berkeley as a city. As such, they should be part of ongoing conversations about Berkeley's housing plan. The survey results demonstrate that artists -- as a group -- have low income, a high rent burden, and have traditionally been left out of ongoing affordable housing. In order to mitigate further displacement and allow artists to continue to work and thrive in Berkeley, the City could consider creating a priority category for artists who meet income qualification to access affordable housing. Such a priority category would require working with the arts community to create an inclusive definition of what it means to be an artist. It should also take into consideration and center artists from Black, Indigenous, and People of Color (BIPOC) communities, as well as LGBTQ+ communities who have already been displaced. In doing so, artists will have an opportunity to return to Berkeley and enrich the city's social and artistic fabric.

### ***Designate some of Berkeley's upcoming affordable housing funding from measure o for units specific to artists***

On July 24, 2019, Berkeley's Civic Arts Commission approved an amendment recommendation for Measure O that called for "significantly increas[ing] the supply of affordable housing and live/work housing for artists, artisans, and cultural workers" through adding to the zoning ordinance, incentivizing developers to build market-rate housing that includes affordable live/work units for creative workers, and incorporate live/work spaces for artists and cultural workers into large-scale affordable housing projects. Other proposals included the development of a community land trust and transforming underused retail spaces and City-owned buildings into artist live/work spaces. These recommendations should be revisited and implemented, as they align with the range of qualitative responses that came through the survey. Respondents also suggesting the development of: 1) co-ops; 2) a separate affordable housing lottery specifically for those artists and cultural workers from BIPOC and other underserved communities; and 3) relationships between the City and land trusts to purchase buildings that serve as artist housing. These suggestions point to the importance of re-evaluating how zoning and other policies further disenfranchise artists and cultural workers.

### ***Consult artists when designing new policies for live/work spaces***

Across the Bay Area, responses to the Ghostship fire emphasized increased attention to artist DIY live/work spaces. These spaces were often the only options for artists to access live/work spaces that met their needs. Yet, artists have always worked to transform neighborhoods through their work and creative use of space. As Berkeley works to address affordability issues for all of its residents, consulting and involving

artists in the planning process can help bring about a much-needed, new, and fresh perspective on issues such as rezoning, repurposing ground floor spaces, and requiring community benefit proposals for new development.

### ***Develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline***

Due to the nature of their work, artists often have a unique income structure that makes applying for affordable housing more difficult. In addition, the survey shows that artists have needs for certain types of spaces that might be difficult to identify. Funding technical assistance to support artists to translate their needs and apply for the existing affordable housing pipeline could be an important step in helping artists leave inadequate living situations. The advisory group also recommended creating a one-stop shop that features affordable housing for artists (perhaps akin to a specialized version of [San Francisco's DAHLIA housing portal](#)), which would create a platform where artists could share information about available housing and get connected to resources like financial technical assistance. A space geared towards artists' housing needs might be especially beneficial for artists who are looking for affinity housing along the lines of race and sexual identity, which allows them to stay more connected with their own communities.

### ***Pilot a guaranteed basic income program for qualifying artists***

Acknowledging the disproportionate impact of the pandemic on a community that was already struggling due to ongoing affordability challenges, multiple cities such as [San Francisco](#) and [Minneapolis](#) have launched pilot programs providing artists from marginalized communities who meet income requirements with a monthly stipend that would help cover their basic needs. Stipends are unrestricted, so they can be spent on rent and food while artists continue their artistic practice. Due to the existing racial wealth gap, which was reflected in the survey results, such a pilot should prioritize BIPOC artists. These types of programs are gaining national attention because the arts and culture are often cited as key strategies for economic recovery. Practicing artists are essential for such recovery. The advisory group agreed that a basic income program would address two key findings in this report -- respondents' extremely low income and high rent burden -- both of which have already forced artists to significantly modify or abandon their art practices.



## **further research**

While the survey and focus groups discussed in this report have provided a much-needed snapshot into the space needs of artists in Berkeley, limited data does not allow us to paint a comprehensive picture. The following research and data collection is recommended, in order to complement this report.

### ***Work with arts organizations to understand the income levels and housing needs of cultural workers***

Only 15% of the respondents to the survey identified exclusively as cultural workers, meaning that there was not a statistically significant sample from which to draw conclusions about the needs of cultural workers. Further research, specifically on the housing needs and income levels of cultural workers, is needed.

### ***Conduct a disparity study***

Currently, Berkeley does not have comprehensive race and ethnicity data for seekers of affordable housing. Therefore, it is impossible to determine whether or not the artists who responded to this survey are demographically representative of the population that qualifies for affordable housing. A disparity study will ensure that changes in policy will not disproportionately impact certain groups.

### ***Continue to collect data on artists***

The lack of baseline data on artists -- even as simple as the total number of artists and disciplines practiced in a given community -- prevents us from understanding the extent of the issues that artists face. More long-term data collection and analysis of artists in Berkeley will allow the city to identify trends, as well as possible challenges that can be mitigated by timely policy changes.

## appendices

### *a: community advisory group members*

Kim Anno, Berkeley Civic Arts Commission  
Delores Nochi Cooper, Berkeley Juneteenth Festival  
Bruce Coughran, Indra's Net Theater  
Hadley Dynak, Berkeley Cultural Trust  
Misty Garrett, City of Berkeley  
Ashlee George, Capoeira Arts Foundation and BrasArte  
Mayumi Hamanaka, Kala Art Institute  
Archana Horsting, Kala Art Institute  
Mildred Howard, Independent Artist  
Beatriz Leyva-Cutler, BAHIA  
Amanda Montez, City of Berkeley  
Mirah Moriarty & Rodrigo Esteva, Dance Monks  
PC Muñoz, Freight & Salvage and BCT E&I Committee  
Natalia Neira, La Pena Cultural Center and BCT E&I Committee  
Daniel Nevers, Berkeley Art Center  
Nancy Ng, Luna Dance Institute  
Kathryn Reasoner, Vital Arts  
Leigh Rondon, Shotgun Theater  
Irene Sazer, Independent Artist (Civic Arts Grantee)  
Sean Vaughn Scott, Black Repertory Group Theater  
Rebecca Selin, Gamelan Sekar Jaya  
Terry Taplin, Berkeley City Council and former Berkeley Civic Arts Commissioner  
Rory Terrell, Local Artists Berkeley  
Tyese Wortham, CAST  
Chingchi Yu, Independent Artist (Civic Arts Grantee)



## ***b: survey questions***

### **Messaging**

Are you an artist or cultural worker struggling to find affordable housing for you and your family?

Artists and cultural workers in Berkeley and throughout the Bay Area are facing an affordability crisis that prevents them from focusing on their creative work. Through the recently completed cultural planning process, the City of Berkeley identified as a primary goal the need to protect and increase access to affordable housing for artists and cultural workers.

Currently, there is little to no data on the affordable housing concerns of Berkeley artists and cultural workers. Your responses to this survey will help the City of Berkeley create programs and policies tailored to the housing needs that are specific to Berkeley's arts sector, including affordable housing and live-work spaces.

Thank you for helping keep Berkeley affordable for artists and cultural workers.

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### **Survey Questions**

1. Are you an artist or cultural worker?
  - a. Artist [proceed to question 2]
  - b. Cultural Worker (staff member at an arts culture organization) [Proceed to Question 4]
  - c. Both
  
2. If you are an artist, how would you describe your artistic practice/artwork?  
Select all that apply:
  - a. 2D (Painting, Printmaking, Drawing, Photography, etc.)
  - b. 3D (Sculpture, Installation)
  - c. Theater/Performance
  - d. Dance
  - e. Craft
  - f. Film, Video, and/or Media Arts
  - g. Literary (Creative Writing, Poetry, etc.)
  - h. Music
  - i. Social Practice
  - j. Write in\_\_\_\_\_
  
3. Do you work with a medium that requires extra space and/or ventilation? This may include metal welding, spray paint, etc.
  - a. Yes
  - b. No

4. If you are a cultural worker, do you work at a Berkeley-based arts and culture nonprofit organization?
  - a. Yes
  - b. No
  
5. What is your primary language?
  - a. English
  - b. Spanish
  - c. Chinese (Mandarin and Cantonese)
  - d. Tagalog
  - e. Vietnamese
  - f. Persian
  - g. Portuguese
  - h. Punjabi
  - i. Swahili
  - j. Write In: \_\_\_\_\_
  - k. Decline to State
  
6. What is your race/ethnicity?
  - a. African-American or Black
  - b. American Indian or Alaska Native or Indigenous or First Nations
  - c. Arab or Middle Eastern
  - d. Asian or Asian American
  - e. Hispanic or Latina/Latino/Latinx
  - f. Native Hawaiian or Pacific Islander
  - g. White or Caucasian or European American
  - h. Multi-racial or multi- ethnic (2+ races/ethnicities)
  - i. Write In \_\_\_\_\_
  - j. Decline to State
  
7. What best describes your gender identity?
  - a. Female (cisgender)
  - b. Female (transgender)
  - c. Male (cisgender)
  - d. Male (transgender)
  - e. Gender-fluid/Genderqueer/Gender-expansive/Non-binary
  - f. Write In \_\_\_\_\_
  - g. Decline to State
  
8. How do you describe your sexual orientation or sexual identity?
  - a. LGBTQ+
  - b. Heterosexual/straight
  - c. Write in \_\_\_\_\_
  - d. Decline to State
  
9. Do you identify as a person with a disability?

- a. Yes
  - b. No
10. Please select the highest degree or level of school you have COMPLETED. If currently enrolled, mark the previous grade or highest degree already received.
- a. Less than high school
  - b. High school diploma/GED
  - c. Associate's degree
  - d. Bachelor's degree
  - e. Master's degree
  - f. Doctorate degree
11. How many people live in your household, including yourself?
- a. One [Proceed to Question 14]
  - b. Two
  - c. Three
  - d. Four
  - e. Five
  - f. More than five: Write In \_\_\_\_\_
12. Do you have any children under the age of 18?
- a. Yes
  - b. No [Proceed to Question 14]
13. If yes, how many children currently live with you?
- a. One
  - b. Two
  - c. Three
  - d. More than three
  - e. Write in: \_\_\_\_\_
14. What is your total household income?
- a. Less than \$26,050
  - b. \$26,051-\$43,400
  - c. \$43,401-\$69,000
  - d. \$69,001-\$98,549
  - e. More than \$98,550
  - f. Decline to state
15. If you are an artist, do you make 50% or more of your income from your artistic practice?
- a. Yes
  - b. No
  - c. I don't know
  - d. I am not an artist

16. What is your current employment status? Check all that apply:
  - a. Self employed artist for your own art practice
  - b. Self-employed, but not for your own art practice
  - c. Employed full time as a cultural worker
  - d. Employed full time as something other than a cultural worker
  - e. Employed part time/doing regular work for pay as a cultural worker
  - f. Employed part time/doing regular work for pay as something other than a cultural worker
  - g. Contract work as a cultural worker (for example: I receive a 1099 from a nonprofit arts organization organization)
  - h. Contract work as something other than a cultural worker (for example: I receive a 1099 from a separate non-arts organization or business)
  - i. Unreported work for cash
  - j. Not employed
  
17. How easy is it to predict your total income from month to month?
  - a. Very easy
  - b. Moderately easy
  - c. Neither easy nor difficult
  - d. Moderately difficult
  - e. Very difficult
  
18. How certain are you that your total income will return to pre-pandemic levels, over the next 6 months?
  - a. Very certain
  - b. Moderately certain
  - c. Neither certain or uncertain
  - d. Moderately uncertain
  - e. Very uncertain
  
19. What percentage of your average monthly income do you spend on housing costs?
  - a. Less than 20%
  - b. 20%-30%
  - c. 30%-40%
  - d. 40%-50%
  - e. More than 50%
  - f. I don't know
  
20. What is the zip code where you work?
  
21. What is the zip code where you live?
  
22. How long have you lived in Berkeley?
  - a. I do not live in Berkeley
  - b. Less than a year

- c. 1 - 3 years
  - d. 3 - 5 years
  - e. 5 - 10 years
  - f. More than 10 years
  - g. How long? \_\_\_\_\_
23. How long do you expect to remain in Berkeley?
- a. I do not live in Berkeley
  - b. Less than a year
  - c. 1 - 3 years
  - d. 3 - 5 years
  - e. 5 - 10 years
  - f. More than 10 years
  - g. How long? \_\_\_\_\_
24. Do you own or lease your living space?
- a. Lease [proceed to question 25]
  - b. Own [proceed to question 28]
25. What is your lease term?
- a. Month to month
  - b. 1 year
  - c. 2-3 years
  - d. More than 3 years
26. How many square feet is your space?
27. How much do you pay in rent per month?
28. Have you been displaced due to a “no-fault” or “no-cause” eviction in the past 2 years? (A “no-fault” or “no-cause” eviction is an eviction that is no fault of the tenant, but is allowed under the law.)
- a. Yes
  - b. No
  - c. I don't know
29. If you were displaced, did you have to move away from Berkeley?
- a. Yes
  - b. No
30. If you were not displaced, did you have to rely on the eviction moratorium that Berkeley has implemented over the past 12 months?
- a. Yes
  - b. No
  - c. I didn't know that evictions had been halted over the past 12 months.

31. How certain are you that you will be able to retain your housing when the eviction moratorium ends?
- Very certain
  - Moderately certain
  - Neither certain or uncertain
  - Moderately uncertain
  - Very uncertain
32. Do you use your living space for housing and your creative practice?
- Yes [proceed to question 37]
  - No [proceed to question 32]
33. If you have a work space that is separate from your living space, do you own or lease your work space?
- Lease [proceed to question 34]
  - Own [proceed to question 36]
34. What is the lease term for your work space?
- Month to month
  - 1 year
  - 2-3 years
  - More than 3 years
35. How much do you pay in rent per month for your work space?  
Write in \_\_\_\_\_
36. How many square feet is your work space?  
Write In \_\_\_\_\_
37. Have you been displaced from your work space due to a “no-fault” or “no-cause” eviction in the past 2 years? (A “no-fault” or “no-cause” eviction is an eviction that is no fault of the tenant, but is allowed under the law.)
- Yes
  - No
  - I don't know
38. If you were displaced, did you have to move your work space away from Berkeley?
- Yes
  - No
39. Do you share your work space?
- Yes
  - No

40. What are some challenges you've faced in the past when trying to access or find affordable housing?

41. Please share any ideas you have on how to ensure equitable participation of BIPOC artists and cultural producers from other historically underserved communities, as well as recommendations for local organizations that should be consulted.

42. Do you have anything else to share with us?

-----END OF SURVEY-----



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CONSENT CALENDAR  
January 25, 2022

To: Honorable Members of the City Council  
From: Councilmember Hahn (Author), Councilmember Taplin (Co-Sponsor),  
Councilmember Harrison (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)  
Subject: Referring the Civic Arts Commission’s *affordable housing for artists in Berkeley* Report and other Artist Live, Work and Live-Work opportunities to the Housing Element Update

RECOMMENDATION

1. Refer the Civic Arts Commission’s report entitled *affordable housing for artists in berkeley* to the City Manager, Planning Commission, and Housing Advisory Commission to review, consider, and incorporate recommendations, to the greatest extent possible, into the Housing Element update and related planning and zoning processes.
2. Refer to the City Manager, Planning Commission, and Housing Advisory Commission consideration of the feasibility and impacts of allowing ground floor affordable live, work, and live-work space for artists in certain commercial, manufacturing, and mixed-use buildings/areas, both new-build and existing, and exploration of other opportunities for living, work and live-work space for artists.

SUMMARY/CURRENT SITUATION:

Affordable living and work-space for artists is a pressing issue for our community, with artists increasingly priced out and unable to live and work in Berkeley. Affordable housing for artists has been identified in numerous planning documents as a key need. Most recently, the Civic Arts Commission generated a report entitled *affordable housing for artists in berkeley* that reported data about the unique housing and space needs of artists, based on a survey and focus groups with diverse artists and cultural workers. (See Attachment 1: *affordable housing for artists in berkeley*). The report was presented at the [December 8, 2021 Civic Arts Commission meeting](#), and generated important discussion around housing and work-space affordability for artists.



Berkeley is currently engaged in an in-depth process to update the City's Housing Element. The results of the update will shape the development of housing in Berkeley for much of the next decade. A key component of the Housing Element is to identify sites that can accommodate future housing needs across income levels and other demographic factors. The Housing Element also involves the development of a variety of approaches to meet community housing and affordability needs such as zoning updates and new affordable housing requirements and programs.

With the [Housing Element update process already in progress](#), it is important for the recently completed *affordable housing for artists in berkeley* report to be referred and the report's findings and recommendations to be incorporated into the Housing Element Update, as feasible.

In addition to the findings and recommendations of the *affordable housing for artists* report, an informal group of artists has been discussing the possibility of allowing ground-floor commercial space to be substituted for affordable artist work- or live-work space in new-buildings, or in existing buildings via conversions in some locations or building types. Because there are many elements to consider, including impacts to the retail environment, feasibility and costs, quality of work- and living-space for artists, relationship to affordable housing and community benefit requirements in new-build, locations and buildings types where artist ground floor live-, work- and live-work space may be feasible, and more, this idea is referred more generally to the City Manager, Planning Commission, and Housing Advisory Commission (HAC).

Exploration of other potential means to create, convert and/or reserve affordable living, work, and live-work space for artists is also referred, allowing the City Manager, Planning Commission, and HAC to broaden their analysis and consultation to consider all opportunities to create affordable living and work-spaces for artists.

To the extent feasible opportunities for affordable artist living and live-work space may be identified from the *affordable housing for artists in berkeley* report or through additional exploration, concepts should be incorporated into the Housing Element Update.

#### BACKGROUND:

The City's 2018-2027 Arts and Culture Plan Update identifies affordable artist housing as the first of five strategic goals:

### **Goal 1 Increase Access to Affordable Housing and Affordable Spaces for Artists and Arts Organizations**

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.

The Plan Update also includes the following introductory remarks:

“Berkeley is home to a vibrant and diverse community that strongly values its rich cultural fabric. Characterized by its collective nature, the city is famous for its distinguished university, beautiful natural setting, and its remarkable history as a home for progressive movements. Arts and culture permeate civic life in Berkeley through numerous acclaimed theaters, performing arts spaces, as well as the city’s many artists. Over 150 arts and culture nonprofits operate in Berkeley and together they contribute to a dynamic, continually evolving arts and culture community that interacts closely with other sectors of the city’s economy. The nonprofits that make up the arts community are particularly diverse in terms of their size and their creative disciplines.

Along with the cultural richness the arts infuse into the community, the arts sector is also a significant economic driver, generating an estimated \$165 million in total economic activity. In 2017, Berkeley Mayor Jesse Arreguin stated that “in addition to fostering civic pride, a flourishing arts scene [brings] new visitors to our city and more revenue to local businesses.” Currently, as the San Francisco Bay Area is experiencing substantial economic growth, rising real estate and living costs have created an especially challenging environment for the arts community in Berkeley. Some artists and arts organizations are leaving the city because they can no longer afford to live and work here.”

Most recently, the Civic Arts Commission generated a report entitled *affordable housing for artists in berkeley* that reported data about the unique housing and space needs of artists, based on a survey and focus groups with diverse artists and cultural workers. (See Attachment 1: *affordable housing for artists in berkeley*). The report was presented at the [December 8, 2021 Civic Arts Commission meeting](#), and generated important discussion around housing and work-space affordability for artists.

Discussions of affordability in the arts ecosystem are often anecdotal, with few studies to provide comprehensive data to inform potential solutions. To provide more comprehensive information, the Civic Arts Commission requested and received a report with findings based on a survey and focus groups. The study consulted a diverse group of Berkeley artists and cultural workers and provides systematic data around the unique housing and space needs of artists. The report explicitly seeks to position Berkeley’s arts community for inclusion in

the City's affordable housing efforts and to help improve the safety of local arts spaces while avoiding further displacement.

The study was initially conceptualized in 2019 in response to concerns around housing and art space affordability among artists and arts organizations in Berkeley, and was motivated by two events.

First, the 2018 Arts and Culture Plan Update for the City of Berkeley identified -- as a primary goal -- the need to increase access to affordable housing and spaces for artists, cultural workers, and arts organizations. The cultural plan specified a number of action steps towards this goal, including undertaking a data-informed assessment of current art space affordability challenges and displacement risks in Berkeley, as well as the development of strategies to protect and create affordable spaces for Berkeley artists, cultural workers, and arts organizations based on the assessment's findings.

Second, in November 2018, the voters of Berkeley approved two bond measures totaling \$135 million to fund affordable housing in Berkeley. Berkeley City Council subsequently began the development of an affordable housing framework (Housing for a Diverse, Equitable and Creative Berkeley) to guide Berkeley's affordable housing policies, programs, and projects through 2030. This framework explored a wide array of affordable housing for artists and other creative workers. In July 2019, the Council referred this policy document to various Commissions for further development. However, the pandemic caused this work to be temporarily put on hold.

The survey and subsequent report on its findings was completed and released by the Civic Arts Commission in November 2021. It made several key findings and recommendations that relate to zoning and planning decisions which may potentially be made as part of the ongoing Housing Element Update.

Some key findings of the report include recommendations that the City of Berkeley:

1. Create policies that prioritize artists for new affordable housing

Artists are an important part of the fabric of Berkeley as a city. As such, they should be part of ongoing conversations about Berkeley's housing plan. The survey results demonstrate that artists -- as a group -- have low income, a high rent burden, and have traditionally been left out of ongoing affordable housing. In order to mitigate further displacement and allow artists to continue to work and thrive in Berkeley, the City could consider creating a priority category for artists who meet income qualification to access affordable housing."

2. Designate some of Berkeley's upcoming affordable housing funding from Measure O for units specific to artists

"On July 24, 2019, Berkeley's Civic Arts Commission approved an amendment recommendation for Measure O that called for "significantly increas[ing] the supply of affordable housing and live/work housing for artists, artisans, and cultural workers" through adding to the zoning ordinance, incentivizing developers to build market-rate housing that includes affordable live/work units for creative workers, and incorporate live/work spaces for artists and cultural workers into large-scale affordable housing projects."

3. Consult artists when designing new policies for live/work spaces

Across the Bay Area, responses to the Ghostship fire emphasized increased attention to artist DIY live/work spaces. These spaces were often the only options for artists to access live/work spaces that met their needs. Yet, artists have always worked to transform neighborhoods through their work and creative use of space. As Berkeley works to address affordability issues for all of its residents, consulting and involving artists in the planning process can help bring about a much-needed, new, and fresh perspective on issues such as rezoning, repurposing ground floor spaces, and requiring community benefit proposals for new development.

4. Develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline

Due to the nature of their work, artists often have a unique income structure that makes applying for affordable housing more difficult. In addition, the survey shows that artists have needs for certain types of spaces that might be difficult to identify. Funding technical assistance to support artists to translate their needs and apply for the existing affordable housing pipeline could be an important step in helping artists leave inadequate living situations.

Because the report and findings include important information about the housing and space needs of artists, the *affordable housing for artists in berkeley* study is being referred to the Housing Element Update and to the Planning Commission and HAC for immediate consideration.

In addition to the findings and recommendations of the *affordable housing for artists* report, an informal task force of artists has been discussing the possibility of allowing ground-floor commercial space to be substituted for affordable artist work- or live-work space in new-buildings, or in existing buildings via conversions, in some locations or building types.

Because there are many elements to consider, including impacts to the retail environment, feasibility and costs, quality of work- and living-space for artists, relationship to affordable housing and community benefit requirements in new-build, locations and buildings types where artist ground floor live-, work- and live-work space may be feasible, and more, this idea is referred more generally to the City Manager, Planning Commission, and Housing Advisory Commission (HAC).

The presence of artists living and working around the clock has been documented as an important factor in creating more livable, animated urban areas. At the same time, retail vacancies have risen steadily in recent years as more purchasing has migrated online. The COVID-19 pandemic has accelerated this trend and led to even greater amounts of empty space, even in Berkeley's most popular commercial areas. Removing barriers to use or re-use of vacant retail/commercial spaces may be a means to provide affordable live/work spaces for artists while also activating storefronts.

To explore the possibilities of using retail/commercial space to house working artists, an informal task force including members of the Civic Arts Commission, affordable housing advocates, artists, and developers was convened. The goal of the group's work was to increase active uses of often-vacant ground floor space and provide a new low-impact supply of affordable live/work spaces for artists.

Some of the ideas generated by this informal group include:

1. Allowing affordable live/work housing for artists in lieu of ground floor retail or commercial use in specific locations (for example, away from main commercial nodes, or on side-streets) or corridors, including the San Pablo and University Avenue corridors and/or in other appropriate locations.
2. Developing a clear set of allowable uses and criteria for tenant eligibility including the responsibility to maintain a lively street presence.

In addition to consulting with the arts community, including members of the informal task force, the City Manager, Planning Commission and HAC should consult with business and commercial property owners to fully understand the opportunities and challenges of allowing live-work in lieu of retail, and to identify the circumstances, requirements,

locations and other factors that could make affordable live-work ground floor uses work both for artists, and for the health and vitality of commercial districts.

#### ALTERNATIVES CONSIDERED

By referring the *affordable housing for artists in berkeley* report and its findings and other affordable living and work-space considerations to be developed simultaneous with and/or as part of the Housing Element, we can ensure that artists' unique housing, work-space and affordability needs are considered during the Update process, and incorporated as feasible in the Housing Element and other zoning and planning processes.

#### FISCAL & STAFF IMPACTS

Staff and the Commissions are already engaged in in-depth discussion of housing needs, zoning changes, and programs to meet housing and affordability needs communitywide. Adding more explicit consideration of the specific needs of artists, drawing from studies already completed and with input from the Arts Commission and arts community, will add important information to existing discussions. Additional formal study or consulting help is not envisioned.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This referral asks only for concepts to be studied and incorporated into a planning process already underway, and does not entail environmental or climate impacts.

#### CONTACT PERSON

Councilmember Sophie Hahn, [shahn@cityofberkeley.info](mailto:shahn@cityofberkeley.info); 510-682-5905

#### Attachments

1. *affordable housing for artists in berkeley*

# affordable housing for artists in Berkeley

## a baseline survey

Anh Thang Dao-Shah, ph.d.& Asif Majid, ph.d  
creative equity research partners  
December 2021

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## executive summary

This project aims to respond to concerns around housing and art space affordability among artists and arts organizations in Berkeley by answering two key questions:

- 1) What are the trends around local affordability issues that can be addressed through targeted resources and policy solutions?
- 2) What pre-existing housing disparities impact what artists seek in possible affordable housing solutions?

As in other parts of the Bay Area, narratives of concern around affordability in the arts ecosystem in the past decade are often anecdotal. The sector lacks comprehensive data that could inform system change solutions. To that end, this report is based on a survey and focus groups with a diverse group of artists and cultural workers in Berkeley to provide systematic data around the unique housing and space needs of artists. It seeks to better position Berkeley's arts community to participate in the City's current affordable housing efforts and help improve the safety of local arts spaces, without causing further artist displacement.

### key findings

#### **Artists are highly educated, yet have low income**

Berkeley's artists and artists/cultural workers who responded to the survey are highly educated (88% have a Bachelor's degree or higher). Yet, 60% of that same group has lower, very low, or extremely low income.

#### **Artists and cultural workers have multiple forms of employment**

Only 32% of all respondents reported that they are employed full time. Others indicated that they cobble together different types of part-time and short-term contract work, as well as self-employment, in order to make ends meet.

#### **Artists are rent burdened**

Artists and artists/cultural workers disproportionately rent their living space (71%). Of those who rent, 77% are rent burdened or severely rent burdened, based on the California's Department of Housing and Community Development definitions.

#### **Artists have a unique need for flexible live/work spaces**

Responding artists and artists/cultural workers indicated, at a rate of 82%, that they do their creative work in their living space. Of those respondents, over half (56%) practice artistic disciplines that require extra ventilation.

### recommendations

- **create policies that prioritize artists for new affordable housing**
- **designate some of Berkeley's upcoming affordable housing funding from measure O for units specific to artists**
- **consult artists when designing new policies for live/work spaces**
- **develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline**
- **pilot a guaranteed basic income program for qualifying artists**

## introduction

### *why this project?*

This project was initially conceptualized in 2019 in response to concerns around housing and art space affordability among artists and arts organizations in Berkeley. It was motivated by two events.

First, the [2018 Arts and Culture Plan Update for the City of Berkeley](#) identified -- as a primary goal -- the need to increase access to affordable housing and spaces for artists, cultural workers, and arts organizations. The cultural plan specified a number of action steps towards this goal, including undertaking a data-informed assessment of current art space affordability challenges and displacement risks in Berkeley, as well as the development of strategies to protect and create affordable spaces for Berkeley artists, cultural workers, and arts organizations based on the assessment's findings.

Second, in November 2018, the voters of Berkeley approved two bond measures totaling \$135 million to fund affordable housing in Berkeley. Berkeley City Council subsequently began the development of an affordable housing framework ([Housing for a Diverse, Equitable and Creative Berkeley](#)) to guide Berkeley's affordable housing policies, programs, and projects through 2030. This framework explored wide array of affordable housing for artists and other creative workers. In July 2019, the Council referred this policy document to various Commissions for further development. However, the pandemic caused this work to be temporarily put on hold.

As elsewhere in the Bay Area, concerns around the arts ecosystem's affordability over the past decade are mostly anecdotal, arising when a major artist or arts organization imminently faces the loss of their living and work space. These stories, while important, inadequately inform systems change solutions aimed at addressing structural concerns.

To that end, this project's goal is to develop an assessment that provides systematic data around the unique housing and space needs of artists and cultural workers. This will better position the arts community to participate in Berkeley's ongoing affordable housing efforts and help improve art space safety in Berkeley without causing further displacement of artists. Two key questions guided this project from the beginning:

- 1) What are the trends around local affordability issues that can be addressed through targeted resources and policy solutions?**
- 2) What pre-existing disparities could impact possible affordable housing solutions for artists?**

This second question is key to ensure the solutions we suggest do not unintentionally impact some groups more than others.

In April 2020, the COVID-19 pandemic brought a pause to the assessment project and

raised new affordability questions, as the arts community dealt with the consequences of regular lockdowns. While some local, state, and federal measures -- such as the eviction moratorium and extension of unemployment benefits to independent contractors -- helped prevent widespread displacement during the pandemic's height, the new normal brought new concerns as artists and cultural organizations continue to struggle with canceled events, lower venue capacity, and overall uncertainty.

These questions brought new urgency to the project, as well as the need to methodologically pivot and narrow the project's focus. Instead of focusing on both housing needs of artists and space needs of arts organizations as originally envisioned, this project focused on understanding the affordable housing and workspace needs of individual artists and cultural workers to ensure timely recommendations that would allow for participation in ongoing affordable housing efforts. This shift also allowed for the inclusion of additional questions that sought to understand both the short-term impact of the pandemic and the ongoing challenges that would inform long-term strategies to address affordability issues in Berkeley.

### ***methodology and data limitations***

In order to collect data directly from artists and cultural workers during the ongoing pandemic, an online survey was issued in September 2021 through the Berkeley Civic Arts Program. The survey was open for four weeks and was accompanied by a robust outreach strategy, including outreach and reminder emails through the Civic Arts Program's and City of Berkeley's mailing lists and social media channels, the direct networks of a number of arts organizations represented by members of an ad-hoc advisory group, and posting on other community-serving digital platforms like Nextdoor. A list of all survey questions is found in Appendix B.

In addition to quantitative data, this project relies on the insights of artists, cultural leaders, and the City's affordable housing experts to provide context to the affordability crisis and housing needs. Research staff conducted three focus group meetings with 21 community stakeholders, who formed an ad-hoc community advisory group.

Members of the advisory group were selected to provide different perspectives on the historic and current landscape of arts and culture in Berkeley with a specific focus on housing needs for artists and cultural workers. With research staff, the advisory group helped design survey questions, reviewed preliminary findings, and brainstormed potential solutions. A list of the advisory group participants is provided in Appendix A.

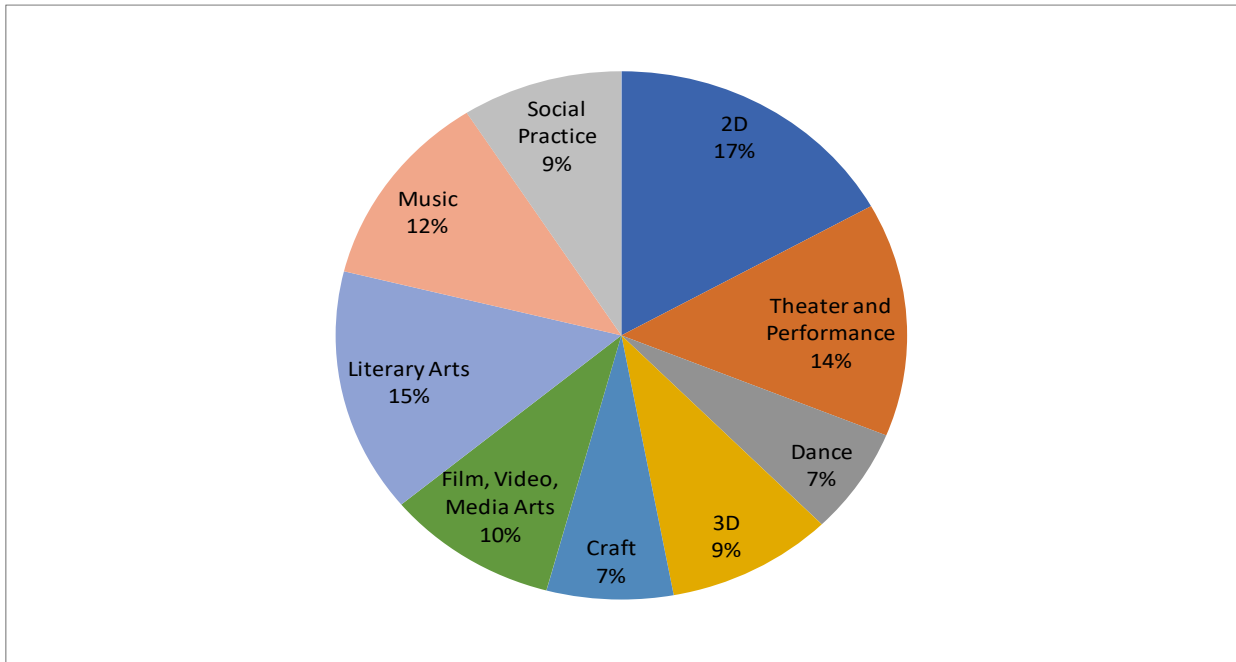
Any survey of artists must contend with the fact that there is no baseline dataset regarding the number of artists in a given community, due to the various ways artists can be defined. The most common way to define a professional group is to use IRS data that classifies someone's profession based on the income they earn from their main profession. Artists' main sources of income, however, often do not come from artwork; income sources are diverse and cross-sectoral. The same can be said for cultural workers. Plus, an artist's level of engagement with an art practice is not limited to paid opportunities. Income is thus an inadequate defining criterion. Through this survey's

grassroots and community-centered approach, this project provides a snapshot of the needs of the arts and culture sector and should be understood as baseline data that should be supplemented with ongoing and long-term data collection and analysis.

## survey results

### who responded?

A total of 163 artists and cultural workers responded to the survey. This constitutes 0.14% of Berkeley’s population, based on data from the 2020 census. For comparison, in a similar study in 2015 in San Francisco, which involved a six-week survey and multiple in-person outreach events, 560 artists and cultural workers responded to the survey. That constituted 0.07% of San Francisco’s population, based on 2010 census data. In other words, the Berkeley survey had double the response rate.



Of the Berkeley survey respondents, **48% identified as artists, 15% identified as cultural workers, and 37% identified as both artists and cultural workers.** In total, 32% of respondents do not currently reside in Berkeley, while 39% have lived in Berkeley for more than 10 years.

**31%**of respondents identified as LGBTQIA+

**62%**of respondents identified as female

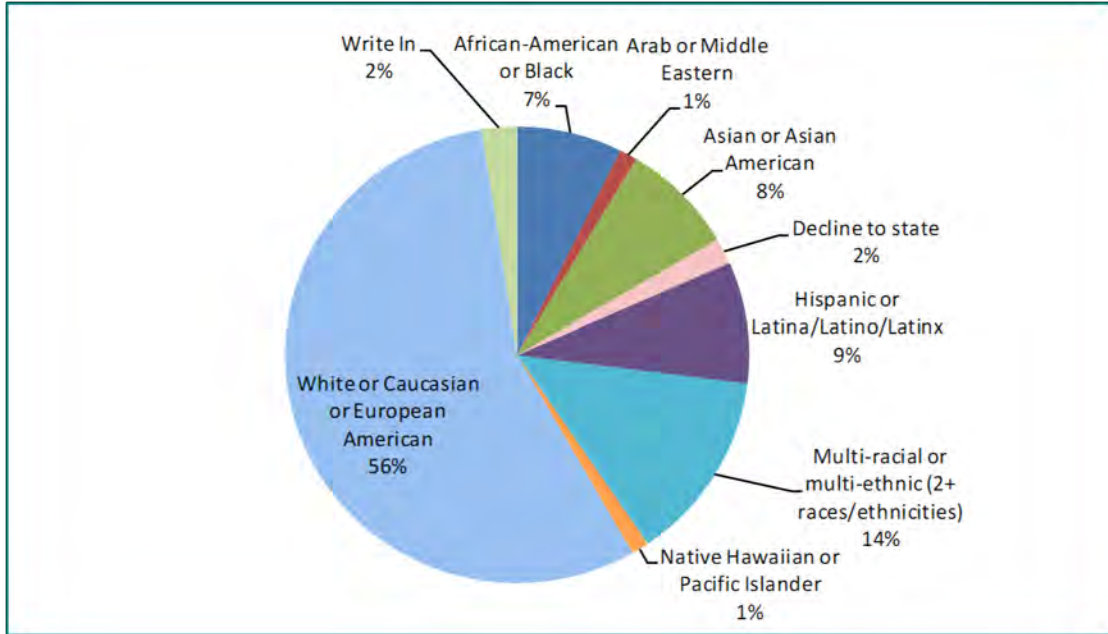


Figure 2: Race and ethnicity of survey respondents

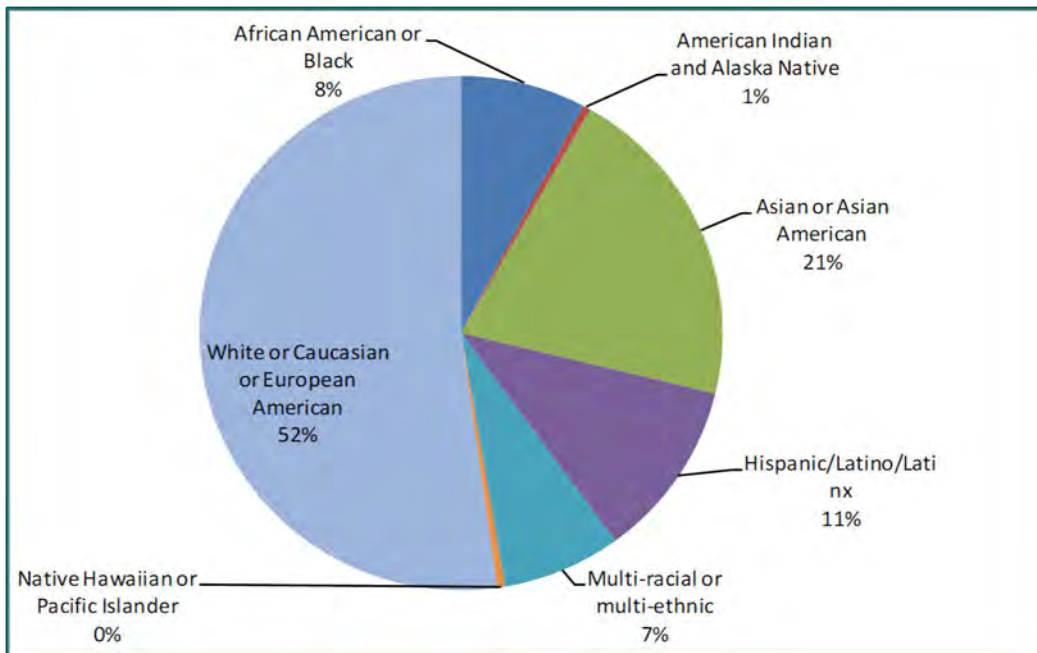


Figure 3: Race and ethnicity of City of Berkeley residents

## key findings

### *Artist respondents are highly educated, yet have low income*

Of those respondents who identified as artists or as both artists and cultural workers, 88% reported having a Bachelor's degree or higher. Of that same group, 60% reported an annual household income of \$69,000 or less. According to the [California Department of Housing and Community Development, in Alameda County for a single individual in 2019](#) (when this project and survey were first developed), annual household income of \$26,050 or below constitutes extremely low income, between \$26,051-\$43,400 is defined as very low income, and between \$43,401-\$69,000 is defined as lower income. Per these categories, 60% of those who identified as artists or both artists and cultural workers have lower, very low, or extremely low income. [In 2021, the upper threshold for the lower income category has risen to \\$76,750](#), meaning that artists are now even further behind financially than they were two years ago.

While low income is prevalent across the group, this rate is significantly higher among BIPOC respondents. Of respondents who identified as non-White, 72%, reported having lower, very low, or extremely low income, compared to 55% among those who identified as White or Caucasian. Due to the small number of participants, we are unable to make comparison between different groups who identify as non-White.

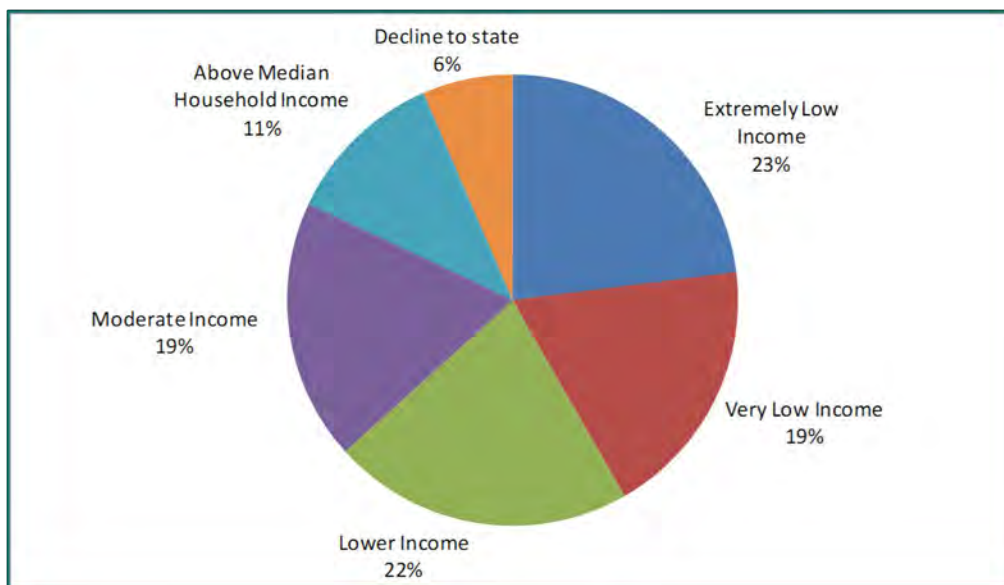


Figure 4a: Income categories for all artist respondents

| <i>Income Category</i> | <i>Income Range</i> | <i>Percentage of Artist Respondents</i> |
|------------------------|---------------------|-----------------------------------------|
| Extremely Low          | ≤ \$26,050          | 21%                                     |
| Very Low               | \$26,051-\$43,400   | 16%                                     |
| Low                    | \$43,401-\$69,000   | 23%                                     |



|                  |                   |     |
|------------------|-------------------|-----|
| Median           | \$69,001-\$78,200 | 17% |
| Moderate         | \$78,201-\$93,850 | 18% |
| Decline to State | n/a               | 5%  |

Figure 4b: Income ranges for artist respondents

### Artists and cultural workers have multiple forms of employment

Only 32% of all respondents reported that they are employed full-time. Others indicate that they engage in a patchwork of different types of part-time and short-term contract work, as well as self-employment, in order to make ends meet. Examples of employment that respondents are undertaking include: being a self-employed artist for one’s own or another’s art practice, being employed part time/doing regular work for pay as either a cultural worker or otherwise, doing contract work as a cultural worker or something other than a cultural worker, and undertaking unreported work for cash.

### Artist respondents report being rent burdened, but are not immediately concerned with losing their housing

Among respondents who identify as artists and as both artists and cultural workers, 71% of respondents rent. Of those who rent, 77% are rent burdened or severely rent burdened. According to the [US Department of Housing and Urban Development](#), a household or individual that spends more than 30% of their monthly household income on rent is rent burdened. Severely rent burdened households or individuals spend more than 50% of their monthly household income on rent.

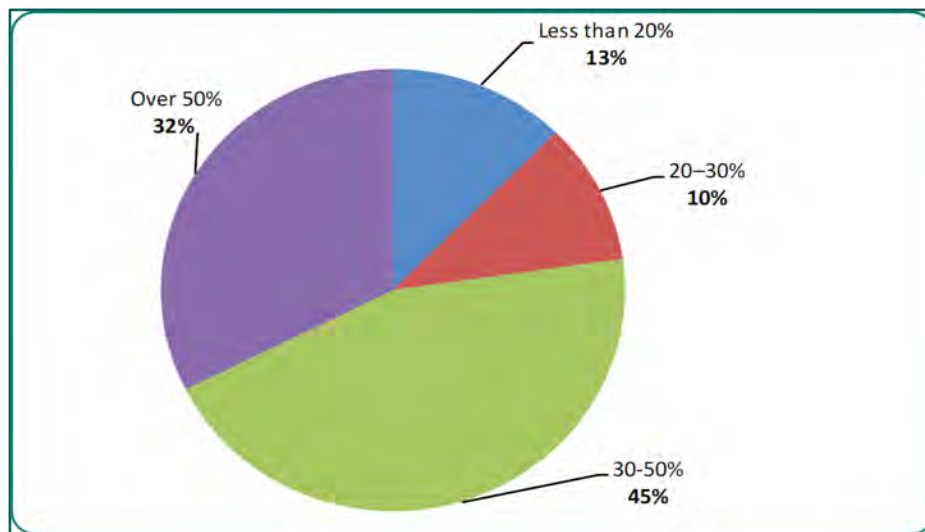


Figure 5: Respondents’ percentage of monthly household income spent on rent

While studies have shown that rent burden and extremely low income decrease the health and overall wellbeing of all those impacted, for artists this burden can



fundamentally change the way they engage with their artistic practice. Qualitative comments provided by the respondents highlighted having to scale back on their practice in order to earn the income they need to pay rent. This means they are unable to focus on developing their creative practice. As one respondent, a musician, explained:

The cost of living in the Bay Area fundamentally changes how I am able to grow in my craft. Since we are all hustling to pay rent at this level, rehearsals must be paid, limited and without a "post gig hang" - something I find central to collaborating with others. This limits how much performing I can do with others, which limits how much I can grow, experiment and contribute in my craft.

Over the long term, the lack of opportunities for artists to devote time and energy to their practice can lead to the abandonment of artistic practice altogether.

Despite respondents' high rent burden and low income, those identifying as artists and as artists/cultural workers do not indicate concerns around losing their housing in the near future.

Only 9% of respondents reported that they were evicted due to no-fault causes in the last 2 years. No-fault eviction is defined as evictions that take place when leases are not renewed without the tenant having violated any regulations as long as a notice to move out is sent to the tenant within the required time period. Landlords might choose to evict tenants who are paying rent on time and complying with regulations due to owner move in or the need to retrofit a building. In the last decade, as the affordability crisis has intensified throughout the Bay Area, no-fault eviction has often been used to let go of long-term tenants who are protected from rent increases to bring in new tenants who are charged at market rate. In the survey issued to San Francisco artists, about 30% of respondents reported that their leases were not going to be renewed due to no fault of their own.

Only 6% of respondents had to rely on the eviction moratorium during the pandemic. In total, only 9% of respondents are uncertain or very uncertain that they will be able to retain housing after the moratorium ends (20% were neither certain nor uncertain). Though seemingly at odds with other findings, this sentiment could be attributed to three factors.

First, Berkeley has strong renter protection policies. Qualitative survey responses show that many respondents who rent are aware of and rely on rent control, which helps keep their rent affordable. This is especially true with respondents who have resided in Berkeley for more than five years. Not concerned with immediate loss of housing does not mean that existing housing needs are met, however. As one respondent explained:

The only reason I am able to remain in the Bay Area is because I have been in the same unit for a decade and we have rent control - the other apartments in my building go for over twice what we're paying. [...] If I ever wanted to leave this apartment (and I do), I would have to leave the area entirely, because I can't afford anything else.

The gap between existing housing and respondents' needs is especially acute for those working in artistic disciplines that have specific space requirements like extra ventilation.

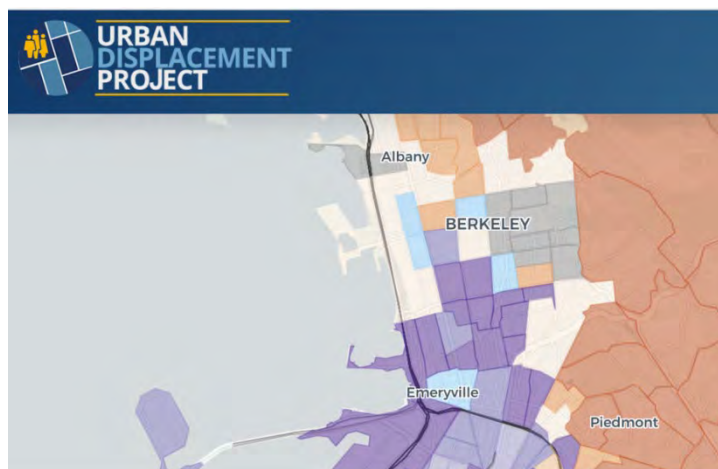
Second, the fact that the majority of respondents engage in multiple forms of employment means that they have multiple sources of income beyond their artistic practices to rely on for rental needs. However, as discussed above, in the long-term, the high burden of rent and reliance on other means of employment to make ends meet will impact artists' abilities to sustain their art. As one artist wrote:

*My housing is over 2/3 of my income, leaving little to nothing for anything over basic living expenses.*

Lastly, the timing of the survey suggests that those who are currently still residing in Berkeley are the ones who managed to weather the wave of displacement that took place in the last decade through the two factors described above and we have not captured the concerns of those who already had to leave as displacement was taking place. According to the [Urban Displacement Project](#), by 2018, almost all of Berkeley, except the immediate area surrounding University of California, Berkeley was experiencing ongoing and advanced gentrification, with a few areas already becoming exclusive and three areas in North Berkeley marked as low income and susceptible to displacement. South Berkeley area between Ashby Avenue and Emeryville border was in an advance gentrification stage with displacement having taken place between 2000 and 2018.

For comparison, the study in San Francisco took place in 2015, in the middle of the biggest wave of gentrification in the broader Bay Area. In that study, more than 1/3 of respondents expressed immediate concerns about loss of housing due to rent increase, end of lease term or fear of no-fault eviction.

Notably, South Berkeley also had high percentage of BIPOC population (between 50% and 70%). This data confirms that, like in the rest of the Bay Area, BIPOC communities are more susceptible to early displacement and the survey respondents' demographic reflects these changes in the population.



## *Artists have a unique need for flexible, live/work space*

Of responding artists and artists/cultural workers, 82% reported that they make their art where they live, with 56% of this group requiring extra ventilation for their art.

This finding reflects the way that affordability challenges can fundamentally change an artist's practice. For artists needing extra ventilation, this could mean a choice between maintaining their own health and practicing their art, particularly if there is no adequate separation between where artists sleep, cook, and eat and where artworks are being stored, produced, or left to dry. The need for flexible and affordable live/work space has pushed artists to make choices to live in dangerous conditions that can have fatal consequences. As one artist respondent explained:

It's really hard to find space to train that is affordable. I need at least 20' ceilings, ideally 30'. There were many affordable live/work warehouse conversions with this kind of ceiling height pre-Ghostship but many of these affordable spaces were affordable due to slumlord and very DIY situations, which often meant common housing needs like sealed roofs, consistent mail/package delivery, heating, bedroom windows/egress, were not guaranteed. The tragedy at Ghostship has led cities around the Bay Area to tighten up their policies around DIY spaces to prevent similar situations. However, without intentional creation of spaces that meet the needs of practicing artists, such policies do not solve the root cause problem that have caused artists to seek out those spaces in the first place.

## recommendations

### *Create policies that prioritize artists for new affordable housing*

Artists are an important part of the fabric of Berkeley as a city. As such, they should be part of ongoing conversations about Berkeley's housing plan. The survey results demonstrate that artists -- as a group -- have low income, a high rent burden, and have traditionally been left out of ongoing affordable housing. In order to mitigate further displacement and allow artists to continue to work and thrive in Berkeley, the City could consider creating a priority category for artists who meet income qualification to access affordable housing. Such a priority category would require working with the arts community to create an inclusive definition of what it means to be an artist. It should also take into consideration and center artists from Black, Indigenous, and People of Color (BIPOC) communities, as well as LGBTQ+ communities who have already been displaced. In doing so, artists will have an opportunity to return to Berkeley and enrich the city's social and artistic fabric.

### *Designate some of Berkeley's upcoming affordable housing funding from measure o for units specific to artists*

On July 24, 2019, Berkeley's Civic Arts Commission approved an amendment recommendation for Measure O that called for "significantly increas[ing] the supply of affordable housing and live/work housing for artists, artisans, and cultural workers" through adding to the zoning ordinance, incentivizing developers to build market-rate housing that includes affordable live/work units for creative workers, and incorporate live/work spaces for artists and cultural workers into large-scale affordable housing projects. Other proposals included the development of a community land trust and transforming underused retail spaces and City-owned buildings into artist live/work spaces. These recommendations should be revisited and implemented, as they align with the range of qualitative responses that came through the survey. Respondents also suggesting the development of: 1) co-ops; 2) a separate affordable housing lottery specifically for those artists and cultural workers from BIPOC and other underserved communities; and 3) relationships between the City and land trusts to purchase buildings that serve as artist housing. These suggestions point to the importance of re-evaluating how zoning and other policies further disenfranchise artists and cultural workers.

### *Consult artists when designing new policies for live/work spaces*

Across the Bay Area, responses to the Ghostship fire emphasized increased attention to artist DIY live/work spaces. These spaces were often the only options for artists to access live/work spaces that met their needs. Yet, artists have always worked to transform neighborhoods through their work and creative use of space. As Berkeley works to address affordability issues for all of its residents, consulting and involving

artists in the planning process can help bring about a much-needed, new, and fresh perspective on issues such as rezoning, repurposing ground floor spaces, and requiring community benefit proposals for new development.

### ***Develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline***

Due to the nature of their work, artists often have a unique income structure that makes applying for affordable housing more difficult. In addition, the survey shows that artists have needs for certain types of spaces that might be difficult to identify. Funding technical assistance to support artists to translate their needs and apply for the existing affordable housing pipeline could be an important step in helping artists leave inadequate living situations. The advisory group also recommended creating a one-stop shop that features affordable housing for artists (perhaps akin to a specialized version of [San Francisco's DAHLIA housing portal](#)), which would create a platform where artists could share information about available housing and get connected to resources like financial technical assistance. A space geared towards artists' housing needs might be especially beneficial for artists who are looking for affinity housing along the lines of race and sexual identity, which allows them to stay more connected with their own communities.

### ***Pilot a guaranteed basic income program for qualifying artists***

Acknowledging the disproportionate impact of the pandemic on a community that was already struggling due to ongoing affordability challenges, multiple cities such as [San Francisco](#) and [Minneapolis](#) have launched pilot programs providing artists from marginalized communities who meet income requirements with a monthly stipend that would help cover their basic needs. Stipends are unrestricted, so they can be spent on rent and food while artists continue their artistic practice. Due to the existing racial wealth gap, which was reflected in the survey results, such a pilot should prioritize BIPOC artists. These types of programs are gaining national attention because the arts and culture are often cited as key strategies for economic recovery. Practicing artists are essential for such recovery. The advisory group agreed that a basic income program would address two key findings in this report -- respondents' extremely low income and high rent burden -- both of which have already forced artists to significantly modify or abandon their art practices.

## further research

While the survey and focus groups discussed in this report have provided a much-needed snapshot into the space needs of artists in Berkeley, limited data does not allow us to paint a comprehensive picture. The following research and data collection is recommended, in order to complement this report.

### *Work with arts organizations to understand the income levels and housing needs of cultural workers*

Only 15% of the respondents to the survey identified exclusively as cultural workers, meaning that there was not a statistically significant sample from which to draw conclusions about the needs of cultural workers. Further research, specifically on the housing needs and income levels of cultural workers, is needed.

### *Conduct a disparity study*

Currently, Berkeley does not have comprehensive race and ethnicity data for seekers of affordable housing. Therefore, it is impossible to determine whether or not the artists who responded to this survey are demographically representative of the population that qualifies for affordable housing. A disparity study will ensure that changes in policy will not disproportionately impact certain groups.

### *Continue to collect data on artists*

The lack of baseline data on artists -- even as simple as the total number of artists and disciplines practiced in a given community -- prevents us from understanding the extent of the issues that artists face. More long-term data collection and analysis of artists in Berkeley will allow the city to identify trends, as well as possible challenges that can be mitigated by timely policy changes.



## appendices

### *a: community advisory group members*

Kim Anno, Berkeley Civic Arts Commission  
Delores Nochi Cooper, Berkeley Juneteenth Festival  
Bruce Coughran, Indra's Net Theater  
Hadley Dynak, Berkeley Cultural Trust  
Misty Garrett, City of Berkeley  
Ashlee George, Capoeira Arts Foundation and BrasArte  
Mayumi Hamanaka, Kala Art Institute  
Archana Horsting, Kala Art Institute  
Mildred Howard, Independent Artist  
Beatriz Leyva-Cutler, BAHIA  
Amanda Montez, City of Berkeley  
Mirah Moriarty & Rodrigo Esteva, Dance Monks  
PC Muñoz, Freight & Salvage and BCT E&I Committee  
Natalia Neira, La Pena Cultural Center and BCT E&I Committee  
Daniel Nevers, Berkeley Art Center  
Nancy Ng, Luna Dance Institute  
Kathryn Reasoner, Vital Arts  
Leigh Rondon, Shotgun Theater  
Irene Sazer, Independent Artist (Civic Arts Grantee)  
Sean Vaughn Scott, Black Repertory Group Theater  
Rebecca Selin, Gamelan Sekar Jaya  
Terry Taplin, Berkeley City Council and former Berkeley Civic Arts Commissioner  
Rory Terrell, Local Artists Berkeley  
Tyese Wortham, CAST  
Chingchi Yu, Independent Artist (Civic Arts Grantee)

## ***b: survey questions***

### **Messaging**

Are you an artist or cultural worker struggling to find affordable housing for you and your family?

Artists and cultural workers in Berkeley and throughout the Bay Area are facing an affordability crisis that prevents them from focusing on their creative work. Through the recently completed cultural planning process, the City of Berkeley identified as a primary goal the need to protect and increase access to affordable housing for artists and cultural workers.

Currently, there is little to no data on the affordable housing concerns of Berkeley artists and cultural workers. Your responses to this survey will help the City of Berkeley create programs and policies tailored to the housing needs that are specific to Berkeley's arts sector, including affordable housing and live-work spaces.

Thank you for helping keep Berkeley affordable for artists and cultural workers.

---

### **Survey Questions**

1. Are you an artist or cultural worker?
  - a. Artist [proceed to question 2]
  - b. Cultural Worker (staff member at an arts culture organization) [Proceed to Question 4]
  - c. Both
  
2. If you are an artist, how would you describe your artistic practice/artwork? Select all that apply:
  - a. 2D (Painting, Printmaking, Drawing, Photography, etc.)
  - b. 3D (Sculpture, Installation)
  - c. Theater/Performance
  - d. Dance
  - e. Craft
  - f. Film, Video, and/or Media Arts
  - g. Literary (Creative Writing, Poetry, etc.)
  - h. Music
  - i. Social Practice
  - j. Write in\_\_\_\_\_
  
3. Do you work with a medium that requires extra space and/or ventilation? This may include metal welding, spray paint, etc.
  - a. Yes
  - b. No



4. If you are a cultural worker, do you work at a Berkeley-based arts and culture nonprofit organization?
  - a. Yes
  - b. No
  
5. What is your primary language?
  - a. English
  - b. Spanish
  - c. Chinese (Mandarin and Cantonese)
  - d. Tagalog
  - e. Vietnamese
  - f. Persian
  - g. Portuguese
  - h. Punjabi
  - i. Swahili
  - j. Write In: \_\_\_\_\_
  - k. Decline to State
  
6. What is your race/ethnicity?
  - a. African-American or Black
  - b. American Indian or Alaska Native or Indigenous or First Nations
  - c. Arab or Middle Eastern
  - d. Asian or Asian American
  - e. Hispanic or Latina/Latino/Latinx
  - f. Native Hawaiian or Pacific Islander
  - g. White or Caucasian or European American
  - h. Multi-racial or multi- ethnic (2+ races/ethnicities)
  - i. Write In \_\_\_\_\_
  - j. Decline to State
  
7. What best describes your gender identity?
  - a. Female (cisgender)
  - b. Female (transgender)
  - c. Male (cisgender)
  - d. Male (transgender)
  - e. Gender-fluid/Genderqueer/Gender-expansive/Non-binary
  - f. Write In \_\_\_\_\_
  - g. Decline to State
  
8. How do you describe your sexual orientation or sexual identity?
  - a. LGBTQ+
  - b. Heterosexual/straight
  - c. Write in \_\_\_\_\_
  - d. Decline to State
  
9. Do you identify as a person with a disability?

- a. Yes
  - b. No
10. Please select the highest degree or level of school you have COMPLETED. If currently enrolled, mark the previous grade or highest degree already received.
- a. Less than high school
  - b. High school diploma/GED
  - c. Associate's degree
  - d. Bachelor's degree
  - e. Master's degree
  - f. Doctorate degree
11. How many people live in your household, including yourself?
- a. One [Proceed to Question 14]
  - b. Two
  - c. Three
  - d. Four
  - e. Five
  - f. More than five: Write In \_\_\_\_\_
12. Do you have any children under the age of 18?
- a. Yes
  - b. No [Proceed to Question 14]
13. If yes, how many children currently live with you?
- a. One
  - b. Two
  - c. Three
  - d. More than three
  - e. Write in: \_\_\_\_\_
14. What is your total household income?
- a. Less than \$26,050
  - b. \$26,051-\$43,400
  - c. \$43,401-\$69,000
  - d. \$69,001-\$98,549
  - e. More than \$98,550
  - f. Decline to state
15. If you are an artist, do you make 50% or more of your income from your artistic practice?
- a. Yes
  - b. No
  - c. I don't know
  - d. I am not an artist

16. What is your current employment status? Check all that apply:
  - a. Self employed artist for your own art practice
  - b. Self-employed, but not for your own art practice
  - c. Employed full time as a cultural worker
  - d. Employed full time as something other than a cultural worker
  - e. Employed part time/doing regular work for pay as a cultural worker
  - f. Employed part time/doing regular work for pay as something other than a cultural worker
  - g. Contract work as a cultural worker (for example: I receive a 1099 from a nonprofit arts organization organization)
  - h. Contract work as something other than a cultural worker (for example: I receive a 1099 from a separate non-arts organization or business)
  - i. Unreported work for cash
  - j. Not employed
  
17. How easy is it to predict your total income from month to month?
  - a. Very easy
  - b. Moderately easy
  - c. Neither easy nor difficult
  - d. Moderately difficult
  - e. Very difficult
  
18. How certain are you that your total income will return to pre-pandemic levels, over the next 6 months?
  - a. Very certain
  - b. Moderately certain
  - c. Neither certain or uncertain
  - d. Moderately uncertain
  - e. Very uncertain
  
19. What percentage of your average monthly income do you spend on housing costs?
  - a. Less than 20%
  - b. 20%-30%
  - c. 30%-40%
  - d. 40%-50%
  - e. More than 50%
  - f. I don't know
  
20. What is the zip code where you work?
  
21. What is the zip code where you live?
  
22. How long have you lived in Berkeley?
  - a. I do not live in Berkeley
  - b. Less than a year

- c. 1 - 3 years
  - d. 3 - 5 years
  - e. 5 - 10 years
  - f. More than 10 years
  - g. How long? \_\_\_\_\_
23. How long do you expect to remain in Berkeley?
- a. I do not live in Berkeley
  - b. Less than a year
  - c. 1 - 3 years
  - d. 3 - 5 years
  - e. 5 - 10 years
  - f. More than 10 years
  - g. How long? \_\_\_\_\_
24. Do you own or lease your living space?
- a. Lease [proceed to question 25]
  - b. Own [proceed to question 28]
25. What is your lease term?
- a. Month to month
  - b. 1 year
  - c. 2-3 years
  - d. More than 3 years
26. How many square feet is your space?
27. How much do you pay in rent per month?
28. Have you been displaced due to a “no-fault” or “no-cause” eviction in the past 2 years? (A “no-fault” or “no-cause” eviction is an eviction that is no fault of the tenant, but is allowed under the law.)
- a. Yes
  - b. No
  - c. I don't know
29. If you were displaced, did you have to move away from Berkeley?
- a. Yes
  - b. No
30. If you were not displaced, did you have to rely on the eviction moratorium that Berkeley has implemented over the past 12 months?
- a. Yes
  - b. No
  - c. I didn't know that evictions had been halted over the past 12 months.

31. How certain are you that you will be able to retain your housing when the eviction moratorium ends?
- Very certain
  - Moderately certain
  - Neither certain or uncertain
  - Moderately uncertain
  - Very uncertain
32. Do you use your living space for housing and your creative practice?
- Yes [proceed to question 37]
  - No [proceed to question 32]
33. If you have a work space that is separate from your living space, do you own or lease your work space?
- Lease [proceed to question 34]
  - Own [proceed to question 36]
34. What is the lease term for your work space?
- Month to month
  - 1 year
  - 2-3 years
  - More than 3 years
35. How much do you pay in rent per month for your work space?  
Write in \_\_\_\_\_
36. How many square feet is your work space?  
Write In \_\_\_\_\_
37. Have you been displaced from your work space due to a “no-fault” or “no-cause” eviction in the past 2 years? (A “no-fault” or “no-cause” eviction is an eviction that is no fault of the tenant, but is allowed under the law.)
- Yes
  - No
  - I don't know
38. If you were displaced, did you have to move your work space away from Berkeley?
- Yes
  - No
39. Do you share your work space?
- Yes
  - No

40. What are some challenges you've faced in the past when trying to access or find affordable housing?

41. Please share any ideas you have on how to ensure equitable participation of BIPOC artists and cultural producers from other historically underserved communities, as well as recommendations for local organizations that should be consulted.

42. Do you have anything else to share with us?

-----END OF SURVEY-----



## **Artists Definition and Certification process for the City of Berkeley**

Approved by the Civic Arts Commission: May 25, 2022

*Whereas: “Artists play a critical role in the well-being of our communities and in the economic, social, and cultural fabric of our cities. Artists bring unique talent and skill to fostering cohesion and belonging, building trust, activating civic engagement, addressing mental health, cultivating collective safety, and celebrating community identity.” From the City of San Francisco Guaranteed Income & Pilot, powered by Yerba Buena Center for the Arts: Learning and Insight from Design to Launch*

The purpose of the following process is to identify artists who are eligible for inclusion in a pool of applicants specifically qualified for artist’s affordable live/work housing in the City of Berkeley. All artists must also qualify as low-income as set by the State of California.

The affordable live/work housing units available to this list of artists will be identified by the City of Berkeley. The Civic Arts Program will solicit applications from artists who reside in Berkeley or those who have been displaced from Berkeley within five years prior to their application for the affordable live/work housing eligible list.

Step One: Artists must apply for verification of low-income status per State of California guidelines before being considered for City of Berkeley artist certification.

Step Two: A rotating jury of arts professionals and artists will convene to review the following materials submitted by each applicant to certify artists for this program:

- A. Artist statement
- B. Submitted samples of artwork (online or PDF formats)
- C. Letter of interest and commitment to producing art and having a creative practice

Step Three: When spaces become available, certified artists can apply to be in a lottery for spaces that may have specific space-use conditions (clean vs. messy, loud vs. quiet, need for ventilation, need for use of heavy equipment, etc.).



### **Artists Affordable Housing Eligible List of Certified Artists**

1. The City of Berkeley will maintain a list of eligible artists who are interested in obtaining Artists Affordable housing in a lottery as spaces become available. This list shall be kept in two locations within the City of Berkeley. Two locations will be identified as being independent of any city-wide technical catastrophe.
2. Civic Arts will advertise the twice annual artist certification process.
3. Available units will be advertised to certified artists.
4. Information about the program and types of housing will be available on the Civic Arts website.
5. Annually Civic Arts will post an invitation to encourage building owners and developers to list unit opportunities with the program.
6. City of Berkeley should adopt a policy to incentivize this program with a City tax/fees waiver to encourage qualified building owners to list unit opportunities.

Step Four: This pool will be renewed twice a year.

#### **Requirement for Art Production:**

All artists occupying artists affordable live/work housing must maintain arts production with an active creative practice in these spaces. The intent of the program is to create and maintain spaces for producing artists with consistent public presentations. If an artist ceases to produce work for two-years then the artist will be notified of non-compliance and will be evicted.

#### **Artists eligibility using one or more of the following criteria:**

1. An individual (or team member of an arts group) who is regularly engaged in the arts on a professional basis. These include but are not limited to those who practice:

- A. Fine Arts such as painting, mixed media works, sculpture, photography, papermaking, printmaking, filmmaking or videography, or interdisciplinary art practices
  - B. Performing Arts such as dance, dance theatre, acting, directing, set design, or members of theatre troupes
  - C. Musical Arts such as musicians, composers, singers, choir members, band members, or ensemble members
  - D. Literary Arts such as writers of prose, poetry, or plays
  - E. Social Practice Arts including interdisciplinary modes of creative production with methods of public engagement
  - F. Craft Artisans who create such as fine woodworking, ceramics, glass blowing, textiles, jewelry, stained glass, metal works, fashion, blacksmithing, basketry, etc.
  - G. Artists who have culturally specific creative practices (folk arts, traditional arts, tradition bearers)
  - H. Self-taught and “outsider” artists
2. Creative production may be documented and renewed biennially on a CV or resume including one or more of the following:
- A. History of creating a body of public or publicly-displayed artwork, including public performances
  - B. Record of exhibitions and/or artwork sales or performances
  - C. History of temporary or permanent public art works
  - D. Education, apprenticeships or study

This definition does not include architectural and landscape services, industrial or graphic design services, computer systems design services, and other commercial activities normally conducted in an office environment.

**Art/Craft Studio shall be defined as:**

1. A live and work establishment in which the creation of art or crafts as defined above takes place. Such an establishment may be used to host periodic open studios, but otherwise is subject to the applicable district's requirements for incidental sales of goods made on site.
2. Art/Craft Studios may also include rehearsal spaces, small gathering places designed to include possible classes, readings, micro performances, exhibitions, or presentations. These are not required but available.
3. Art/Craft studios typically have larger spaces where the artist is in production. The living portion of the spaces must include kitchen, bathroom, and sleeping area. All construction is subject to building code that requires two entrances to the units. All spaces must include at least one operable window.

**Requirement for Street Activation:**

Street presence is of value to the life and sustainability of the City of Berkeley. Towards this end, recipients of artists affordable housing also make a commitment to participating in a visual display in street facing windows. The display is a visual phenomenon occupying the windows in relationship to artists' creative practice.

1. Artists have the routine responsibility to maintain a current lively rotating street presence in the windows of their spaces that face the street where they reside. The form for this is determined by the artist and the medium they are working in. The window displays can be two or three dimensional, in a tandem relationship to their art(s) practice. The scale of the visual presence will be conceived to respect the scale of the windows. Media may be presented in compliance with sound and light regulations in the City of Berkeley.
2. Windows facing the interior yards, or back yards do not need to be activated.





Office of the Mayor

CONSENT CALENDAR  
May 23, 2023

To: Members of the City Council  
From: Mayor Jesse Arreguín  
Subject: Resolution to Support SB 532

RECOMMENDATION

Adopt a Resolution in support of Senate Bill 532, introduced by Senator Scott Weiner and coauthored by Assembly Member Phil Ting, and send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Scott Weiner, and Assembly Members Buffy Wicks and Phil Ting.

SUMMARY

Current law stipulates ballots used when voting on a measure proposed by a local governing body or submitted by the voters as an initiative or referendum measure must include a printed statement detailing the amount of money to be raised annually and the rate and duration of a local tax to be levied. If adopted, Assembly Bill 532 would amend Section 13119 of the Elections Code, allowing for an exemption to this requirement when a local measure imposes or increases a tax with more than one rate or authorizes the issuance of bonds. Instead, these types of measures would require the ballot to include an estimate of the amount of money to be raised annually and the rate and duration of the tax to be levied. Also, if adopted, there would be no word limit and statements could be provided in bullet point format. In addition, this bill would create a state-mandated local program that oversees the new duties on local elections officials conducting these estimates. If costs associated with mandating this bill are accrued and identified by the Commission on State Mandates, these costs will be reimbursed pursuant to existing statutory provisions included in the California Constitution.

BACKGROUND

For ballot measures that relate to new or increasing taxes, voters in California are provided with statements to educate them on the budgets to be raised throughout the duration of the tax. Local jurisdictions that submit a ballot measure that include more than one tax to be levied may find it difficult to precisely measure the amount that will be raised as one tax may influence the other and vice versa. In addition, the tax rate for bonds issued in multiple series under one voter approval may fluctuate significantly over time. Given the nuance of some of these local measures, voters can also benefit from a word limit being lifted. The current 75-word threshold may not be enough space for voter education to explain complex financial matters. This bill would ideally create greater voter transparency into the financial implications of ballot measure and leave

room for authors to also describe the benefit or non-financial impacts when raising these funds.

In 2015, the legislature enacted a law requiring a measure that imposes or increases a tax to include in the ballot label language “the amount of money raised annually and the rate and duration of the tax to be levied” to be limited to 75 words. In 2017, the legislature passed further amendments applying the requirement to the issuance of bonds. However, transit agencies, school districts, cities, counties, hospitals, libraries, and other public entities that are legally required to rely on ballot measures to raise critical funds were found to be limited in their ability to describe complex tax and bond measures when written to fit a 75-word ballot label. In addition, whittling down a description to less than 75 words may cause voters to become misled or fill gaps of knowledge with their own assumptions, moving them away from understanding the full extent of the measure and its impacts. According to a statement from Senator Weiner’s office, many agencies had seen a decrease of 5 to 15 percentage points in their polling as a result of the aforementioned legislative changes.<sup>1</sup>

SB 532 had originally been authored with language to allow for local jurisdictions to choose between pursuing the current word-limit or print the following in the ballot label: “See voter guide for measure information statement.” Furthermore, SB 532 would have required a local jurisdiction to describe to add further descriptions of the ballot measure in the voter guide depending on the type of financial measure. The Senate Governance And Finance and Senate Elections and Constitutional Committees provided amendments which removed these portions of the bill. The bill has since been re-referred to the Senate Appropriations Committee. The spirit of the bill is still maintained with its current amendments, and allows for the intended impact to be achieved by removing the word limit in the description of these related measures.

SB 532 is sponsored by the Nonprofit Housing Association of Northern California and the Coalition for Adequate School Housing. It is supported by San Diego Housing Federation, the California State Council of SEIU, and Urban Counties of California.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental impact.

#### CONTACT PERSON

Mayor Jesse Arreguín, 510-981-7100  
Anthony Rodriguez, Senior Legislative Assistant

#### ATTACHMENTS

- 1: Resolution (SUPPORT OF CALIFORNIA SENATE BILL 532)
- 2: Text of SB 532 (as of April 25, 2023)

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<sup>1</sup> <https://sd11.senate.ca.gov/news/20230215-senator-wiener-introduces-legislation-improve-transparency-financial-impacts-critical>

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

SUPPORTING SENATE BILL 441

WHEREAS, for ballot measures that relate to new or increasing taxes, voters in California are provided with statements to educate them on the budgets to be raised throughout the duration of the tax limited to 75-words; and

WHEREAS, the current 75-word limit requirements reduce the amount of space on the ballot label available to describe what the revenues raised by a measure would be used for; and

WHEREAS, these ballot label requirements can be confusing and misleading to voters; and

WHEREAS, the tax rate for bonds issued in multiple series under one voter approval may fluctuate significantly over time, thus making it difficult to predict; and

WHEREAS, SB 532 would amend Section 13119 of the Elections Code, allowing for an exemption to current requirements when a local measure imposes or increases a tax with more than one rate or authorizes the issuance of bonds, and allows for estimates in funds raised when more than one tax is increased or added as part of a ballot measure; and

WHEREAS, SB 532 would address a serious problem in current law that inhibits local tax mechanisms that cannot be accurately explained in the 75-word ballot label; and

WHEREAS, SB 532 expands transparency for local tax measures by providing the option to include key financial measures in the voter information guide, while amending ballot label requirements that have proven problematic or even impossible for tiered tax rates and bond issuances; and

WHEREAS, the City of Berkeley believes SB 532 is in-line with its commitment, to providing fair, impartial, and knowledgeable elections to all its residents; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 532.

BE IT FRUTHER RESOLVED that copies of the Resolution be sent to Governor Gavin Newsom, State Senators Nancy Skinner and Scott Weiner, and Assembly Members Buffy Wicks and Phil Ting.

AMENDED IN SENATE APRIL 25, 2023

AMENDED IN SENATE APRIL 13, 2023

AMENDED IN SENATE MARCH 30, 2023

**SENATE BILL**

**No. 532**

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**Introduced by Senator Wiener**  
(Coauthor: Assembly Member Ting)

February 14, 2023

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An act to amend Sections 9401, 9403, 9405, and *Section* 13119 of, to amend the heading of Chapter 5 (commencing with Section 9400) of Division 9 of, to add Section 9406 to, and to repeal and add Section 9400 of, of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 532, as amended, Wiener. Ballot measures: local taxes.

Existing law requires that the ballots used when voting upon a measure proposed by a local governing body or submitted to the voters as an initiative or referendum measure, including a measure authorizing the issuance of bonds or the incurrence of debt, have printed on them a true and impartial statement describing the purpose of the measure. If the proposed measure imposes a tax or raises the rate of a tax, existing law requires the ballot to include in the statement of the measure the amount of money to be raised annually and the rate and duration of the tax to be levied.

This bill would exempt from this requirement a measure that imposes or increases a tax with more than one rate or authorizes the issuance of bonds. The bill would instead permit for these types of measures the statement of the measure to include the words "See voter guide for measure information statement and an explanation of how this measure



could impact local property taxes.” The bill would exclude these words from any word count limit that applies to the statement of the measure. The bill would require an elections official to ensure that each polling place has voter information guides, as specified. *If the proposed measure imposes or increases a tax with more than one rate, or authorizes the issuance of bonds, this bill would require that the ballot include in the statement of the measure to be voted on an estimate of the amount of money to be raised annually and the rate and the duration of the tax to be levied. This statement, which may contain bullet points, would not count toward any word limit that applies to the statement of the measure.*

Existing law requires local governments, when submitting for voter approval a bond measure that will be secured by an ad valorem tax, to provide the voters with a statement that includes estimates of the tax rates required to fund the measure.

This bill would additionally require for a measure that imposes or increases a tax with more than one rate or authorizes the issuance of bonds, that voters be provided with a statement that includes specified information relating to the tax that will be imposed or increased as a result of the measure.

By imposing new duties on local elections officials, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 9400 of the Elections Code is repealed.~~
- 2     ~~SEC. 2. The heading of Chapter 5 (commencing with Section~~
- 3     ~~9400) of Division 9 of the Elections Code is amended to read:~~
- 4
- 5             ~~CHAPTER 5. LOCAL TAX OR BOND MEASURES~~
- 6
- 7     ~~SEC. 3. Section 9400 is added to the Elections Code, to read:~~

1 9400. ~~(a) For each tax measure specified in paragraph (3) of~~  
 2 ~~subdivision (b) of Section 13119, a measure information statement~~  
 3 ~~shall be mailed to the voters, or electronically submitted to the~~  
 4 ~~voters pursuant to Section 13300.7, with the sample ballot for the~~  
 5 ~~election to authorize the tax. The measure information statement~~  
 6 ~~required by this section shall be filed with the elections official~~  
 7 ~~conducting the election not later than the 88th day before the~~  
 8 ~~election, and it shall include all of the following:~~

9 (1) ~~A concise description of the purpose of the tax proposed,~~  
 10 ~~including how the bond proceeds or tax revenue will be spent to~~  
 11 ~~benefit the community.~~

12 (2) ~~If the measure imposes a tax expected to have more than~~  
 13 ~~one tax rate, a list of all the tax rates that are expected to apply and~~  
 14 ~~a description of how the tax will be imposed.~~

15 (3) ~~A plain language description of any mechanism that would~~  
 16 ~~cause the tax rate or rates to vary over time.~~

17 (4) ~~An explanation of the duration of the tax stating whether~~  
 18 ~~the tax expires on a specific date, expires upon final payment of~~  
 19 ~~indebtedness, does not expire until further action by the voters or~~  
 20 ~~the local governing body, or expires as the result of some other~~  
 21 ~~action or occurrence.~~

22 (5) ~~Except if the information specified in paragraph (6) of this~~  
 23 ~~subdivision is included, the best estimate from official sources of~~  
 24 ~~the average annual dollar amount of taxes that would be collected~~  
 25 ~~during the ten-year period following the initial levy.~~

26 (6) ~~If the tax measure would authorize the issuance of bonds,~~  
 27 ~~the security for which constitutes a lien on the property for ad~~  
 28 ~~valorem taxes within the jurisdiction, all the disclosures required~~  
 29 ~~by Section 9401.~~

30 (b) ~~For purposes of an election to approve a tax under the~~  
 31 ~~Mello-Roos Community Facilities Act of 1982, Chapter 2.5~~  
 32 ~~(commencing with Section 53311) of Part 1 of Division 2 of Title~~  
 33 ~~5 of the Government Code, or a charter city's authority under~~  
 34 ~~Section 5 of Article XI of the California Constitution, the statement~~  
 35 ~~required by subdivision (a) may consist entirely of a complete~~  
 36 ~~copy of the report and resolution of formation described in Sections~~  
 37 ~~53321.5 and 53325.1 of the Government Code, or, in the case of~~  
 38 ~~a charter city, the applicable charter or ordinance provision.~~

39 SEC. 4. ~~Section 9401 of the Elections Code is amended to read:~~

1 9401. (a) In connection with each bond issue proposed by a  
2 county, city and county, city, school district, community college  
3 district, or special district, or by any agency, department, or board  
4 thereof, the security for which constitutes a lien on the property  
5 for ad valorem taxes within the jurisdiction and the proposal for  
6 which is required to be submitted to the voters for approval, a  
7 measure information statement, which shall be combined with any  
8 measure information statement required by Section 9400, shall be  
9 mailed to the voters, or electronically transmitted to the voters  
10 pursuant to Section 13300.7, with the sample ballot for the bond  
11 election. The measure information statement required by this  
12 section shall be filed with the elections official conducting the  
13 election not later than the 88th day before the election, and shall  
14 include all of the following:

15 (1) The best estimate from official sources of the average annual  
16 tax rate that would be required to be levied to fund that bond issue  
17 over the entire duration of the bond debt service, based on assessed  
18 valuations available at the time of the election or a projection based  
19 on experience within the same jurisdiction or other demonstrable  
20 factors. The estimate shall also identify the final fiscal year in  
21 which the tax is anticipated to be collected.

22 (2) The best estimate from official sources of the highest tax  
23 rate that would be required to be levied to fund that bond issue,  
24 and an estimate of the year in which that rate will apply, based on  
25 assessed valuations available at the time of the election or a  
26 projection based on experience within the same jurisdiction or  
27 other demonstrable factors.

28 (3) The best estimate from official sources of the total debt  
29 service, including the principal and interest, that would be required  
30 to be repaid if all the bonds are issued and sold. The estimate may  
31 include information about the assumptions used to determine the  
32 estimate.

33 (b) In addition, the statement may contain a declaration of policy  
34 of the legislative or governing body of the applicable jurisdiction,  
35 proposing to use revenues other than ad valorem taxes to fund the  
36 bond issue, and the best estimate from official sources of these  
37 revenues and the reduction in the tax rate levied to fund the bond  
38 issue resulting from the substitution of revenue.

1 ~~(e) The words “tax rate” as used in this chapter means tax rate~~  
2 ~~per one hundred dollars (\$100) of assessed valuation on all property~~  
3 ~~to be taxed to fund a bond issue described in Section 9400.~~

4 ~~SEC. 5. Section 9403 of the Elections Code is amended to read:~~  
5 ~~9403. Failure to comply with this chapter does not affect the~~  
6 ~~validity of either of the following:~~

- 7 ~~(a) A bond issue following the sale and delivery of the bonds.~~
- 8 ~~(b) A tax following its initial imposition.~~

9 ~~SEC. 6. Section 9405 of the Elections Code is amended to read:~~  
10 ~~9405. (a) If the elections official is required to mail a measure~~  
11 ~~information statement, as provided in Section 9400 or 9401, only~~  
12 ~~one copy of the measure information statement shall be mailed to~~  
13 ~~a postal address where two or more registered voters have the same~~  
14 ~~surname and the same postal address, or the measure information~~  
15 ~~statement may be transmitted electronically pursuant to Section~~  
16 ~~13300.7.~~

17 ~~(b) This section only applies if the legislative body adopts this~~  
18 ~~section and the election official conducting the election approves~~  
19 ~~of the procedure.~~

20 ~~SEC. 7. Section 9406 is added to the Elections Code, to read:~~  
21 ~~9406. An estimate or projection made in the measure~~  
22 ~~information statement required pursuant to Section 9400 or 9401~~  
23 ~~shall not restrict or limit the tax imposed in accordance with the~~  
24 ~~measure.~~

25 ~~SEC. 8.~~  
26 ~~SECTION 1. Section 13119 of the Elections Code is amended~~  
27 ~~to read:~~

28 ~~13119. (a) The ballots used when voting upon a measure~~  
29 ~~proposed by a local governing body or submitted to the voters as~~  
30 ~~an initiative or referendum measure pursuant to Division 9~~  
31 ~~(commencing with Section 9000) shall have printed on them the~~  
32 ~~words “Shall the measure (stating the nature thereof) be adopted?”~~  
33 ~~To the right or below the statement of the measure to be voted on,~~  
34 ~~the words “Yes” and “No” shall be printed on separate lines, with~~  
35 ~~voting targets. If a voter marks the voting target next to the printed~~  
36 ~~word “Yes,” the voter’s vote shall be counted in favor of the~~  
37 ~~adoption of the measure. If a voter marks the voting target next to~~  
38 ~~the printed word “No,” the voter’s vote shall be counted against~~  
39 ~~its adoption.~~

1 (b) (1) Except for a measure described in paragraph (2), if the  
 2 proposed measure imposes a tax or raises the rate of a tax, the  
 3 ballot shall include in the statement of the measure to be voted on  
 4 an estimate of the amount of money to be raised annually and the  
 5 rate and duration of the tax to be levied.

6 (2) *If the proposed measure imposes or increases a tax with*  
 7 *more than one rate, or authorizes the issuance of bonds, the ballot*  
 8 *shall include in the statement of the measure to be voted on a fiscal*  
 9 *disclosure that includes an estimate of the amount of money to be*  
 10 *raised annually and the rate and duration of the tax to be levied.*

11 (3) *This fiscal disclosure in paragraph (2), which may contain*  
 12 *bullet points, does not count toward any word limit that applies*  
 13 *to the statement of the measure.*

14 ~~(2) If the proposed measure imposes or increases a tax with~~  
 15 ~~more than one rate, or authorizes the issuance of bonds, the~~  
 16 ~~jurisdiction submitting the measure to the voters, or, in the case~~  
 17 ~~of an initiative measure, the proponents, shall, not later than 88~~  
 18 ~~days before the election, inform the elections official conducting~~  
 19 ~~the election which of the following shall be included in or~~  
 20 ~~immediately following, as applicable, the statement of the measure:~~

21 (A) ~~The estimate, rate, and duration information described in~~  
 22 ~~paragraph (1).~~

23 (B) ~~The phrase “See voter guide for measure information~~  
 24 ~~statement and an explanation of how this measure could impact~~  
 25 ~~local property taxes.”~~

26 (3) ~~If the statement of the measure is to include the phrase~~  
 27 ~~provided for in subparagraph (B) of paragraph (2), the~~  
 28 ~~specifications of the election order for the measure, or, in the case~~  
 29 ~~of an initiative measure, the full text of the measure itself, shall~~  
 30 ~~include a statement of the reasons for selecting the inclusion of~~  
 31 ~~the phrase provided for in subparagraph (B) of paragraph (2).~~

32 (4) ~~If the elections official is informed that the statement of the~~  
 33 ~~measure shall include the phrase contained in subparagraph (B)~~  
 34 ~~of paragraph (2), the requirements of Section 9400 apply to the~~  
 35 ~~measure, and the 19 words of the phrase shall not count toward~~  
 36 ~~any word limit that applies to the statement of the measure.~~

37 (c) The statement of the measure shall be a true and impartial  
 38 synopsis of the purpose of the proposed measure, and shall be in  
 39 language that is neither argumentative nor likely to create prejudice  
 40 for or against the measure.

1 (d) Any estimate or projection included in the statement of the  
2 measure pursuant to this section, or included in the ~~statements~~  
3 *statement* required pursuant to Section ~~9400~~ or 9401, shall not  
4 restrict or limit the tax imposed in accordance with the measure.

5 (e) For purposes of this section, the following definitions apply:

6 (1) “Local governing body” means the governing body of a city,  
7 county, city and county, including a charter city or charter county,  
8 or district, including a school district.

9 (2) “Target” means an object designated as the aim for a voter  
10 to make a vote selection.

11 ~~(f) The elections official shall ensure that each polling place~~  
12 ~~has voter information guides as required by Section 19323.~~

13 ~~SEC. 9.~~

14 *SEC. 2.* If the Commission on State Mandates determines that  
15 this act contains costs mandated by the state, reimbursement to  
16 local agencies and school districts for those costs shall be made  
17 pursuant to Part 7 (commencing with Section 17500) of Division  
18 4 of Title 2 of the Government Code.

19 ~~SEC. 10.~~

20 *SEC. 3.* It is the intent of the Legislature that elections officials  
21 prepare ballot materials for the March 5, 2024, primary election  
22 in compliance with this act.

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CONSENT CALENDAR

May 23, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Budget Referral: Vision Zero Improvements at 6th & Addison Intersection

RECOMMENDATION

Refer \$600,000 to the budget process for HAWK (High-intensity Activated crossWalk) beacons and a median refuge island at 6th and Addison Streets.

CURRENT SITUATION AND ITS EFFECTS

At the March 9th, 2021 Regular Session of the Berkeley City Council, Councilmember Taplin's budget referral for the funding of Rectangular Rapid Flashing Beacons (RRFB) at the intersection of Sixth & Addison Street was referred for funding consideration under the FY 21-22 budget process.<sup>1</sup> However, this budget referral was not prioritized in light of limited resources, which lack is compounded by the failure of Measure L in 2022. The funding and eventual construction of traffic calming projects at these intersections would be an important improvement for pedestrian and cyclist safety along this heavily trafficked street in West Berkeley.

On June 23, 2022, the Zoning Adjustments Board (ZAB) approved two Use Permits at 2213 Fourth Street and 747 (787) Bancroft Way, directly adjacent to this intersection: **#ZP2021-0043** "to demolish three existing non-residential buildings and one existing duplex and construct a new 128,143-square-foot, four and one-half level parking garage containing 412 off-street automobile parking spaces and one loading space to serve uses in the vicinity of the project site"; and **#ZP2021-0096** "to demolish six existing buildings and construct a 159,143-square-foot, three-story building containing 124,539 square feet of research and development space and 34,604 square feet of light manufacturing space, and a surface parking lot containing 76 off-street parking spaces and five loading spaces."

To mitigate concerns of increased traffic impacts, the project applicant offered to provide \$40,000 for the installation of traffic safety infrastructure at 6th and Addison. However, this does not cover the full costs of needed improvements.

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<sup>1</sup><https://berkeleyca.gov/sites/default/files/documents/2021-03-09%20Item%2015%20Budget%20Referral%20Funding%20Rectangular.pdf>

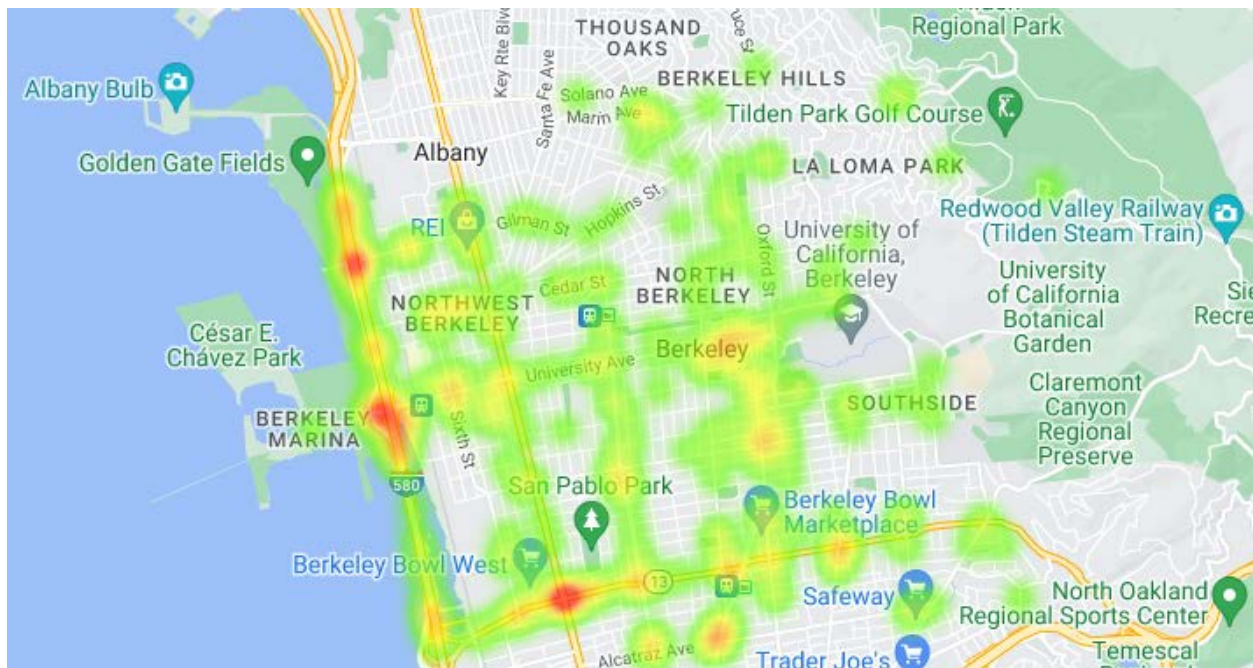
As neighbors have noted, this intersection “is a primary pedestrian and bicycle access point for The Lab, Berkeley Commons, Aquatic Park, Berkeley Marina, McLaughlin Eastshore State Park, the San Francisco Bay Trail/Pedestrian Bridge, and the 4th Street business district.”

Neighbors’ petition requesting HAWK beacons at 6th & Addison, signed by residents as well as nearby schools and businesses, is included in Attachment 1.

## BACKGROUND

Sixth Street remains classified as a “High-Injury Street” as well as an “Equity Priority Area” under the City’s Vision Zero Action Plan.<sup>2</sup> The fact that Sixth Street falls under both of these categories indicates that not only is Sixth among the most dangerous streets in Berkeley where traffic injuries are a regular occurrence, but that its current condition and perpetual disinvestment is a symptom of the historic discrimination against West Berkeley’s African-American community.

As data from UC Berkeley’s Transportation Injury Mapping System (TIMS)<sup>3</sup> shows, Sixth Street has continued to see significant collisions between motor vehicles and other road users, particularly between Cedar Street and Dwight Way. For example, on February 21, 2020, the Berkeley Police Department reported a collision between an automobile and a motorcycle on 6th St, 117 feet north of the intersection with Addison at 12:10pm. The Primary Collision Factor (PCF) in the report is listed as “Improper Turning” by the driver of the automobile. This indicates that the lack of visibility and unimpeded speeds of vehicles at this intersection may pose an increased safety risk for road users. Fortunately, the two victims on the motorcycle sustained only minor injuries.



<sup>2</sup><https://berkeleyca.gov/sites/default/files/2022-02/Berkeley-Vision-Zero-Action-Plan.pdf>

<sup>3</sup><https://tims.berkeley.edu/>



*Fig. 1: Traffic collision heat map, 2020-2022. UC Berkeley Transportation Injury Mapping System (TIMS), using data from California Highway Patrol's Statewide Integrated Traffic Records System (SWITRS).*

RRFB and medians at both Sixth & Addison and Sixth & Channing are also specifically called for under the City's Bicycle Plan due to the street having "one lane in each direction and high traffic volumes" which indicate a need for pedestrian warning improvements and physical pedestrian refuge infrastructure.<sup>4</sup>

### FISCAL IMPACTS

The City of Berkeley's 2017 Bicycle Plan estimated \$3,500-40,000 for one median refuge island.<sup>5</sup> In 2021, the City of Oakland estimated a cost of \$300,000 per unit for HAWK beacons, and \$52,000 for a median refuge. Given significant escalation in construction costs over the previous years, \$600,000 is the high end of estimated costs for this project.

### ENVIRONMENTAL IMPACTS

Establishing a network of safe streets for pedestrians and bicycles, promoting bicycle literacy, and distributing bicycles to those in need incentivize nonautomobile travel, reducing greenhouse gas emissions. The City estimates that transportation-related emissions accounts for approximately 60% of our community's total annual greenhouse gas emissions.<sup>6</sup> By encouraging alternatives to car transportation by making pedestrian and cyclist infrastructure safer and more accessible, these improvements stand to lower the emissions from our community's dominant source of carbon emissions.

### CONTACT

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

### ATTACHMENTS

1. Petition: "WEST BERKELEY NEIGHBORS DEMAND ACTION ON 6TH AND ADDISON CROSSWALK"

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<sup>4</sup>[https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Bicycle-Plan-2017\\_Ch5\\_ProposedBikewayNetwork.pdf](https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Bicycle-Plan-2017_Ch5_ProposedBikewayNetwork.pdf)

<sup>5</sup> [https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Bicycle-Plan-2017\\_AppendixF\\_Facility%20Design%20Toolbox.pdf](https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Bicycle-Plan-2017_AppendixF_Facility%20Design%20Toolbox.pdf)

<sup>6</sup><https://berkeleyca.gov/sites/default/files/2022-04/2022-02-08%20Item%2017%20Greenhouse%20Gas%20Emissions%20Inventory.pdf>

## Taplin, Terry

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**From:** Eric Wiesner <ejwiesner@gmail.com>  
**Sent:** Monday, April 24, 2023 10:59 AM  
**To:** Berkeley Mayor's Office; Manager, C; Javandel, Farid; All Council; Kesarwani, Rashi; Taplin, Terry; Bartlett, Ben; Harrison, Kate; Hahn, Sophie; Wengraf, Susan; Robinson, Rigel; Humbert, Mark  
**Cc:** Nathan Sullivan  
**Subject:** WEST BERKELEY NEIGHBORS DEMAND ACTION ON 6TH AND ADDISON CROSSWALK

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

April 24, 2023

To:

Jesse Arreguin, Mayor  
Dee Williams-Ridley, City Manager  
Farid Javandel, Deputy Director of Public Works  
Berkeley City Council

We the undersigned are West Berkeley neighbors, businesses, and non-profit organizations who are concerned with traffic safety in our community and are asking the City of Berkeley to take immediate action to address the dangerous crosswalk at 6th and Addison Streets. Sixth Street is already one of the busiest thoroughfares in the City, especially as it approaches University Avenue and the freeway entrance, yet the pedestrian crosswalk at 6th and Addison does not have any stop lights or stop signs to protect the many neighbors who cross on foot or bicycle each day. This intersection has been the site of several serious car accidents in the past several years, and vehicles frequently do not stop or slow down even when pedestrians are waiting to cross.

The uncontrolled 6th and Addison Street crossing is a primary pedestrian and bicycle access point for The Lab, Berkeley Commons, Aquatic Park, Berkeley Marina, McLaughlin Eastshore State Park, the San Francisco Bay Trail/Pedestrian Bridge, and the 4th Street business district. The intersection is frequented by populations of all ages, including Lifelong Medical Care health center, Black Pine Circle and Rosa Parks schools, and Build House, "an innovative community-based home in Berkeley for individuals with significant developmental disabilities." Families from all over Berkeley and beyond, including many young children, utilize the crosswalk on a daily basis.

In the next year, West Berkeley will see the addition of two research and development and life sciences developments: Berkeley Commons and The Lab. We are excited for their openings because they will bring beautification, jobs and energy to our enclave. The projects will also add more than 1500 vehicle parking spaces, not to mention shipping and receiving, services, and short-term visitors in multiple transit modes. There is no doubt that the 6th Street Corridor will see a substantial increase in vehicle traffic, which will make the Addison Street intersection even more dangerous for pedestrians. The time for the City to take action is now before these projects are completed and traffic in the neighborhood spikes.

At the June 23, 2022 Zoning Adjustment Board meeting, Steelwave, the developer of "The Lab," a major project on 5th Street nearby, agreed to pay the City for pedestrian improvements along Sixth Street, and specifically a pedestrian beacon signal at the Addison Street intersection. Since, Steelwave has attempted to pay the City to complete the project, but the City has not delivered. The Lab is now open and Berkeley Commons construction continues, with no measures taken to address the impending impact to the intersection

and neighborhood. We sincerely hope that it will not take a neighbor getting severely hurt or worse by a speeding vehicle for the City to take this issue seriously and take action.

We write to request that the City take immediate concrete steps to accept the funding that Steelwave agreed to provide nearly a year ago and begin installation of a HAWK beacon for the 6th and Addison crosswalk. We further request a written response from the City within 30 days to update us as to the current status of this project with a projected timeline as to its completion. We greatly appreciate your time and attention to this critical safety issue for our community.

Signed By,

Local Businesses

Black Pine Circle School  
John Carlstroem, Head of School

BuILD House  
Racquel Robinson, MPA, Executive Director

Franklin Brothers Market  
Jennifer Freese, Owner

Kids "N" Clay Pottery Studio  
Chelsea and Matthew Duke, Owners

LifeLong Medical Care  
David B. Vliet, Chief Executive Officer

Nia House Learning Center  
Eve Uberman, Executive Director  
Residents

- 1.
- 2.
3. Hans Moore, District 2
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7. Ashley McClure, District 2
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11. Sharla Sullivan, District 2
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15. Nathan Hood, District 2
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19. Elijah Medina, District 2
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23. Noelle Hood, District 2
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27. Jonah Hood, District 2
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31. Monica Campbell, District 2
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35. Eric Wiesner, District 2
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39. Gabriel Wiesner, District 2
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43. Heather Mulhall, District 2
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47. Eric Savoia, District 2
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51. Ana Savoia, District 2
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55. Steven Grind, District 1
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59. Sheridan Pauker, District 1
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63. Jane Ellis, District 2
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67. Jack Litewka, District 2
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- 71. Michele Guide, District 2
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- 75. Alex Sharenko, District 2
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- 79. Margo Schueler, District 1
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- 83. Paul Cox, District 1
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- 87. Tam Crane, District 2
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- 91. Joshua Paul, District 2
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- 95. Madeleine Emodi, District 1
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- 99. Nathaniel Emodi, District 1
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- 103. Jenny Lederer, District 2
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- 107. Nick Lederer, District 2
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- 111. Andy Davis, District 2
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- 115. Mila Matos, District 2
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- 119. Remi Matos, District 2
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- 123. Dorian Matos, District 2
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- 127. Stacey Lewis, District 2
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- 131. Brandon Baunach, District 2
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- 135. Lawrence Baunach, District 2
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- 139. Leon Baunach, District 2
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- 143. Carol Baunach, District 2
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- 147. Renaye Brown, District 2
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- 151. Susan Springborg, District 2
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- 155. Greg Martin, District 2
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- 159. Cancion Soto, District 2
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- 163. Matthew Rosen, District 2
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- 167. Dan Sobel, District 2
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- 171. Lisa Wehmeier, District 2
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- 175. David Skolnick, District 2
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- 179. Celia Jackson, District 2
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- 183. Chilezie Nnadi, District 2
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- 187. Katherine Nnadi, District 2
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- 191. David Nicholls, District 2
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- 195. Anna Nicholls, District 2
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- 199. Tawny Reynolds, District 1
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- 203. Megan Bates, District 2
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- 207. Joey Gottbrath, District 2
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- 211. Sara Pierre, District 2
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- 215. Brie Fulton, District 2
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- 219. Orion Fulton, District 2
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- 223. Sarah Roggero, District 2
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- 227. Brian Price, District 2
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- 231. Amy Campos, District 2
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- 235. Olivia Price, District 2
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- 239. Casper Price, District 2
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- 243. Sarah Abigail Ejigu, District 2
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- 247. Keith Berry, District 2
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- 251. Sika Gasinu, District 2
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- 255. Sam Kronick, District 2
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- 259. Manya Sheps, District 2
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- 263. Hong Ly, District 2
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- 267. Arun Chawan, District 2
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- 271. Deborah Sommers, District 1
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- 275. Andrew Gilbert, District 2
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- 279. Gabriela Quiros, District 2
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- 283. Becca Schonberg, District 2
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- 287. Julia Goodman, District 2
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- 291. Michael Hall, District 2
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- 295. Dale Goodman, District 2
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- 299. Michael Rodriguez, District 2
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- 303. Bonnie Rauscher, District 2
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- 307. Eric Rauscher, District 2
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- 311. Rebecca Herman, District 2
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- 315. Zena Barakat, District 2
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- 319. Terry Betts, District 2
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- 323. Ilata Barakat, District 2
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- 327. Albert Brown, District 2
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- 331. Toni Mester, District 2
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- 335. Thomas Paul, District 2
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- 339. Michael Hall, District 2
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- 343. Amy Hill, District 2
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- 347. Joshua Paul, District 2
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- 351. Adam Whyte, District 2
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- 355. Maureen Clearfield, District 2
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- 359. Sophia C. Whyte, District 2
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- 362.
- 363. Marcy Rein, District 2
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- 365.
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- 367. Sherline Long, District 2
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- 371. Jeanette Wagner, District 2
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- 375. David Wagner, District 2
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Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
May 23, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf (Author), Mayor Arreguín (Co-Sponsor),  
Councilmember Taplin (Co-Sponsor)

Subject: Support for H.R.603 - HEAL Act

RECOMMENDATION

Adopt a Resolution in support of H.R.603 (Gottheimer) - Holocaust Education and Antisemitism Lessons Act or the HEAL Act and send it to the author, Rep. Josh Gottheimer, with copies to Rep. Kathy Manning, Rep. Barbara Lee and Senator Dianne Feinstein.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

H.R. 603, a bipartisan bill with over 100 co-sponsors would direct the Holocaust Memorial Museum in Washington, D.C. to conduct a study on Holocaust education efforts in public schools nationwide. The study would determine which states and school districts require or do not require Holocaust education in their curriculum and which offer optional Holocaust education. The study would identify standards and requirements schools mandate on Holocaust education, the types and quality of instructional materials used to teach, and the approaches used by schools to assess what students learn. The Holocaust Memorial Museum would report the results of the study to Congress.

There is mounting evidence that knowledge about the Holocaust is beginning to fade. A 2020 survey<sup>1</sup> measuring Holocaust awareness in the U.S. found that roughly two-thirds of those asked did not know how many Jewish people died. The survey of Americans between 18 and 40 also found that 48% could not name one concentration camp or ghetto.

According to recent analysis<sup>2</sup>, a majority of U.S. states do not have laws requiring public school students to learn about the horrors of the Holocaust.

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<sup>1</sup> [Most states lack laws requiring Holocaust and genocide education \(axios.com\)](https://www.axios.com/news/2020/05/14/most-states-lack-laws-requiring-holocaust-and-genocide-education-2020-05-14/)

<sup>2</sup> Ibid.

Congressmember and lead sponsor, Josh Gottheimer (NJ-5) said of the bill, "We all have an obligation to teach future generations about this evil. We have an obligation to try to heal our communities. We have an obligation to teach about this stain of hatred, so that it never happens ever again."

Congressmember Bonnie Watson Coleman (NJ-12) stated, "At a time when the teaching of history is under attack, the lessons of the Holocaust are more urgent now than ever before." She added that, "Antisemitism is experiencing a frightening resurgence in the United States and across the globe. Recent remarks by well-known public figures threaten to stoke the same fires of hate that brought the Nazi Party to power and resulted in genocide."

Congressmember Kathy Manning (NC-6) proclaimed, "It is vitally important to teach students about the history of the Holocaust and antisemitism and to empower them to recognize and confront hate whenever they see it. As we face rising antisemitism, it is critical to expand education nationwide about the history and unique nature of antisemitism, the conspiracy theories and scapegoating that have incited hatred and violence for centuries, and led to the Holocaust. Education and understanding are a critical antidote to the spreading of misinformation and hate,"

The City of Berkeley has a deep commitment to recognizing and understanding the importance of Holocaust history and education in efforts to combat rising antisemitism. For the past twenty years the City has supported an annual [Holocaust Remembrance Day Program](#) for community members. Berkeley was also instrumental in the United Against Hate Campaign, initiated in 2017, in response to white supremacist rallies in the region.

#### ENVIRONMENTAL SUSTAINABILITY

No direct impact on environmental sustainability.

#### CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

#### Attachments:

1: Resolution

2: H.R.603 - HEAL Act

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

SUPPORT FOR H.R. 603 - HEAL ACT

WHEREAS, there is mounting evidence that knowledge about the Holocaust is beginning to fade; and

WHEREAS, the Anti-Defamation League found Antisemitic Incidents in the U.S. at their highest number in 2021 since they started tracking in 1979; and

WHEREAS, the majority of states in the U.S. do not have laws requiring public school students to learn about the horrors of the Holocaust; and

WHEREAS, Congresswoman Kathie Manning (NC-6) eloquently stated, “As we face rising antisemitism, it is critical to expand education nationwide about the history and unique nature of antisemitism, the conspiracy theories and scapegoating that have incited hatred and violence for centuries, and led to the Holocaust”; and

WHEREAS, the HEAL Act will direct the United States Holocaust Memorial Museum to conduct a study on current Holocaust education efforts in the U.S and provide the report to Congress as a first step.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it unanimously supports H.R. 603 – Holocaust Education and Antisemitism Lessons Act (HEAL Act).

BE IT FURTHER RESOLVED that the City of Berkeley held its 20<sup>th</sup> Annual Holocaust Remembrance Day Program on April 16, 2023 to honor survivors, remember those who perished and remind us all to never forget the atrocities nor let them happen again.

Exhibits

A: City of Berkeley's 20th Annual Holocaust Remembrance Day Program:

<https://youtu.be/texUkWVoHlc>

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.....  
(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

# H. R. \_\_\_\_\_

To require a study on Holocaust education efforts of States, local educational agencies, and public elementary and secondary schools, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. GOTTHEIMER introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# A BILL

To require a study on Holocaust education efforts of States, local educational agencies, and public elementary and secondary schools, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Holocaust Education  
5 and Antisemitism Lessons Act" or the "HEAL Act".

6 **SEC. 2. STUDY AND REPORT ON HOLOCAUST EDUCATION.**

7 (a) STUDY.—Beginning not later than 180 days after  
8 the date of the enactment of this Act, the Director of the

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1 United States Holocaust Memorial Museum (referred to  
2 in this Act as the “Director”) shall conduct a study on  
3 Holocaust education efforts in States, local educational  
4 agencies, and public elementary and secondary schools.

5 Such study shall include an examination of—

6 (1) all States;

7 (2) a nationally representative sample of local  
8 educational agencies; and

9 (3) a representative sample of schools within  
10 the local educational agencies being studied.

11 (b) ELEMENTS.—In conducting the study under sub-  
12 section (a), the Director shall—

13 (1) determine whether States and local edu-  
14 cational agencies require Holocaust education as  
15 part of the curriculum taught in public elementary  
16 and secondary schools;

17 (2) identify States and local educational agen-  
18 cies that have optional Holocaust education as part  
19 of the curriculum taught in public elementary and  
20 secondary schools;

21 (3) identify each State’s standards and local  
22 educational agency’s requirements relating to Holo-  
23 caust education and summarize the status of the im-  
24 plementation of such standards, including—



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1 (A) the existence of a centralized appa-  
2 ratus at the State or local level that collects and  
3 disseminates Holocaust education curricula and  
4 materials;

5 (B) the existence of Holocaust education  
6 professional development opportunities for pre-  
7 service and in-service teachers; and

8 (C) the involvement of informal edu-  
9 cational organizations in implementing Holo-  
10 caust education, including museums and cul-  
11 tural centers;

12 (4) determine whether public elementary and  
13 secondary schools use the following strategies in  
14 their Holocaust education, including through the  
15 qualitative and quantitative analysis of such indica-  
16 tors as—

17 (A) in-class discussion;

18 (B) educational activities conducted out-  
19 side the classroom, including homework assign-  
20 ments and experiential learning involving State  
21 and local organizations, such as museums and  
22 cultural centers;

23 (C) project based learning;



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1 (D) educational materials and activities  
2 that are developmentally appropriate and  
3 taught through a trauma-informed lens; and

4 (E) integration of lessons from the Holo-  
5 caust across the curriculum and throughout the  
6 school year;

7 (5) identify the types of instructional materials  
8 used to teach students about the Holocaust, includ-  
9 ing the use of primary source material;

10 (6) identify—

11 (A) the duration of the periods in which  
12 Holocaust education is taught in public elemen-  
13 tary and secondary schools; and

14 (B) the comprehensiveness of the Holo-  
15 caust education curriculum taught in such  
16 schools, as indicated by the extent to which the  
17 curriculum addresses all elements and aspects  
18 of the Holocaust; and

19 (7) identify the approaches used by such  
20 schools to assess outcomes using traditional and  
21 nontraditional assessments, including assessments  
22 of—

23 (A) students' knowledge of the Holocaust;  
24 and

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1 (B) students' ability to identify and ana-  
2 lyze antisemitism, bigotry, hate, and genocide in  
3 historical and contemporary contexts.

4 (c) REPORT.—

5 (1) IN GENERAL.—Following the completion of  
6 the study under subsection (a), the Director shall  
7 prepare and submit to Congress a report on the re-  
8 sults of the study.

9 (2) DEADLINE FOR SUBMITTAL.—The report  
10 under paragraph (1) shall be submitted not later  
11 than the earlier of—

12 (A) 180 days after the completion of the  
13 study under subsection (a); or

14 (B) three years after the date of the enact-  
15 ment of this section.

16 (d) DEFINITIONS.—In this Act:

17 (1) ESEA TERMS.—The terms “elementary  
18 school”, “local educational agency”, “secondary  
19 school”, and “State” have the meanings given those  
20 terms in section 8101 of the Elementary and Sec-  
21 ondary Education Act of 1965 (20 U.S.C. 7801).

22 (2) HOLOCAUST.—The term “Holocaust” has  
23 the meaning given that term in section 3 of the  
24 Never Again Education Act (Public Law 116–141;  
25 36 U.S.C. 2301 note).

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1           (3) HOLOCAUST EDUCATION.—The term “Holo-  
2       caust education” means educational activities that  
3       are specifically intended—

4           (A) to improve students’ awareness and  
5       understanding of the Holocaust;

6           (B) to educate students on the lessons of  
7       the Holocaust as a means to raise awareness  
8       about the importance of preventing genocide,  
9       hate, and bigotry against any group of people;  
10      and

11          (C) to study the history of antisemitism,  
12      its deep historical roots, the use of conspiracy  
13      theories and propaganda that target the Jewish  
14      people, and the shape-shifting nature of anti-  
15      semitism over time.

16          (4) PROJECT BASED LEARNING.—The term  
17      “project based learning” means a teaching method  
18      through which students learn by actively engaging in  
19      real-world and personally meaningful projects.

Support for H.R.603 - HEAL Act

CONSENT CALENDAR  
May 23, 2023



Energy Commission

ACTION CALENDAR  
May 23, 2023

To: Honorable Mayor and Members of the City Council

From: Energy Commission

Submitted by: Bentham Paulos, Chairperson, Energy Commission

Subject: Recommendation on Climate, Building Electrification, and Sustainable Transportation Budget Priorities for Fiscal Year 2023 and 2024

RECOMMENDATION

The Energy Commission recommends that the Berkeley City Council prioritize and include in the City's budget for the Fiscal Years Ending (FYE) 2023 and 2024 several staff positions, pilot projects, investments in electric vehicles and charging infrastructure, and other measures to ensure that the City's budget is aligned with and provides adequate and needed funding to implement the City's adopted Climate Action Plan, Electric Mobility Roadmap, Building Emissions Saving Ordinance, 2019 ban on gas in new construction, and the Existing Buildings Electrification Strategy.

POLICY COMMITTEE RECOMMENDATION

No action was taken by the Budget & Finance Committee. Item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.

SUMMARY

In this memo, the Energy Commission (which disbanded March 31, 2022, and was merged with the Community Environmental Advisory Commission in April 2022) provides details on specific budget and funding priorities for: staffing an Electric Mobility Coordinator and the Green Buildings Program Manager; fully funding the Building Electrification and Just Transition pilot project (especially to avoid risking loss of state funding); accelerate funding for the City's delayed fleet replacement with electric vehicles, residential electric vehicle charging infrastructure, and electric bike parking infrastructure; expanding public engagement and outreach; leveraging street maintenance budgets to incorporate and promote low-carbon mobility; and adopting policies and creating incentive programs to advance transportation and building electrification such as using the Transportation Network Company (TNC) User Tax General Fund revenue to fund bike and pedestrian projects and using a portion of the Transfer Tax to create an incentive program for residential building electrification.



## FISCAL IMPACTS OF RECOMMENDATION

The specific fiscal impacts are detailed in the budget recommendations below. At least one of our priority budget recommendations – to fully fund the Building Electrification and Just Transition pilot – is urgent and time-sensitive and cannot wait until the June budget process. Any delay risks Berkeley losing access to substantial state funding that could support this pilot.

## CURRENT SITUATION AND ITS EFFECTS

Berkeley has been a world leader on climate change and building electrification, as well as on zero waste. The City has already adopted an ambitious climate action plan and greenhouse gas (GHG) emission reduction goals.<sup>1</sup> Between our Building Emissions Savings Ordinance<sup>2</sup>, 2019 ban on gas in new construction, the 100% renewable option with East Bay Community Energy, and the Existing Buildings Electrification Strategy<sup>3</sup> (BEBES), approved by the Council last year<sup>4</sup>, we continue to lead the world with our thoughtfulness and action.

However, the task in front of us is daunting. With 60% of the City's emissions coming from the transportation sector and 36% from the building sector,<sup>5</sup> we must redouble our efforts to reduce climate emissions from transportation and buildings through electrification of buildings and transportation, sustainable low- and zero-carbon transportation modes, and other efforts. With the upcoming budget processes, we have ample opportunity to take necessary next steps to reach our zero emissions goals.

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<sup>1</sup> In 2006, voters overwhelmingly passed ballot Measure G and established Berkeley's goal to *Reduce our entire community's greenhouse gas emissions by 80% below 2000 levels by 2050*. Since then, the City has adopted a Climate Action Plan (2009).

On June 12, 2018, the Council passed item 30 which adopted a resolution establishing the goal of becoming a Fossil Fuel-Free City. Of the recommendations in the resolution, one was that "All future City government procurements of vehicles should minimize emissions and set a goal of transitioning the city's vehicle fleet to all electric vehicles."

Also, on June 12, 2018, the Council passed item 49 "Declaration of a Climate Emergency" which refers "to the Energy Commission to study and report back to Council on a path for Berkeley to become a "Carbon Sink" as quickly as possible, and to propose a deadline for Berkeley to achieve this goal" ideally by 2030.

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

<sup>3</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Berkeley%20Existing%20Bldg%20Elect%20Strategy\\_Final\\_102021.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Berkeley%20Existing%20Bldg%20Elect%20Strategy_Final_102021.pdf)

<sup>4</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/12\\_Dec/Documents/2021-12-14\\_Item\\_06\\_Minutes\\_for\\_Approval.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/12_Dec/Documents/2021-12-14_Item_06_Minutes_for_Approval.aspx)

<sup>5</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2022/02\\_Feb/Documents/2022-02-08\\_Presentations\\_Item\\_17\\_Pres\\_Planning\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2022/02_Feb/Documents/2022-02-08_Presentations_Item_17_Pres_Planning_pdf.aspx)

The Energy Commission has identified the following priority items related to climate, buildings, and transportation in the City's Fiscal Year (FY) 2023 budget to ensure that the budget aligns with the City's adopted climate action plan and greenhouse gas (GHG) emission reduction goals.

At least one of our priority budget recommendations – to fully fund the Building Electrification and Just Transition pilot – is urgent and time-sensitive and cannot wait until the June budget process. Any delay risks Berkeley losing access to substantial state funding that could support this pilot.

At its meeting of February 23, 2022, the Energy Commission voted to send this recommendation to the City Council by a vote of 6-0-0-1 [Moved Tahara, Second Paulos. Ayes: Paulos, Wolf, Tahara, Moore, Guliasi, Zuckerman. Noes: None. Abstain: None. Absent: de Tournay Birkhahn].

### **Budget Priorities Recommended by the Energy Commission**

#### **I. Budget Priorities to Increase Staff Capacity to Implement the City's Established Climate, Transportation, and Clean Energy Policies and Priorities**

- 1. Fund and Hire Staff to Implement the Electric Mobility Roadmap.** The City had previously approved the hiring of an Electric Mobility Coordinator within the Public Works Department<sup>6</sup> to assist with implementation of the Berkeley Electric Mobility Roadmap adopted in July 2020<sup>7</sup>; but, at the time of writing, no position has been posted, now a year and a half after approval of the Roadmap.

The Council has been a leader in adopting resolutions acknowledging the need for a prompt transition away from fossil fuels and strategies for how to do so.<sup>8</sup> But, without additional staff capacity, and exacerbated by recent staff departures and necessary pandemic re-assignments, the City has not been able to make adequate progress on implementing initiatives to reduce global warming pollution from the transportation sector, which is the largest emitter of global warming pollution in Berkeley.<sup>9</sup> Existing staff's capacity is simply inadequate to lead implementation of the groundbreaking,

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<sup>6</sup> Budget Referral from Councilwoman Harrison, March 30, 2021. The Energy Commission's understanding is that this position was included in the FY21-22 Budget to commence half-way through the fiscal year or as an "unfunded council referral," which was supposed to be funded via savings from other cuts or delayed expenses.

[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-30\\_Item\\_25\\_Budget\\_Referral\\_Allocate\\_Funding.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-30_Item_25_Budget_Referral_Allocate_Funding.aspx)

<sup>7</sup> On July 21, 2020, the Council passed item 1, adopting the [Berkeley Electric Mobility Roadmap](#).

<sup>8</sup> *Ibid.*

<sup>9</sup> 59% of GHG emissions in Berkeley come from transportation, followed by 39% from buildings..

[https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-21\\_Special\\_Item\\_05\\_Climate\\_Action\\_Plan\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx) (July 21, 2020).

transformative Roadmap in addition to their current responsibilities, and relying only on existing staff to implement will continue to cause unacceptable delays. **To implement the Electric Mobility Roadmap, it is critical that the City fund and hire additional staff beginning in the FY 2023 budget.**<sup>10</sup>

- 2. Increase Staff Necessary to Implement the Berkeley Existing Buildings Electrification Strategy, and Ensure Durable Funding for Critical Staff Positions.** In addition to the Electric Mobility Coordinator position, the Energy Commission believes it should also be a priority for the City to enhance staff capacity for implementing other climate and clean energy initiatives, such as, but not limited, to the Berkeley Existing Building Electrification Strategy<sup>11</sup> and Climate Equity Action Fund.<sup>12</sup>

City staff has and continues to do impressive work with limited staff. However, the scope of the task ahead of us is massive. As laid out by the BEBES, there are no fewer than 57 policy actions (Table 3-5, BEBES) that the City should take in order to decarbonize the building sector by 2045, let alone by 2030, which the science demands of comparatively wealthy municipalities such as ours. Many of these actions involve substantial education and regulatory initiatives, which can only be achieved with the addition of dedicated, skilled staff.

Although we defer to staff with respect to the specifics of what additional positions might be most useful, some critical actions include:

- Ensuring durable, long-term funding for the Green Buildings Program Manager. Although hiring has only recently begun, this role was approved as part of the

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<sup>10</sup> This single staff person will have an outsized impact, as they will be responsible for establishing and coordinating the Electric Mobility Roadmap Implementation Working Group as called for in the Roadmap. This Working Group was supposed to be convened within six months of the Roadmap's approval, but in the absence of staff capacity, it still has not been done. The Working Group's mandate includes tracking and evaluating Roadmap implementation progress. Without the Working Group, there is no accountability for the City to deliver against its stated electric mobility plans.

<sup>11</sup> On November 30, 2021, the Council passed item 13, adopting the [Berkeley Existing Building Electrification Strategy](#). Phase 1 (2021-2025) actions for the Berkeley Existing Building Electrification Strategy will lay the groundwork to support wide-spread transition to electrified buildings in Berkeley. Policies included in Phase 1 will involve continued community engagement, pilot projects, education campaigns to demonstrate the benefits and feasibility of electrification, collaboration with labor and workforce organizations to advance inclusive high road jobs, alignment of existing programs and incentives, and the development of additional incentive programs as well as larger scale funding and financing programs such as tariffed on-bill financing. The City of Berkeley will work with partners such as East Bay Community Energy and Pacific Gas & Electric to develop larger scale Phase 2 projects. There will also be a need to collaborate with regional and State partners to align State policies to support Phase 2 actions. (Berkeley Existing Building Electrification Strategy, p. 95.)

<sup>12</sup> The City recently issued an [RFP](#) for the Climate Equity Action Fund. but existing staff do not have the capacity to maximize program impact and collect lessons learned from this innovative fund.



2019 gas ban,<sup>13</sup> and its extension will be critical in helping to develop future code amendments and help to reduce permitting overhead, improve compliance, and address the myriad other regulatory questions identified in the BEBES.

- Supporting and expanding staffing across the City for programs related to tenant protections and anti-displacement, such as those listed in Appendix C of the BEBES. As we electrify our existing building stock, we will need to evolve and augment our existing policies to protect marginalized communities at risk of displacement (CC-9, BEBES). We cannot afford for these policies to lag behind the pace and scale of electrification measures in the city.
- Supporting and expanding OESD staff to facilitate updates to the 2009 Climate Action Plan as appropriate and programs to facilitate Berkeley's ambitious new greenhouse gas limit goals. For example, last year the Council passed a Resolution establishing a 2030 emission reduction target that reflects Berkeley's fair share of the 50% global reduction in CO<sub>2</sub>e – 60.5% from 2018 levels by 2030.<sup>14</sup> Council is also actively considering more stringent and binding targets across its sector-based and consumption inventories. These new initiatives will have significant implications for the City's approach to building decarbonization. While we fully support these ambitious targets, efforts to implement them have been largely unfunded and understaffed. Achieving these targets will require a significant expansion of the City's climate staff capacity.

## II. Budget Priorities to Advance Clean Transportation in Berkeley

1. **Fund City Fleet Electrification and Charging.** On June 29, 2021, the City adopted item 25 approving the recommendations in the City Auditor's report "Fleet Replacement Fund Short Millions"<sup>15</sup>, which directed staff to adjust the fleet replacement funding model and budget, ensuring that the City's transition to electric vehicles (EVs) aligns with its adopted GHG emissions goals. On September 14, 2021, the Council adopted the recommendation from item 27 "Recommendations for Fleet Electrification Policy and Financing",<sup>16</sup> made by the Energy Commission, which referred to the City Manager to update the Municipal Fleet Electrification Assessment and EV charging funding priorities to respond to the City Auditor's Report and align with the objectives stated in the Electric Mobility Roadmap and

<sup>13</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/12\\_Dec/Documents/2019-12-03\\_Supp\\_2\\_Reports\\_Item\\_24\\_Supp\\_Arreguin\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/12_Dec/Documents/2019-12-03_Supp_2_Reports_Item_24_Supp_Arreguin_pdf.aspx)

<sup>14</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/11\\_Nov/Documents/2021-11-30\\_Item\\_14\\_Cities\\_Race\\_to\\_Zero\\_Campaign\\_\\_2030\\_emission\\_reduction\\_target.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/Documents/2021-11-30_Item_14_Cities_Race_to_Zero_Campaign__2030_emission_reduction_target.aspx)

<sup>15</sup> Fleet Replacement Fund Short Millions, Berkeley City Auditor, June 29, 2021. [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/06\\_June/Documents/2021-06-29\\_Supp\\_2\\_Reports\\_Item\\_25\\_Supp\\_Auditor\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/06_June/Documents/2021-06-29_Supp_2_Reports_Item_25_Supp_Auditor_pdf.aspx).

<sup>16</sup> Recommendations for Fleet Electrification Policy and Financing, From Energy Commission, Sept 14, 2021. [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/09\\_Sep/City\\_Council\\_\\_09-14-2021\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/09_Sep/City_Council__09-14-2021_-_Regular_Meeting_Agenda.aspx) - Item 27

prioritize municipal fleet modal shift to electric bicycles and other forms of zero-emissions mobility where feasible.

The Fleet EV Plan identified 32 vehicles to replace with EVs in FY 2021, requiring an estimated \$1.16 million; but, as of June 2021, Public Works had only \$747,000 to replace 29 vehicles scheduled to be replaced with EVs in FY 2021. The Energy Commission's recommendation noted that delaying replacement of these vehicles in 2021 would result in greater GHG emissions:

“For example, per the Fleet EV Plan, if the City does not replace light-duty internal combustion cars with EVs as scheduled in 2021, it will produce an estimated additional 10.6 MT of GHG emissions in 2021; if not replaced as planned in 2022 an additional 19.5 MT of GHGs would be emitted in 2022; and so on.” (page 4).

It is the Energy Commission's understanding that East Bay Community Energy (EBCE) has offered to provide substantial investments in the City of Berkeley for EV charging infrastructure, which would support progress on the City's fleet electrification and free up City funds that would otherwise have been spent on EV charging infrastructure. The Energy Commission urges the Council to resolve the budget gaps identified in the Auditor's report and explore additional funding sources so that the City can accelerate its purchases of EVs and the associated EV charging infrastructure in FY 2023.

A global microchip shortage resulting in prolonged supply chain delays and long wait times for the delivery of EVs is compounding the necessity for the City to take immediate action on fleet replacement. These delays are being exacerbated by the recent surge in demand for EVs. As more municipalities similarly pass electrification plans, Berkeley will see increasing competition for the same vehicles. The City must thus plan and order ahead if it wants to have a smooth fleet transition. The City should also commence its purchase of e-bikes for the years ahead, as replacements to existing City vehicles where appropriate. E-bikes are both highly cost effective and may not face the same supply chain delays as electric cars and trucks. The Energy Commission recommends that the Council prioritize these municipal fleet EV replacements, along with the associated EV charging infrastructure, in the FY 2023 budget.

2. **Expand Infrastructure for Residential EV Charging and E-Bike Parking.** The City should prioritize funds to address solutions for residential curbside EV charging. The City's Residential Curbside EV Charging Pilot Program<sup>17</sup> sunset in 2020. The development model the pilot used – private ownership of a charger on the side of a

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<sup>17</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Manual%20with%20attachments%2012-1-14.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Manual%20with%20attachments%2012-1-14.pdf)

public street – was not successful. While 62 residents applied for the program, only four on-site and seven curbside chargers were installed - high permitting fees, restrictive engineering requirements, lack of control of the parking space adjacent to the charger, and poor access to electrical supply resulted in high costs.<sup>18</sup> Given the number of Berkeley residents who do not have access to a driveway or garage, the Electric Mobility Roadmap identified as a high priority the need to deploy curbside charging for electric cars, particularly in neighborhoods with high rates of multifamily and rental housing. The next phase of curbside charging will incorporate lessons learned from the Pilot, investigate alternative strategies, identify state and federal funding sources, and explore partnerships with EBCE and EV charging companies.

The City should also investigate the potential to provide public secure parking for other types of fossil fuel-free vehicles, namely e-bikes and cargo bikes, for apartment dwellers. E-bikes and cargo bikes tend to be larger and heavier than regular bicycles, making them difficult to carry up steps. A paid, public parking system, such as the BikeLink lockers at BART stations, may be adapted to street parking near apartment buildings.

The Council should allocate funds in the budget for an electric mobility staff person who would oversee new projects — research other cities' approaches, evaluate Berkeley's codes, standards, and permitting processes, and conduct feasibility studies — along with funds for the pilot projects themselves.

3. **Incorporate Low-Carbon Mobility into Street Maintenance Budget.** While Council is considering a bond measure that would make capital investments in our transportation system, the City should also revisit how the maintenance budget can be used to promote low-carbon mobility.

The Council has approved multiple plans to promote safe, equitable, and low-carbon mobility for all. These “complete streets” concepts are captured in the Bicycle Plan, Pedestrian Plan, Vision Zero Action Plan, and analysis of Safe Routes to School.<sup>19</sup> But many of the measures in these plans have been implemented slowly, if at all. The Council should direct the Public Works Department to follow these plans to the letter, and integrate all low-cost and rapidly deployable concepts from the plans into their ongoing maintenance. The timing of deploying higher cost measures may necessarily depend on funding.<sup>20</sup>

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<sup>18</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/02\\_Feb/Documents/2018-02-27\\_Item\\_16\\_Residential\\_Curbside\\_Electric.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/02_Feb/Documents/2018-02-27_Item_16_Residential_Curbside_Electric.aspx)

<sup>19</sup> See [Bicycle Plan](#), [Pedestrian Plan](#), [Vision Zero Action Plan](#), [Safe Routes to School](#).

<sup>20</sup> A related concept is that the Council should consider giving a more formal policy status to Bicycle Boulevards. While the Boulevards serve as a useful wayfinding tool for cyclists, their designation does not give the streets a meaningful status, and no prioritization when it comes to City planning or operations. For example, places where Bicycle Boulevards cross busy streets, such as at California/Dwight or Channing/San Pablo, face years of delay before safe crossing solutions can be implemented. Numerous

On January 18, 2022, the Council adopted item 19, referring a budget item to use Transportation Network Company (TNC) User Tax General Fund revenue to build and maintain protected bicycle lanes and crossings, pedestrian street crossings, and quick-build public transit projects under the Street Repair Program. The Energy Commission recommends that the Council follow through on its plan to use this revenue to benefit transportation projects in Berkeley.

### III. Budget Priorities and Financial Incentives to Advance Building Decarbonization in Berkeley

1. **Fully Fund the Building Electrification and Just Transition Pilot Project.** In the December 2021 Annual Adjustment Ordinance (AAO) budget process, the Mayor declared, and the Council approved, that the Building Electrification and Just Transition pilot (“the pilot”)<sup>21</sup> be a first priority to be funded in the May 2022 AAO.<sup>22</sup> Consistent with the City’s “targeted universalism” approach to building electrification,<sup>23</sup> the pilot intends to kick-start electrification among affordable housing and low income (LMI) communities through incentives, and develop high-road jobs through labor standards and contractor prequalification.

**Funding for this item in the May AAO is critical, and cannot wait until the June budget process.** Any delay risks losing access to substantial state funding that could multiply the reach and impact of the pilot. The California TECH initiative, an \$120 million initiative established by SB 1477, recently began offering incentives for heat pump space and water heating that can defray nearly \$10,000 of cost per home,<sup>24</sup> including the cost of an electric panel upgrade. These incentives are accessible to contractors via the BayREN Home+ programs, which will simplify administration of the pilot due to its use of pre-qualified contractors.

There is additional urgency as well. The Bay Area Air Quality Management District (BAAQMD) is looking at phasing out the sale of NOx-emitting appliances by the end

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Bicycle Boulevards suffer from extremely poor pavement condition. Stop signs often favor cars instead of the Boulevards, and lighting can often be sub-standard. All of these factors undermine achievement of City plans, threaten public safety, and lock in carbon pollution. Direction from the Council to staff could take the form of a formal designation of the Boulevards as a category of street, just as Public Works delineates “arterials” and “collectors” when it comes to planning and operations.

<sup>21</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/11\\_Nov/City\\_Council\\_11-30-2021\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/City_Council_11-30-2021_-_Regular_Meeting_Agenda.aspx)

<sup>22</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/12\\_Dec/Documents/2021-12-14\\_Supp\\_2\\_Reports\\_Item\\_44\\_Supp\\_Mayor\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/12_Dec/Documents/2021-12-14_Supp_2_Reports_Item_44_Supp_Mayor_pdf.aspx)

<sup>23</sup> According to the BEBES: “Targeted Universalism is the practice of setting a universal policy goal...while identifying targeted strategies and actions specifically for marginalized communities to ensure that those communities can benefit from the policy goal.”

<sup>24</sup> For single-family homes (up to 4 units), including “enhanced” incentives for HPWH. See: <https://energy-solution.com/wp-content/uploads/2021/12/TECH-Single-and-Multifamily-Incentives.pdf>

of the decade,<sup>25</sup> which will significantly affect the availability of non-electric space and water heating. However, BAAQMD recognizes that such a rule can only be effective if there is sufficient financial support for disadvantaged communities and a robust installer network (things the BEBES also calls out) so that everyone can reap the benefits of zero-pollution appliances without facing substantial costs. **These costs cannot be borne by cities alone, but Berkeley can lay the groundwork to leverage state and federal money with its pilot and thus significantly contribute to the regional effort to improve air quality and GHG emissions.**

2. **Use Transfer Tax Revenues to Provide Incentives for Electrification.** With soaring home prices, the transfer tax represents a durable source of funds that the City should leverage to accelerate our building electrification goals. There are two potential models to consider.

First, would be to model a rebate program after the Seismic Retrofit Refund Program<sup>26</sup> that would rebate a percentage of the transfer tax with a value up to the cost of a typical electrification package for electrification measures completed within one year of transfer. This would incentivize electrification at a time when there is large access to capital, and could lay the groundwork for an ultimate requirement to retrofit at time of sale. OESD staff have already provided Council with a draft ordinance and indicate that each year on average 800 units would qualify through this mechanism.<sup>27</sup>

The Energy Commission recommends that Council move forward with this ordinance but with a cap on the amount of eligible homeowner rebates per year. These rebates are critical to the City's long-term strategy of phasing in potential electrification mandates as feasible.

At the same time, as a diverse and majority renter city, it is critical that electrification subsidies are also available for units occupied by rent controlled or below market rate tenants. As a second model option, a percentage of the transfer tax refund program (for example, the difference between the reserved and actual rebate amounts) might be simultaneously allocated to expand electrification work among those LMI and minority communities most affected by inequality, pollution, climate change, or at risk of displacement. This could come in the form of expanding the Building Electrification and Just Transition pilot and Climate Equity Fund to reach more households, or other incentive programs targeted at those same communities.

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<sup>25</sup> <https://www.baaqmd.gov/rules-and-compliance/rule-development/building-appliances>

<sup>26</sup> [https://www.cityofberkeley.info/Finance/Home/Real\\_Property\\_Transfer\\_Tax\\_Seismic\\_Refunds.aspx](https://www.cityofberkeley.info/Finance/Home/Real_Property_Transfer_Tax_Seismic_Refunds.aspx)

<sup>27</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-21\\_Special\\_Item\\_03\\_Referral\\_Response\\_Ordinance\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_03_Referral_Response_Ordinance_pdf.aspx)

- 3. Adopt Policies to Promote Implementation of Low-cost, Partial Electrification measures.** In addition to enacting full retrofit programs, we recommend that the Council consider low-cost, partial electrification measures to maximize the immediate climate and health impacts of electrification measures. For example, a requirement that any AC installation instead be a heat pump (TR-7, BEBES) could be coupled with a subsidy for LMI communities to pay for the cost difference between an AC and an equivalent heat pump model, which is estimated to be between just \$200 and \$500 wholesale.<sup>28</sup> An installer subsidy of \$676 alone could be enough to nearly double heat pump market share even absent a mandate<sup>29</sup>. Other low-cost measures might include the purchasing and distribution of portable heat pumps to provide cooling to households on our increasing number of hot days (newer inverter models offer substantial energy savings over traditional portable ACs<sup>30</sup>), portable induction units as both a gateway into electric cooking and a mechanism to reduce indoor NOx pollution that has been demonstrated to cause asthma in small children,<sup>31</sup> as well as weatherization work to make homes safer, more comfortable, and to reduce energy use. Council might also consider rebates for electrification at time of replacement, or provide access to equipment purchased under bulk purchasing agreements as part of the Building Electrification and Just Transition pilot program.

#### **IV. Budget Priorities to Educate and Engage Berkeley Residents in Implementing Transportation and Building Electrification**

- 1. Expand Sustainability Outreach Events.** In conjunction with implementation of the Electric Mobility Roadmap and Existing Building Electrification Strategy, it is appropriate for the City to continue and expand public engagement on alternative transportation and green building solutions.

Increasing electric mobility awareness and education is a key strategy in the Electric Mobility Roadmap for achieving the City's zero net carbon goals. Berkeley has already organized four highly successful annual Ride Electric events, which brought the public together to learn about and, in certain cases, test drive EVs and e-bikes. The City has also partnered successfully with other local groups to organize in-person and virtual green building tours that feature clean energy, energy and water conservation, gray water, electric appliances, and garden features.

As technologies and incentives evolve, more members of the public consider adopting electric mobility and building electrification technologies, and as the City

<sup>28</sup> <https://www.clasp.ngo/research/all/3h-hybrid-heat-homes-an-incentive-program-to-electrify-space-heating-and-reduce-energy-bills-in-american-homes/>

<sup>29</sup> *ibid*

<sup>30</sup> <https://www.midea.com/us/air-conditioners/portable-air-conditioners/midea-duo-smart-inverter-portable-air-conditioner-map12s1tbl>

<sup>31</sup> <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=310879>



increases its e-mobility expertise through additional staffing, these events can and should continue to play an important role in getting Berkeley residents to transition away from fossil fuels. The Roadmap states that the City will expand electric mobility education and outreach activities, with a goal of increasing awareness of electric mobility options and incentives.<sup>32</sup> To deliver on this commitment, the City must allocate funds for these events in its next budget.

With its recent adoption of the Existing Building Electrification Strategy, the Council must expand funding for sustainability outreach events to also address needs identified in the Strategy. For example, the Strategy identified a need for education to address the steep learning curve and cultural sensitivity around cooking with electric stoves, as cooking is a cultural asset and many feel strongly about cooking with gas stoves.<sup>33</sup> While the City has hosted building electrification events, including loan programs for residents to try out electric induction cooktops, it will need to do more to engage residents in adopting electric heat pumps, induction stoves, and other technologies.

## BACKGROUND

The City has existing mandated climate goals and emissions reductions commitments, and already-adopted strategies, such as the Electric Mobility Roadmap and the Existing Buildings Electrification Strategy. Furthermore, the City has already approved certain staff positions and investments, such as an Electric Mobility Coordinator position and commitments to replace the City's vehicle fleet with electric vehicles on a schedule. The City is falling behind in hiring and filling needed positions and in executing on needed investments. The budget recommendations proposed by the Energy Commission in this memo seek to ensure the City stays on track to meet its goals.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

If the Council further delays investments or doesn't include our recommended priorities in the upcoming budget, it puts at risk the health and safety of Berkeley's residents, the City's achievement of its adopted and mandated climate, clean energy, and transportation goals, and its national and global leadership on addressing climate change in innovative ways.

## RATIONALE FOR RECOMMENDATION

The Energy Commission commends the Council for its many years of leadership to reduce Berkeley's global warming pollution and to advance clean energy solutions for the transportation and building sectors. Our budget is a declaration of our values. We have a tremendous opportunity to accelerate building decarbonization while improving equity through targeted universalism, and we must seize the moment to secure a safer, healthier, more resilient future.

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<sup>32</sup> Berkeley Electric Mobility Roadmap, p. 43.

<sup>33</sup> Berkeley Existing Building Electrification Strategy, p. 42.

However, if the Council further delays investments in staffing, fleet electrification and electric vehicle charging infrastructure, building maintenance and retrofits, and public education in the FYE 2023 and 2024 budget, it puts at risk the health and safety of Berkeley's residents, the City's achievement of its adopted and mandated climate, clean energy, and transportation goals, and its national and global leadership on addressing climate change in innovative ways. The Energy Commission thus urges the City Council to incorporate the above stated priorities into its FYE 2023 and 2024 budget.

ALTERNATIVE ACTIONS CONSIDERED

We did not consider excluding these items from the budget.

CITY MANAGER

The City Manager recommends that the content and recommendations of the Commission's Report be referred to the budget process.

CONTACT PERSON

Billi Romain, Energy Commission Secretary, 510-981-7432



Internal



Office of the Mayor

CONSENT CALENDAR  
May 23, 2023

To: Honorable Members of the City Council  
From: Mayor Jesse Arreguín  
Subject: Addressing Hyundai and Kia Car Thefts

RECOMMENDATION

- 1) Adopt a Resolution calling on Hyundai and Kia to take immediate action to fix the flaw in their vehicles that make them easy targets of car thefts.
- 2) Direct the City Attorney to explore taking legal action against Hyundai and Kia.

BACKGROUND

In recent months, the number of thefts of Hyundai and Kia vehicles manufactured between 2011 and 2022 have skyrocketed throughout the country. Before December 2022, thefts of such cars in Berkeley accounted for 1-2% of all vehicle thefts in Berkeley, but recently it has risen to 38%. The cause of this is a flaw in design in these models that make it easy to bypass ignition switches and do not include an engine immobilizer, making them extremely vulnerable to theft. However, these anti-theft devices were included in the same models sold in other countries. This flaw was highlighted last year in viral videos shared on social media platforms that demonstrated how to steal such vehicles using basic tools. The Berkeley Police Department issued a bulletin in March 2023 informing the public of this trend.

On April 20, State Attorney General Rob Bonta held a press conference in Berkeley with Interim Police Chief Jen Louis to announce that he is leading a coalition of 18 states in calling for a federal recall of Hyundai and Kia vehicles after the companies failed to take adequate steps to address the surge in thefts. This comes after the Attorneys General of 23 states wrote a letter to Hyundai and Kia in March urging them to accelerate their response to providing a software update and other actions to resolve the flaw. At the press conference, the Chief warned that such thefts are being used to perpetrate further crimes. According to the National Highway Traffic Safety Administration (NHTSA), the thefts have resulted in at least 14 crashes and eight fatalities across the country as of February 2023. Multiple cities throughout the country have filed lawsuits against the automakers.

Hyundai and Kia have responded to the surge in thefts by offering a software upgrade. However, this upgrade will not be available for many of the vehicles until June, and the upgrade is incompatible with some models. Owners of those models have been offered

Internal

Hyundai and Kia Car Thefts

CONSENT CALENDAR

May 23, 2023

a free steering wheel lock, which places additional burdens on the owner while failing to address the underlying flaw.

As of April 26, 2023, there have been 377 stolen vehicles in Berkley, a 51% increase from this point last year. Much of this can be attributed to the surge in thefts of Hyundai and Kia vehicles. In addition to the trauma experienced by victims, car thefts take up valuable time and resources from the Police Department. These thefts could have been avoided if this preventable flaw did not exist. Until these issues are resolved, owners of these vehicles will remain at a higher risk of becoming the victim of a car theft.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1: Resolution

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

CALLING ON HYUNDAI AND KIA TO RESOLVE SURGE IN CAR THEFTS

WHEREAS, the number of Hyundai and Kia car thefts have skyrocketed in recent months due to a flaw in design in these models that make it easy to bypass ignition switches and do not include an engine immobilizer, making them extremely vulnerable to theft; and

WHEREAS, in Berkeley car thefts are up 51% compared to this point last year, and the Police Department issued a bulletin to inform that public that Hyundai and Kia car thefts have skyrocketed to account for 38% of all car thefts in the City in recent months, when historically these vehicles typically account for 1-2% of all car thefts; and

WHEREAS, in addition to the trauma experienced by victims, car thefts take up valuable time and resources from the Police Department; and

WHEREAS, viral videos shared on social media platforms show how easy it is to steal such vehicles with simple tools, an issue that has become known to the manufacturers; and

WHEREAS, some of these thefts are being used to perpetrate further crimes, and according to the National Highway Traffic Safety Administration (NHTSA), the thefts have resulted in at least 14 crashes and eight fatalities across the country as of February 2023; and

WHEREAS, in March 2023, State Attorney General cosigned a letter with 23 Attorneys General to Hyundai and Kia in March urging them to accelerate their response to providing a software update and other actions to resolve the flaw; and

WHEREAS, Hyundai and Kia have offered a software upgrade to address the flaw, but this upgrade will not be available for many of the vehicles until June, and the upgrade is incompatible with some models, who will instead be offered a free steering wheel lock, which places additional burdens on the owner while failing to address the underlying flaw; and

WHEREAS, On April 20, the State Attorney General led a coalition of 18 states in calling for the NHTSA to recall Hyundai and Kia vehicles after the companies; and

WHEREAS, until these issues are resolved, owners of these vehicles will remain at a higher risk of becoming the victim of a car theft.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby calls upon Hyundai and Kia to immediately act to resolve the flaw in vehicles

manufactured between 2011 and 2022 that have ignition switches that are easily bypassed and do not include an engine immobilizer.

BE IT FURTHER RESOLVED that the Council supports the actions being taken by State Attorney General Rob Bonta in calling for a recall of Hyundai and Kia vehicles that are susceptible to this flaw.

BE IT FINALLY RESOLVED that copies of this Resolution be sent to Hyundai Motor America and Kia Motors America.



Office of the Mayor

CONSENT CALENDAR  
May 23, 2023

To: Members of the City Council  
 From: Mayor Jesse Arreguin  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Contract: Badawi & Associates, Certified Public Accountants for Professional Auditing Services

RECOMMENDATION

Adopt a Resolution ratifying the Mayor's decision to select Badawi & Associates as the auditing firm to perform annual financial audits of the City's financial statements and perform annual compliance audits required by the Single Audit Act of 1984 (as amended in 1996), for the period of May 22, 2023 through June 30, 2026, in the amount of \$432,525 plus a contingency of \$50,000 for a total of \$482,525; and to authorize the execution of a three-year contract with Badawi & Associates, with an option to extend the contract for two additional years.

FISCAL IMPACTS OF RECOMMENDATION

This three-year contract will cost a total of \$432,525 plus a contingency of \$50,000 for a total not to exceed \$482,525 for all funds. If the City decides to extend the contract for the two additional option years, the total cost for the five-year period will be \$743,065 plus a contingency of \$80,000 for a not to exceed \$823,065 (FY 2023, FY 2024, FY 2025, FY 2026 and FY 2027).

Contract funding for the full 3-year term is as follows:

All Fund total cost of \$432,525:

- \$139,900 in FY 2023
- \$144,210 in FY 2024
- \$148,415 in FY 2025

General Fund total budget of \$358,653 (011-99-900-900-0000-000-412-612210):

- \$119,551 in FY 2023
- \$119,551 in FY 2024
- \$119,551 in FY 2025

Other Revenue Funds total cost and budget of \$73,872:

- Business Economic Development Fund (142-21-208-253-0000-000-446-612210): \$6,124 in FY 2023; \$6,124 in FY 2024; and \$6,124 in FY 2025;

and

- Community Block Grant Development (CDBG) Fund (128-51-504-530-0000-000-444-612210): \$16,000 in FY 2023; \$16,000 in FY 2024; and \$16,000 in FY 2025
- Measure F Alameda County Vehicle Registration Fee Fund (133-99-900-900-0000-000-412-612210): \$2,500 in FY 2023; \$2,500 in FY 2024; and \$2,500 in FY 2025; and

### CURRENT SITUATION AND ITS EFFECTS

Article VI, Section 24 of the City Charter requires the City of Berkeley to have an annual audit performed, and gives the Mayor sole authority to select the firm that will perform the audit. In addition, the City is required to perform an audit in conformance with the Federal Single Audit Act of 1984, as amended in 1996.

The Finance Selection Panel recommended, and the Mayor selected, the proposal of Badawi & Associates as the most favorable to the City based on the evaluation criteria identified in the RFP.

### BACKGROUND

On January 10, 2023, the City published Request for Proposals 23-11559-C for External Audit Services. Potential bidders submitted twenty-five clarification questions, which were subsequently answered on February 2, 2023. Responses were due on February 16, 2023, and the City received and opened submissions from two firms. The two firms were (1) Badawi & Associates and (2) Eide Bailly

The proposal was for qualified Certified Public Accountants to audit the City's financial statements for the three fiscal years ending June 30, 2023, 2024, and 2025, with an option for two additional years. These audits are to be performed in accordance with generally accepted auditing standards, the standards set forth for financial audits in the U. S. General Accounting Office's *Government Auditing Standards* (December 2011 edition), the provisions of the Federal Single Audit Act of 1984, as amended in 1996, and U. S. Office of Management (OMB) Circular A-133, *Audits of State, Local Governments, and Non-Profit Organizations*.

The two proposals were reviewed and evaluated by the Finance Selection Panel, based on the following evaluation criteria:

- Expertise and Experience
  1. Partner, supervisory and management staff to be assigned to the engagement; the numbers of hours to be spent on the engagement; and their experience;

2. Experience of the individual performing the review of the City's information system operations;
  3. Qualifications, experience and training of staff to be assigned to the engagement; and
  4. Similar engagements with governmental entities
- Audit Approach
    1. Understanding of the major tasks and subtasks to be performed;
    2. Approach to be taken to gain and document an understanding of the City's internal control structure;
    3. Approach used to assess control risk;
    4. Approach to be taken in determining laws and regulations that will be subject to audit test work;
    5. The extent to which statistical sampling is to be used on the engagement;
    6. The approach to information systems on the engagement; and
    7. Type and extent of analytical procedures to be used in the engagement
    8. Planned hours and level of staff to be used for each major task
    9. Value added to the engagement, in the form of free training to City staff and other free services
    10. Maximum fee for the engagement

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

The two firms that provided proposals were determined to be sufficiently qualified and experienced to timely performed the engagement. Badawi & Associate's proposal received the panel's highest score based on the evaluation criteria outlined in the RFP.

#### CONTACT PERSON

Henry Oyekanmi, Director, Finance (510) 981-7326

#### Attachments:

1: Resolution

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

RATIFYING THE MAYOR'S EXECUTION OF A CONTRACT WITH BADAWI & ASSOCIATES TO PROVIDE COMPREHENSIVE PROFESSIONAL AUDITING SERVICES

WHEREAS, a Request for Proposal (Specification No. 23-11559-C) was distributed and posted on the City's Website on January 10, 2023; and

WHEREAS, two proposals were received by the February 16, 2023 deadline; and

WHEREAS, all two proposals were considered responsive to the City's Request for Proposal requirements; and their proposals were reviewed and analyzed by the Finance Selection Panel, based on the evaluation criteria outlined in the Request for Proposal; and their references were checked; and

WHEREAS, the City Charter gives the Mayor sole authority to select the firm to perform the City's annual audit; and

WHEREAS, the Mayor selected the proposal of Badawi & Associates as the most favorable to the City, based on the recommendation of the Finance Selection Panel.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley ratifies the Mayor's selection of Badawi & Associates as the auditing firm to provide professional auditing services for the City for the period May 23, 2023 through June 30, 2026 in the amount of \$432,525 plus a contingency of \$50,000 for a total not to exceed \$482,525 to be paid from budget codes 010-9701- 410-3033, 480-8705-465-3033, and 370-7903-463-3033; and authorizes the execution of a three-year contract with Badawi & Associates, with an option to extend the contract for two additional years for a total not to exceed amount of \$823,065 which includes a \$80,000 contingency for the entire five-year period.



**BEN BARTLETT**

VICE MAYOR

ACTION CALENDAR

May 23, 2023

TO: Honorable Members of the City Council

FROM: Vice Mayor Ben Bartlett (Author) & Mayor Jesse Arreguin (Co-Sponsor)

SUBJECT: Adopting a temporary exemption from the collection of taxes under BMC Chapter 9.04.136(D): Tax Rate for Non-Medical and Medical Cannabis Businesses

RECOMMENDATION

- 1) Adopt a temporary exemption (per 9.04.136(D)) on the collection of the taxes for all non-medical and medical cannabis businesses, retroactive to January 2023 and ending July 2025; Waive any late penalties that may have accrued since January 2023; any and all tax payments already made to the City for Q1 2023 will apply as a credit against a future tax or fee payment to the City; and
- 2) Refer to the City Manager and Cannabis Commission and/or its successor, the Planning Commission, to analyze and develop an ordinance adjusting local cannabis business tax rates by February 2025 that are in balance with the state cannabis tax rates, with an eye to the ability for the cannabis industry to become a sustainable economic driver for the City of Berkeley.
- 3) Licensed cannabis businesses in Berkeley will pay the business license tax that applies to their respective area of the market during the moratorium, like retail, manufacturing, etc.

BACKGROUND

On November 8, 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). This proposition legalized the use of cannabis for adults over 21 years old. Berkeley voted overwhelmingly for Proposition 64, with 85% approving the measure. The State of California developed state-wide regulations for recreational cannabis, allowing temporary licenses for adult-use businesses effective January 1, 2018.

In September 2017, the Berkeley City Council adopted amendments to B.M.C. Chapter 12.26 to permit temporary licenses for existing medical cannabis dispensaries, allowing them to sell adult-use cannabis in the City effective January 1, 2018. To date, five of the

six existing permitted dispensaries have received city and state licenses and are selling adult-use cannabis.

Since long-standing dispensaries began selling adult-use cannabis on January 1, 2018, there have been many questions regarding the local cannabis tax rate. In addition to State and sales taxes, local taxes have added significant costs to cannabis products and may discourage business, especially as other nearby cities adopt lower tax rates.

In 2018, the City set tax rates at 5% based on the best information possible at the time. Since then, the cannabis industry in California has seen its growth stall, and in the last year, the bottom has fallen out, leading to an industry-wide collapse.

- During the COVID pandemic, cannabis was deemed essential, yet was left out of the state and federal relief provided to other business owners, including but not limited to relief for wages paid to employees on leave for COVID-related workplace exclusions, the Paycheck Protection Program (PPP) loans, and Small Business Administration loans.
- The costs of compliance with state and local regulations for the cannabis business are extremely high.
- Nearly all of what would otherwise be considered a standard business tax deduction are not applicable because of Internal Revenue Code Section 280E, which disallows all ordinary business expenses and still unjustly applies to state legal tax businesses.
- The unlicensed market and organized cartels continue to thrive under this system, undercutting the legal market. Berkeley is not immune to this. In the first months of 2023, two unlicensed operations within the City were shut down. One facility had 14,000 plants and hundreds of pounds of cannabis concentrate on site.
- Licensed cannabis cannot compete.

The compounding effect of these added costs of doing business with the state and local taxes and fees and lack of access in much of the state drives the cannabis consumer to the unlicensed market, which is currently more than twice the size of the regulated one—and half the price.

Last year, the State had an opportunity to adjust the tax rates for cannabis businesses and provide relief for those struggling to make it into the legal market. Instead of providing that relief, the state shifted the tax burden to retailers and cannabis consumers and will likely increase those excise taxes in the future. This change in state tax collection had a

chilling effect on an already struggling industry, and the shift negatively impacted urban regions of the state that predominantly have retail cannabis as the main license type.

Berkeley wants to see its legal cannabis businesses thrive so they can continue providing high-wage jobs and access to safe, tested cannabis to the people of Berkeley and those who come to Berkeley.

### **Taxes Applicable to Non-Medical Cannabis Businesses**

There are a number of taxes applicable to adult-use cannabis businesses, including:

- State Cannabis Excise Tax
  - Effective January 1, 2018, a 15% excise tax is imposed upon retail purchasers of all cannabis and cannabis products, except for those possessing a state cannabis medical card. The 15% excise tax is calculated based on the average market price from the retail sale, **which leads to an actual current effective tax rate of around 27%.**
  - **Beginning this year, that excise tax was shifted to retail. Because of the way the tax is calculated, this amounted to a tax increase.**
  
- Local Sales Taxes
  - The City of Berkeley and Alameda County's combined sales tax is 10.25%
  
- City of Berkeley Business License Tax
  - Measure S, adopted by Berkeley voters in 2010, set the business license tax rate for Non-Medical Cannabis Businesses authorized pursuant to Proposition 19 at 10% or \$100.00 for every \$1,000 of gross receipts. The measure included language allowing the City Council to lower the tax rate by ordinance, which the Council did in 2018 to 5% or \$50 for every \$1000.
    - A note about Measure S - This ballot measure was expressly written to accompany Proposition 19 from 2010, which would have legalized cannabis and did not set a state tax rate. That ballot initiative did not pass.
    - Cities like Berkeley and Oakland, which set high local tax rates in anticipation of Proposition 19 passing, have seen an exodus of the supply chain businesses that can leave and a loss of customers to its brick-and-mortar dispensaries as other jurisdictions have come online with much lower taxes. This also leads the more price-driven customers to jurisdiction shop when choosing where to buy their cannabis, particularly where delivery from neighboring regions is widely available.

- The business license tax rate for Medical Cannabis Businesses is currently 2.5% of gross receipts.

#### Other Cannabis Tax Rates in the region

Different jurisdictions in Alameda County have set their cannabis tax rates at a range of levels. Over the next year, there will be efforts to lower the local rates in most of these jurisdictions.

Oakland: has seen an exodus of supply chain businesses to lower tax rate jurisdictions.

Hayward: voters approved up to 15% but have set the effective rate at 6% and is having trouble attracting cannabis businesses.

San Leandro: Measure NN approved in November 2016, was a voter-approved gross receipts tax on cannabis businesses of up to 10%. It is currently 6% and will increase over time. All cannabis businesses must have annual audits.

Emeryville: Has set tax rates at 3% for retail, 2% for manufacturing, and 1% for distribution.

City of Alameda: **Currently has no cannabis tax for its cannabis businesses. The City Council chose not to pursue any additional cannabis taxes for the foreseeable future to allow licensed businesses to get on their feet. Cannabis businesses pay regular business license taxes.**

City and County of San Francisco: **Have continually delayed the implementation of a cannabis-specific tax to help the flailing industry.** Cannabis businesses pay regular business taxes.

In order for Berkeley to remain competitive and attract new cannabis businesses, it should consider lowering its business license tax on Non-Medical Cannabis businesses.

#### FISCAL IMPACTS OF RECOMMENDATION

Reducing the business license tax rate for Non-Medical Cannabis Businesses may reduce tax receipts to the General Fund. However, a lower tax rate will make Berkeley cannabis businesses more competitive in the regional market and may result in greater business activity and tax revenues to the City. According to the FY 2023 Mid-Year Budget Update, Recreational Cannabis Taxes have produced \$1,643,749 in receipts as of February 2023.

## ENVIRONMENTAL SUSTAINABILITY

No identifiable environmental effects or opportunities are associated with this report's subject.

## CONTACT

Ben Bartlett, Councilmember/Vice-Mayor, District 3

510-981-7130

### Attachments:

1. [Ordinance: BMC Chapter 9.04.136](#)
2. [CDTFA total cannabis sales data from 2021 through Q4 2022 show unexpected and continual losses.](#)
3. [MJ Biz article: "California localities extend tax relief to marijuana companies in the absence of state action," February 28, 2022](#)
4. Letter from hi fidelity

## Attachment 1

<https://berkeley.municipal.codes/BMC/9.04.136>

Ch. 9.04 Business Licenses | Berke... x +

https://berkeley.municipal.codes/BMC/9.04.136

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**9.04.136 Cannabis businesses.**

A. 1. Every Medical Cannabis Business that is not a Nonprofit Organization as defined in Section [9.04.305](#), and every Non-Medical Cannabis Business, shall pay an annual tax for each thousand dollars of gross receipts as provided in Section [9.04.240](#). If the "Regulate, Control and Tax Cannabis Act of 2010" on the November 2010 state ballot passes and takes effect, the maximum gross receipts rate that may be applied to medical cannabis businesses shall be reduced to 1.8%, or \$18 per \$1000.

2. Except as provided in paragraph 1 of this subdivision, the tax on Medical Cannabis Businesses that is imposed by this Section shall be phased in as follows:

(a) The tax payable in 2011 shall be \$18 per \$1000 of gross receipts after June 30, 2010.

(b) The tax payable in 2012 shall be \$25 per \$1000 of gross receipts after January 1, 2011.

(c) The tax payable in subsequent years shall be \$25 per \$1000 of gross receipts during the preceding calendar year.

B. For purposes of this Chapter:

1. "Medical Cannabis Business" means any activity regulated or permitted by Chapter [12.26](#) or Title [23](#) that involves planting, cultivating, harvesting, transporting, dispensing, delivering, selling at retail or wholesale, manufacturing, compounding, converting, processing, preparing, storing, packaging, or testing, any part of the plant Cannabis sativa L. or any of its derivatives, pursuant to Health & Safety Code sections [11362.5](#) and [11362.7-11362.83](#).

2. "Non-Medical Cannabis Business" means any of the activities described in the preceding paragraph that are not conducted pursuant to Health & Safety Code sections [11362.5](#) and [11362.7-11362.83](#), but are otherwise authorized by state law.

3. "Cannabis Business" includes both Medical Cannabis Businesses and Non-Medical Cannabis Businesses.

4. A Cannabis Business shall be deemed a "Business" under Section [9.04.010](#) and as that term is used in...

**What's Nearby**

| TITLE   |      |      |
|---------|------|------|
| 8       | 9    | 10   |
| CHAPTER |      |      |
|         | 9.04 | 9.08 |

**On This Page**

- 9.04.130 Conviction for violating ordi...
- 9.04.135 Retail trade
- 9.04.136 Cannabis businesses**
- 9.04.140 Grocer, retail or wholesale
- 9.04.145 Motor vehicle dealers (new ...)

https://berkeley.municipal.codes/BMC/9.04.136

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9.04.136 Cannabis businesses.

otherwise authorized by state law.

B. 3. "Cannabis Business" includes both Medical Cannabis Businesses and Non-Medical Cannabis Businesses.

4. A Cannabis Business shall be deemed a "Business" under Section [9.04.010](#) and as that term is used in this Chapter.

C. For purposes of this Section and Section [9.04.305.A.2](#), "gross receipts" includes any monetary consideration for medical cannabis whatsoever, including but not limited to: membership dues; reimbursement pursuant to Health & Safety Code sections [11362.5](#) and [11362.7-11362.83](#); and any money received for wholesale or retail sales.

D. 1. The annual tax rate imposed by Section [9.04.240](#) on Non-Medical Cannabis Businesses shall apply to the sum of gross receipts as defined in Section [9.04.025](#) and this Section.

2. The City Council may impose the tax authorized by this Section at a lower rate, and may establish an exemption for Cannabis Businesses whose gross receipts are below a specified amount. The Council may adopt different rates and exemption levels for Medical and Non-Medical Cannabis Businesses. No action by the Council under this paragraph shall prevent it from subsequently increasing the tax rate for any type of Cannabis Business to the maximum specified in this Section and Section [9.04.240](#) or from modifying or eliminating any exemption.

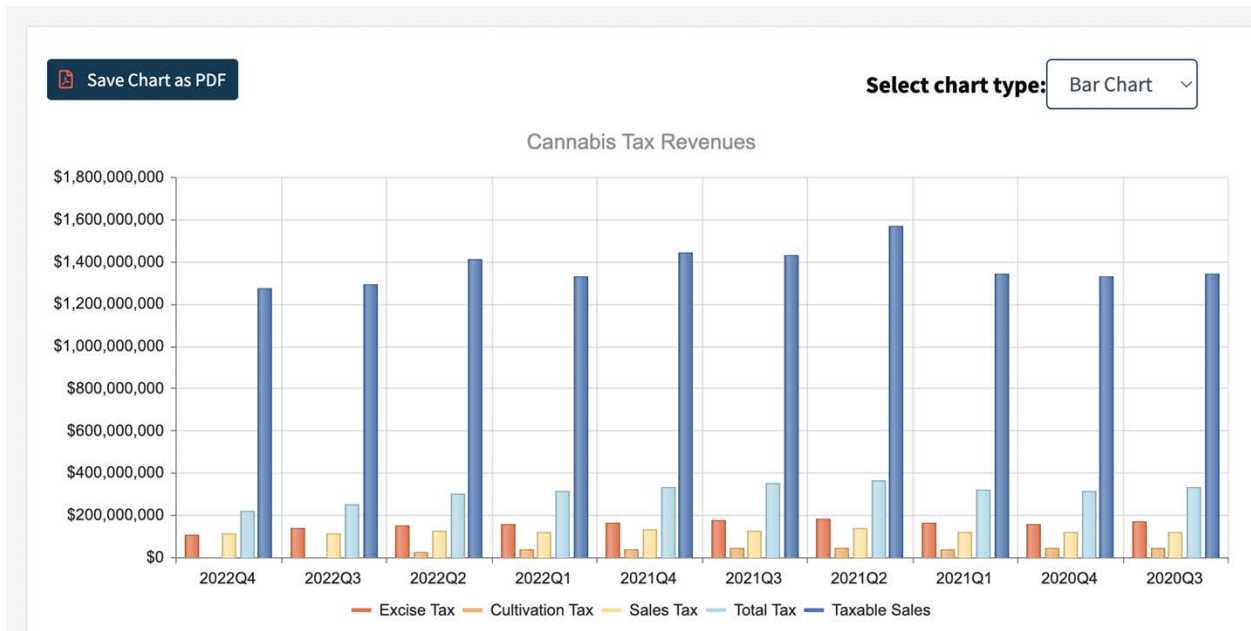
E. In order to aid in the City's collection of taxes due under this Chapter and ensure that all Cannabis Businesses are taxed consistently to the best of the City's ability, beginning January 1, 2011, in any Cannabis Business, that obtains any product containing Cannabis sativa L. or any of its derivatives for monetary consideration that constitutes gross receipts under subdivision (C) for the provider of that Cannabis sativa, shall either:

1. Report quarterly to the City all such transactions, the monetary consideration involved, and the identity and contact information of the person or entity to whom or to which monetary consideration was provided; or
2. Collect the tax that would be payable as a result of the transaction from the person or entity to whom monetary consideration was provided and remit it to the City.

F. The City Manager may promulgate regulations to implement and administer this Section, including allowing Medical Cannabis Businesses to remit taxes more frequently than annually. (Ord. 7160-NS § 1, 2010)

## Attachment 2

<https://www.cdtfa.ca.gov/dataportal/charts.htm?url=CannabisTaxRevenues>





### Attachment 3

<https://mjbizdaily.com/california-localities-extend-tax-relief-to-marijuana-companies/>

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

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## California localities extend tax relief to marijuana companies in absence of state action






By Jackie Bryant  
February 28, 2022 - Updated March 11, 2022

SHARE    

A map showing California localities that are providing tax relief for the cannabis industry.



**Latest News**

- For some, US marijuana industry becoming a David-versus-Goliath battle 
- Businesses, groups, unions and tribes spend millions lobbying Congress on marijuana issues 
- Who's who in federal marijuana reform and legalization 
- Minority marijuana companies need federal relief, advocate tells Congress 
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March Magazine Issue

Since state lawmakers have been slow to lower marijuana taxes, local governments throughout California are scrambling to grant tax relief to cannabis businesses.

The tax rollbacks by cities and counties mainly reflect lobbying from industry organizations as well as local residents and businesses.



March Magazine Issue



They argue that taxation at all levels of the supply chain is simultaneously choking cannabis companies' ability to stay afloat while strengthening the illicit market.

The rush to grant tax relief began a couple of years ago and has since accelerated.

It has encompassed a range of localities, including the cities of Desert Hot Springs and San Diego as well as Humboldt and Sonoma counties.

"This is really a statewide issue," explained Natalynne DeLapp, executive director of the Humboldt County Growers Association.

All this comes against the backdrop of a historic [bear market for California wholesale cannabis prices](#), which plummeted last year in response to a supply glut.

Prices have only [recently begun to rebound](#).

The tax rollbacks also come amid accusations from operators, local lawmakers and industry insiders that the [state has not done enough](#) to properly address tax reform, among other ills, leading to what many are calling a crisis in California's cannabis industry.

Marijuana license holders in California are subject to a state cultivation tax of \$161 per pound, as well as a 15% excise tax, in addition to taxes levied by city and county officials.

In January, Gov. Gavin Newsom [pledged tax reform](#), though he was light on details.

Four bills at the state level addressing cannabis taxation have been introduced in the past few weeks: [Assembly Bill 2792](#), [AB 2506](#), [Senate Bill 1281](#) and [SB 1293](#).

SB 1281 appears to be the most comprehensive. Among other things, it would eliminate the cultivation tax and reduce the excise tax to 5%.

With constituents screaming for relief, localities are not waiting for any state tax changes to kick in, especially considering that such legislative actions wouldn't take effect until 2023, at the earliest.

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One of the most high-profile moves took place in Humboldt County on Feb. 7, when the Board of Supervisors voted to reduce by 85% the county cultivation tax locally known as Measure S.

Measure S previously required a \$1-\$3-per-square-foot payment, the amount of which was dependent on license type. Now, those fees will be calculated in the same manner, but growers will pay only 15% of the total amount.

Temporarily lowering the cultivation tax showed the county's "commitment to growers who have committed \$50 million to our local economy in the four years since Measure S was passed," Humboldt County Supervisor Rex Bohn said.

The reduction was met with some opposition from locals who believe cannabis growers got off easy by not having to pay taxes before legalization.

Bohn said this came into stark relief once it became clear that many of the same growers are now choosing to leave their gardens fallow rather than risk planting and paying taxes on marijuana flower they can't sell.

Though Humboldt might be one of the more significant of such actions taken, it's far from the only one.

"Most cities and counties set their local tax rates based on an assumption that cannabis businesses were going to be wildly profitable," DeLapp said.

"The reality is that, in many places, those tax rates are no longer sustainable, particularly for small and independent legacy businesses who are operating without outside capital."

Cannabis lobbyist Nara Dahlbacka, a partner at the Oakland-based Milo Group, said that while tax relief is needed both at the state and local levels, localities enacting reform can "also be a huge help on the red tape side" for businesses.

"In order to expand their (marijuana) businesses, there's a level of red tape and bureaucracy that have to be dealt with at the local and state levels," Dahlbacka said.

The following localities have, or are considering, cannabis tax reductions and relief:

The following localities have, or are considering, cannabis tax reductions and relief:

### **Humboldt County**

- This month, the Board of Supervisors voted to temporarily reduce its cultivation tax by 85% for one year.

### **Lake County**

- In January, the Board of Supervisors voted to postpone until May 15 the due date for cannabis tax payments and suspend the 25% late-payment penalty during the postponement. The board also directed staff to develop additional options for cannabis tax relief for ongoing discussion and voting in future meetings.

### **Monterey County**

- The Board of Supervisors is preparing to vote March 1 on an industrywide cultivation tax reduction, including eliminating automatic increases on all taxes and doing away with the distribution tax entirely.
- After freezing an automatic tax increase on growers previously scheduled for 2021-22, the board voted last October to increase the number of times growers could amend the taxable square footage of their crop canopy from once to twice per year.

### **Sonoma County**

- In January, the Board of Supervisors voted to postpone first-quarter taxes from Jan. 31 to April 30. Total taxes levied for both quarters will be due without penalties or interest on April 30 unless the board approves another extension.

### **Bellflower**

- In October 2020, local officials reduced taxes for manufacturing and distribution from 7.5% to 2% and 1%, respectively.

### **Berkeley**

- In February 2018, local officials reduced the cannabis tax rate from 10% to 5% to remain competitive in the Bay Area.

### **Cloverdale**

- The City Council is scheduled to vote on March 9 to reduce tax rates for all licensees and tier the tax rates for different types of licenses.

### **Desert Hot Springs**

- In February 2021, local officials reduced the tax for cultivation from \$25.50 per square foot to \$10.20 per square foot for cultivation.

### **Long Beach**

- In 2019, the city lowered manufacturing, distribution and testing taxes from 6% to 1%.
- In 2020, the City Council agreed to ditch a proposed tax increase and instead increased the hours of operation for cannabis retailers.

### **Oakland**

- In 2019, the City Council voted to lower the gross receipts tax on cannabis businesses that make \$500,000 or less from 10% to 0.12%.

### **Palm Springs**

- In February 2019, local officials reduced the manufacturing tax from 10% to 2%.

### **San Diego (city)**

- In February, **the City Council voted** to reduce the manufacturing and cultivation tax from 8% to 2%, effective May 1.

### **San Francisco (city)**

- In December 2021, San Francisco authorities **approved a second one-year suspension** of the city's marijuana business tax through 2023.

### **San Jose**

- In July 2019, local officials reduced the flat-rate taxes of 10% to 4% for cultivation, 3% for manufacturing, 2% distribution and 0% for testing.

Additionally, according to Dahlbacka, the following localities have passed resolutions formally requesting the state to amend its cannabis taxes:

- Alameda County
- Calaveras County
- Lake County
- Mendocino County
- Monterey County
- San Francisco (city and county)
- Santa Cruz County
- City of Berkeley
- City of Desert Hot Springs
- City of Oakland
- City of Rio Dell

Jackie Bryant can be reached at [jacqbryant@gmail.com](mailto:jacqbryant@gmail.com).

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CULTIVATION

**NEW YORK HEMP FARMERS GIVEN PRIORITY TO GROW RECREATIONAL MARIJUANA**



**Attachment 4**



April 18, 2023

Dear Vice Mayor Bartlett:

On behalf of High Fidelity Dispensary, we are writing to support the proposed tax moratorium for Berkeley cannabis businesses.

Operating a licensed, profitable cannabis dispensary in California is now nearly impossible. Layer upon layer of taxation, coupled with punitive federal rules denying tax deductions for operating expenses -- while competing against the unlicensed, unregulated market -- makes this industry unsustainable for operators who play by the rules.

Now that many jurisdictions around Berkeley are lowering their cannabis tax rates, it is incumbent on this city to follow suit. It is our hope that a future tax rate once the moratorium sunsets is fair and equitable and takes into account the unique constraints endemic to this industry.

Thank you for your consideration,

David Prinz, Owner,

Marc Weinstein, Owner

High Fidelity Dispensary

Cc: Mayor and City Council





CONSENT CALENDAR  
May 23, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Terry Taplin (Co-Sponsor), Councilmember Rashi Kesarwani (Co-Sponsor), Councilmember Mark Humbert (Co-Sponsor)

Subject: Referral: Reconnecting Communities Pilot Program proposal to build a Freeway Lid over I-80 to reconnect West Berkeley to the Waterfront

RECOMMENDATION

Refer to the City Manager to assess the viability of transforming the University & I-80 interchange with the goal of removing the I-80 at-grade barrier between the Berkeley Marina and the rest of the City, and to explore related grant opportunities, including but not limited to pursuing a planning grant from the US DOT Reconnecting Communities Pilot Program in the next application cycle or future application cycles.

Staff are encouraged to look to successful examples of “freeway lid” projects around the country.

BACKGROUND

The Reconnecting Communities Pilot Program<sup>1</sup> is a five-year pilot grant program administered by the United States Department of Transportation (USDOT) to provide municipalities and other planning bodies with resources to study and implement built environment changes that reduce physical barriers created by infrastructure, especially highway infrastructure. The program was created as part of the federal Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law. In the first grant cycle (2022), there were a few successful capital project awards but most approved projects were for study, planning, and design.

Notably, our neighbor the City of Oakland was awarded \$680,000 in federal funding to explore ways to reconnect communities divided by transportation infrastructure along Interstate 980.<sup>2</sup>

Eligible facilities include a highway, including a road, street, or parkway or other transportation facility, such as a rail line, that creates a barrier to community connectivity, including barriers to mobility, access, or economic development, due to high speeds, grade separations, or other design factors.

<sup>1</sup> [Reconnecting Communities Pilot Program | US Department of Transportation](#)

<sup>2</sup> [Caltrans, City of Oakland to Study Ways to Reconnect Communities Divided by Interstate 980 as Part of New Federal Program](#)

### Funding Available

| Fiscal Year                     | 2022          | 2023          | 2024          | 2025          | 2026          | 5-Year Total    |
|---------------------------------|---------------|---------------|---------------|---------------|---------------|-----------------|
| Planning & Technical Assistance | \$50M         | \$50M         | \$50M         | \$50M         | \$50M         | \$250M          |
| Capital Construction            | \$145M        | \$148M        | \$150M        | \$152M        | \$155M        | \$750M          |
| <b>Total Authorized Amount</b>  | <b>\$195M</b> | <b>\$198M</b> | <b>\$200M</b> | <b>\$202M</b> | <b>\$205M</b> | <b>\$1,000M</b> |

Table: Funding allocated to the USDOT Reconnecting Communities Pilot Program through FY26<sup>3</sup>

The California Department of Transportation (Caltrans) is currently anticipating planning for a redesign and rebuild of the University Avenue/I-80 overcrossing, although funding has not yet been identified. The estimated cost for this project in 2018 was \$77 million,<sup>4</sup> but due to rising construction costs it is almost guaranteed to be higher. As the project is not yet funded, if the City of Berkeley were to seek a more ambitious vision for the reconfiguration of the University/I-80 interchange, it is timely to develop that vision now.

### Freeway Lid Case Studies

Many other cities in the U.S. have built lids over their freeways to mitigate the physical and psychological barriers they impose. Above these lids can be parks, buildings, or other spaces that mitigate the division between sides of the freeway. These treatments are geographically and infrastructurally dependent and require specific considerations for their surrounding contexts, including topography and the nature of the built environment. In many cases, the freeway in question can remain at the grade it is built at, but certain cases require a reconstruction of the freeway at a different grade.

Seattle has built several freeway lids in suburban areas to reconnect neighborhoods throughout the city. Each lid is built with specific attention to the surrounding topography and built environment, and contains park crossings that make crossing the freeway at these locations feel seamless and often even unnoticeable. This attention to the natural environment and inclusion of parks could be relevant to the design for a potential Interstate 80 freeway lid in Berkeley.

<sup>3</sup> [Reconnecting Communities Pilot Program | US Department of Transportation](#)

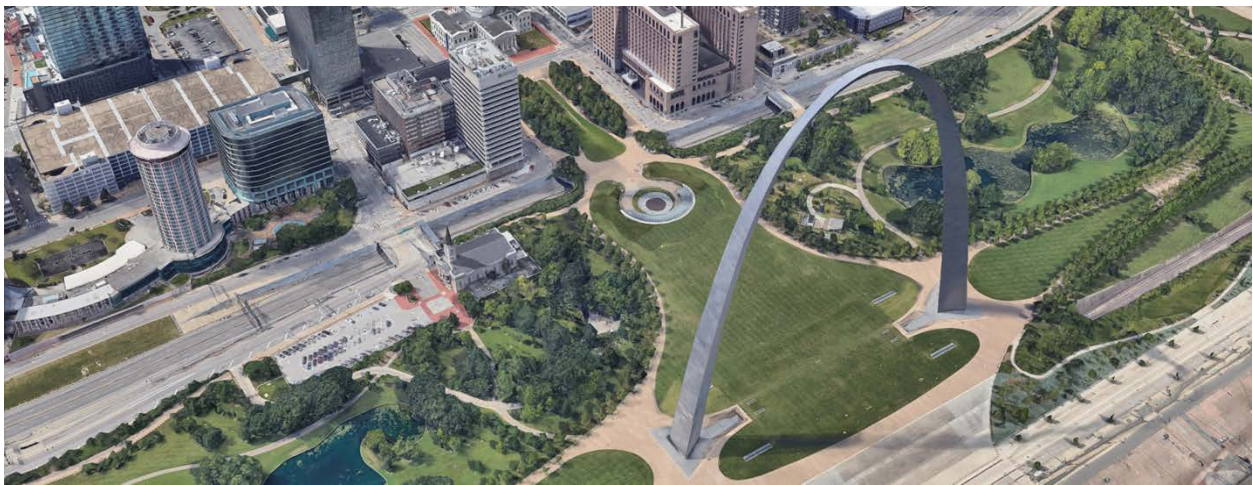
<sup>4</sup> [Caltrans Unveils Plans To Raise University Avenue Bridge In Berkeley - CBS San Francisco \(cbsnews.com\)](#)





*Lids at three adjacent freeway crossings on SR-520 east of Downtown Seattle*

St. Louis, with its famous Gateway Arch divided from Downtown by Interstate 44, built a small lid that entirely changed the pedestrian experience around the City's most prized landmark. The "Park Over the Highway" opened in 2018, with support from the US DOT. The Berkeley Marina is similarly divided from Berkeley's urban fabric by the I-80 freeway.



*The "Park over the Highway" in St. Louis makes crossing from the Gateway Arch to Downtown a seamless experience*

In 2022, San Francisco opened Tunnel Tops Park, a park over the US-101 freeway that offers picturesque views of the Golden Gate Bridge and provides new, high-quality parks space that connects the Presidio with Crissy Field. This design, which relates to the local topography and built environment, could serve as inspiration for a freeway lid in Berkeley focused on reconnecting parks space to the West Berkeley community.



*A rendering of Tunnel Tops Park in San Francisco. Source: The Registry*

### *Rationale for Recommendation*

It is well-accepted in urban planning that freeways create barriers between different areas in cities that divide people and the built and natural environment — both physically and psychologically. The I-80 freeway separates historically redlined West Berkeley neighborhoods from vital public park space and thus limits access to that park space. Removing the at-grade freeway barrier between the Berkeley Marina and Berkeley proper would reconnect not only West Berkeley residents, but the entire city to its largest parks space and to the waterfront.

Planning is already anticipated for a University/I-80 interchange redesign by Caltrans. The City has a once-in-a-generation opportunity to combine this effort with a plan to remove the at-grade freeway barrier between the Berkeley Marina and University Avenue. Staff should assess whether this vision is possible to be incorporated into Caltrans' planning work, and assess whether currently expected plans for University/I-80 go far enough to advance the city's goals of sustainability, green space, and public access to the waterfront.

Construction of a project to reconfigure the University/I-80 interchange would involve a variety of stakeholders and have significant impacts on traffic flow and surrounding properties. It would require significant outreach and be a herculean effort, and one likely not possible without the support of significant outside resources. By pursuing a planning grant from the Reconnecting Communities Pilot Program, we can conduct the viability analysis necessary to understand whether this vision is realistic for Berkeley.



The I-80 freeway creates a significant barrier between much of Berkeley and its waterfront. For the benefit of Berkeley, its residents, and access to the Berkeley Marina, this item urges that we dream of a day that the substantial barrier between our pristine waterfront and our residents is removed.

#### FINANCIAL IMPLICATIONS

Authoring and submitting a grant application would require staff time. Receiving an award could provide hundreds of thousands of dollars for planning and staff resources that may otherwise be fiscally impossible.

#### ENVIRONMENTAL SUSTAINABILITY

No direct environmental sustainability implications associated with authoring and submitting a grant application. However, removing the at-grade barrier between the Berkeley Marina and West Berkeley could allow for increased green space for people and wildlife, depending on the design.

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Sam Greenberg, Legislative Assistant



### Upcoming Worksessions and Special Meetings

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

| Scheduled Dates |                                                                                        |
|-----------------|----------------------------------------------------------------------------------------|
| May 16 (WS)     | 1. Fire Facilities Study Report                                                        |
| June 20 (WS)    | 1. Climate Action Plan and Resilience Update<br>2. Berkeley Economic Dashboards Update |
| July 18         | 1. Draft Waterfront Specific Plan (tentative)                                          |

### Unscheduled Workshops and Special Meetings

1. Fire Dept Standards of Coverage and Community Risk Assessment None

### Unscheduled Presentations (City Manager)

None

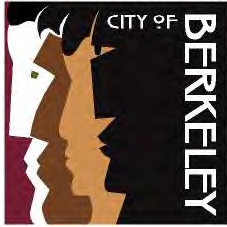
|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | <b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 1. | <p><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></p> <p><b>From: City Manager</b><br/> Contact: Liam Garland, Public Works, (510) 981-6300</p> <p><i>(Note: schedule with tentative special meeting in May 2023 on Ashby BART TOD)</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 2. | <p><b>37. Unfunded Liability Obligations and Unfunded Infrastructure Needs</b> <i>(Referred to the Agenda &amp; Rules Committee for scheduling on April 11, 2023.)</i></p> <p><b>From: City Manager</b></p> <p><b>Recommendation:</b> That the City Council takes the following actions:</p> <ol style="list-style-type: none"> <li>1. Accept the Unfunded Liability Obligations and Unfunded Infrastructure Needs report;</li> <li>2. Receive a presentation on Pensions and Other-Post Employment Benefits tonight and provide staff with direction;</li> <li>3. Schedule for either the April 25, 2023 City Council Meeting or at a later date to be determined a presentation and discussion on Unfunded Infrastructure Needs.</li> </ol> <p><b>Financial Implications:</b> See report</p> <p>Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000</p> |

| 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>                                               |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Notes</b>                                                                |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |

5/3/2023







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)

---

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  
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 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**

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### **IX. In-Meeting Procedures**

#### **Revised and Supplemental Materials**

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## 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.

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

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**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>.

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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.

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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**

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

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## 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.~~

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

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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**

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RE: Transition Period Prior to Repeal of COVID-related Executive Orders

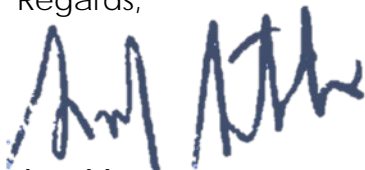
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

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

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### Introduction

This memo responds to the request from the Agenda & Rules Committee on May 17, 2021 for information from the City Manager on the options and timing for a return to in-person meetings for City legislative bodies. The analysis below is a preliminary summary of the considerations and options for returning to in-person meetings.

With the onset of the COVID-19 pandemic, the shelter-in-place order, and the issuance of Executive Order N-29-20 (“Executive Order”) in the spring of 2020, the City quickly adjusted to a virtual meeting model. Now, almost 15 months later, with the Blueprint for a Safer Economy scheduled to sunset on June 15, 2021, the City is faced with a new set of conditions that will impact how public meetings may be held in Berkeley. While the June 15, 2021 date appears to be certain, there is still a great deal of uncertainty about the fate of the Executive Order. In addition, the City is still awaiting concrete, specific guidance from the State with regards to regulations that govern public meetings and public health recommendations that will be in place after June 15, 2021.

For background, Executive Order N-29-20 allows legislative bodies to meet in a virtual setting and suspends the following Brown Act requirements:

- Printing the location of members of the legislative body on the agenda;
- Posting the agenda at the location of members of the legislative body that are remote; and
- Making publicly available remote locations from which members of the legislative body participate.



Meeting Options

There are three groups of City Legislative bodies that are considered in this memo

- City Council;
- City Council Policy Committees; and
- Boards and Commissions.

The three meeting models available are:

- In-person only;
- Virtual only; or
- Hybrid (in-person and virtual).

The scenarios below show the options available for each given set of facts.

| Summary Recommendations of Meeting Options | Physical Distancing |        |          | No Physical Distancing |        |          |
|--------------------------------------------|---------------------|--------|----------|------------------------|--------|----------|
|                                            | In-Person           | Hybrid | Virtual* | In-Person              | Hybrid | Virtual* |
|                                            | City Council        | X      | X        | X                      | X      | X        |
| Policy Committees                          |                     |        | X        | X                      |        | X        |
| Board and Commissions                      |                     |        | X        | X                      |        | X        |

\* The ability to hold virtual-only meetings is dependent on the status of Executive Order N-29-20

Currently, the Centers for Disease Control recommends physical distancing for unvaccinated persons. While the City and the community have made tremendous progress with regards to vaccination, the City would use the guidelines for unvaccinated persons when making determinations regarding public meetings.

Meeting Type Considerations

Our previous experience pre-pandemic and our experience over the past 15 months demonstrates that the City can conduct all in-person and all virtual meetings. However, the possibility of hybrid meetings presents new questions to consider. The primary concern for a return to in-person meetings using a hybrid model is the impact on the public experience and the legislative process.

*Will the legislative body be able to provide a transparent, coherent, stable, informative, and meaningful experience for the both the public in attendance and virtually?*

*Will the legislative body be able to conduct the legislative process in an efficient, coherent, and meaningful manner with the members split between in-person and virtual, and considering the additional delays and logistical challenges of allowing for public participation in a hybrid model?*

For the City Council, testing has shown that the larger space and technology infrastructure at the Boardroom will allow the Council to conduct all three types of meetings (in-person, hybrid, virtual).

For Policy Committees and Commissions, only the “all virtual” or “all in-person” meetings are recommended. Preliminary testing has shown that the audio/visual limitations of the meeting rooms available for these bodies would result in inefficient and cumbersome management of the proceedings in a hybrid model. In addition, there are considerations to analyze regarding the available bandwidth in city facilities and all members having access to adequate devices. Continuing the all virtual model for as long as possible, then switching to an all in-person model when conditions permit provides the best access, participation, and legislative experience for the public and the legislative body.

#### Other Considerations

Some additional factors to consider in the evaluation of returning to in-person or hybrid meetings are:

- How to address vaccination status for in-person attendees.
- Will symptom checks and/or temperature checks at entry points be required?
- Who is responsible for providing PPE for attendees?
- How are protocols for in-person attendees to be enforced?
- Physical distancing measures for the Mayor and City Councilmembers on the dais.
- Installation of physical barriers and other temporary measures.
- Will the podium and microphone need to be sanitized after every speaker?
- High number of touch points in meeting rooms.
- Will chairs for the public and staff need to be sanitized if there is turnover during the meeting?
- Determining the appropriate capacity for meeting locations.
- The condition and capacity of meeting room ventilation system and air cycling abilities.
- How to receive and share Supplemental Items, Revisions, Urgent Items, and submissions by the public both in-person and virtually.
- Budget including costs for equipment, physical improvements, A/V, PPE, and sanitization.

Conclusion

As stated above, conditions are changing daily, and there is a high degree of uncertainty surrounding the future guidance, regulations, and actions at the state level. Planning, testing and analysis are already underway to prepare for an eventual return to in-person meetings. Staff will continue to monitor the evolving legislative and public health circumstances and advise the committee at future meetings.

Attachment:

1. Executive Order N-29-20

**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-29-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** despite sustained efforts, the virus continues to spread and is impacting nearly all sectors of California; and

**WHEREAS** the threat of COVID-19 has resulted in serious and ongoing economic harms, in particular to some of the most vulnerable Californians; and

**WHEREAS** time bound eligibility redeterminations are required for Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries to continue their benefits, in accordance with processes established by the Department of Social Services, the Department of Health Care Services, and the Federal Government; and

**WHEREAS** social distancing recommendations or Orders as well as a statewide imperative for critical employees to focus on health needs may prevent Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries from obtaining in-person eligibility redeterminations; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

1. As to individuals currently eligible for benefits under Medi-Cal, CalFresh, CalWORKs, the Cash Assistance Program for Immigrants, the California Food Assistance Program, or In Home Supportive Services benefits, and to the extent necessary to allow such individuals to maintain eligibility for such benefits, any state law, including but not limited to California Code of Regulations, Title 22, section 50189(a) and Welfare and Institutions Code sections 18940 and 11265, that would require redetermination of such benefits is suspended for a period of 90 days from the date of this Order. This Order shall be construed to be consistent with applicable federal laws, including but not limited to Code of Federal Regulations, Title 42, section 435.912, subdivision (e), as interpreted by the Centers for Medicare and Medicaid Services (in guidance issued on January 30, 2018) to permit the extension of



otherwise-applicable Medicaid time limits in emergency situations.

2. Through June 17, 2020, any month or partial month in which California Work Opportunity and Responsibility to Kids (CalWORKs) aid or services are received pursuant to Welfare and Institutions Code Section 11200 et seq. shall not be counted for purposes of the 48-month time limit set forth in Welfare and Institutions Code Section 11454. Any waiver of this time limit shall not be applied if it will exceed the federal time limits set forth in Code of Federal Regulations, Title 45, section 264.1.
3. Paragraph 11 of Executive Order N-25-20 (March 12, 2020) is withdrawn and superseded by the following text:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow

members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

- (i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and
- (ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

- (i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

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

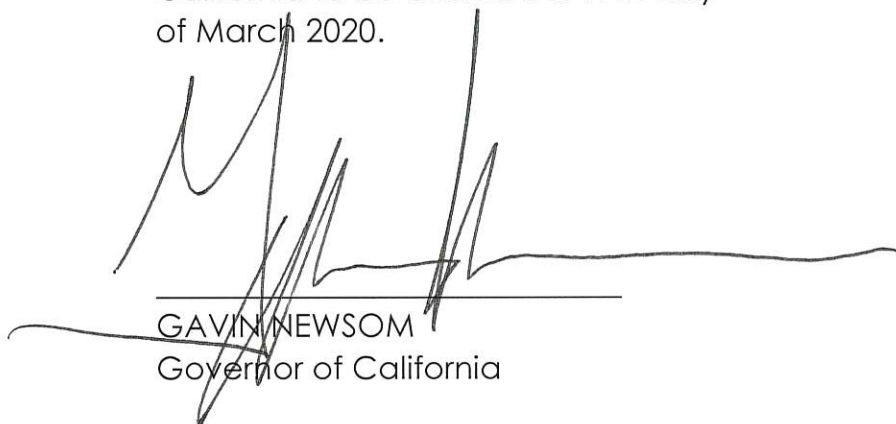


All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 17th day of March 2020.



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State







Lori Droste  
Councilmember, District 8

On March 14, 2023, the City Council referred the relevant concepts of this item to the Agenda & Rules Committee for consideration under the existing committee agenda item regarding enhancements to the City's legislative process.

Action Calendar  
March 14, 2023

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

**From:** Councilmember Lori Droste

**Subject:** Bureaucratic Effectiveness and Referral Improvement and Prioritization Effort (BE RIPE)

### Recommendation

In order to ensure that the City focuses on high-priority issues, projects, and goals and affords them the resources and funding such civic efforts deserve, the City Council should consult with the City Manager's Office to develop and adopt a suite of revisions to the City Council Rules of Procedure and Order that would implement the following provisions:

1. Beginning in 2023, Councilmembers shall submit no more than one major legislative proposal or set of amendments to any existing ordinance per year, with the Mayor permitted to submit two major proposals, for a maximum of ten major Council items per year.
2. In 2023 and all future years, Councilmembers shall be required to submit major items before an established deadline. Council shall then prioritize any new legislative items as well as any incomplete major items from the previous year using the Reweighted Range Voting (RRV) process. This will help establish clear priorities for staff time, funding, and scheduling Council work sessions and meetings. For 2023 alone, the RRV process should include outstanding/incomplete Council items from all previous years. In 2024 and thereafter, the RRV process should only incorporate outstanding/incomplete major items from the prior year. However, Councilmembers may choose to renominate an incomplete major policy item from an earlier year as their single major item.
3. During deliberations at a special worksession, Council retreat, and/or departmental budget presentations, Council and the City Manager should develop a work plan that establishes reasonable expectations about what can be accomplished by staff given the list of priorities as ranked by RRV. Council should also consult with the City Manager and department heads, particularly the City Attorney's office, Planning Department, and Public Works Department on workload challenges (mandates outside Council priorities, etc.), impacts, reasonable staff output expectations, and potential corrective actions to ensure that mandated deadlines are met, basic services are provided, and policy proposals are effectively implemented.
4. Budget referrals and allocations from City Council must be explicitly related to a previously established or passed policy/program, planning/strategy document, and/or an external funding opportunity related to one of these. As a good government practice, councilmembers and the Mayor may **not** submit budget referrals which direct funds to a

specific organization or event. Organizations which receive City funding must submit at least annually an application detailing, at a minimum: the civic goal(s)/purpose(s) for which City funds are used, the amount of City funding received for each of the preceding five years, and quantitative or qualitative accounting of the results/outcomes for the projects that made use of those City funds. Organizations receiving more than \$20,000 in City funds should be required to provide quantitative data regarding the number of individuals served and other outcomes.

5. Ensuring that any exceptions to these provisions are designed to ensure flexibility in the face of an emergency, disaster, or urgent legal issue/liability and narrowly tailored to be consistent with the goals of enhanced efficiency, effectiveness, fairness, and focus.

### **Policy Committee Recommendation**

On February 14, 2023, the Agenda and Rules Committee adopted the following action: M/S/C (Hahn/Arreguin) to send the item to the City Council with a Qualified Positive Recommendation to refer the relevant concepts of the original item to the Agenda & Rules Committee for consideration under the existing committee agenda item regarding enhancements to the City's legislative process. Vote: All Ayes.

### **Current Situation and Its Effects**

Over the past few years (excluding the COVID-19 state of emergency), City Council has grappled with potential options to reduce the legislative workload on the City of Berkeley staff. While a significant portion of this workload is generated from non-legislative matters and staffing vacancies, it is important to recognize that staff also continue to struggle to keep up with Council directives while still accomplishing the City's core mission or providing high quality public infrastructure and services.

### **Background and Rationale**

Berkeley faces an enormous staffing crisis due in part to workload concerns; as such, Council should take steps to hone its focus on legislative priorities. [November 2022's Public Works Off-Agenda Memo](#) offers a benchmark for problems faced by City departments. Public Works staff struggles to complete its top strategic plan projects, respond to audit findings, and provide basic services, in addition to fulfilling legislative priorities by Council. While the "Top Goals and Priorities" outlined by Public Works is tied to 130+ directives by the City Council, it is not reasonable to assume that all will be implemented.

The challenges faced by the Public Works department are not an anomaly. Other departments share the same challenges. In addition to needing to ensure that the City can adopt a compliant state-mandated Housing Element, process permits, secure new grant funding, mitigate seismic risks, and advance our Climate Action Plan, Planning Department staff have been tasked with addressing multiple policy proposals from the City Council. The sheer number of referrals also impacts the ability of staff in the City Attorney's office to vet all ordinances, protect the City's interests, participate in litigation, and address the City's other various legal needs.

### **Best Practices**

A number of nearby, similarly-sized cities were contacted to request information about how these cities approach Councilmember referrals and prioritizations processes. Cities contacted

included Richmond, Vallejo, Santa Clara, Concord, and Sunnyvale. Of these cities, Santa Clara, Concord, and Sunnyvale replied.

### **Santa Clara**

Overall, Santa Clara staff indicated that—similar to Berkeley—the Council referrals and prioritization process is not especially formalized, with additional referrals being made outside of the prioritization process.

Each year, the Council holds an annual priority setting session at which the Council examines and updates priorities from the previous year and considers what progress was made toward those priorities. The prioritization process takes place in February so that any priorities that rise to the top may be considered for funding ahead of the budget process. In any given year, some priorities may go unfunded and even holding those priorities over to a second year is not necessarily a guarantee of funding.

Despite conducting this annual prioritization exercise, Councilmembers in Santa Clara often still do bring forward additional referrals outside of this process. Part of this less restricted approach in Santa Clara's 030 ("zero thirty") policy, which allows members of the the City Council to add items to the Council agenda with sufficient notice and even allows members of the public to petition to have items added to a special section of the Council agenda.

Despite the overally looseness of Santa Clara's approach. Council members still rely upon staff to provide direction with respect to what priorities are or are not feasible based upon available funding and staff bandwidth.

### **Concord**

According to Concord City staff, although Concord—like Berkeley and Santa Clara—does have a process for Councilmembers to request items be added to Council agendas, Councilmembers generally agree not to add referrals outside of the formal priority-setting process.

Concord City staff only work on "new" items/policies that are mandated by law, recommended by the City Manager, and have been recommended for review/work of some kind by a majority (three of the five members) of the City Council.

In general, Councilmembers agree to not add work items outside of the Council's formal priority setting process. The Concord City Council has a once-a-year goal setting workshop each spring where the City plans its Tier 1 and Tier 2 priorities for the year (or sometimes for a 2-year cycle). Most Councilmembers abide by this process and refrain from bringing forward additional items. However any Councilmember may put forward a referral outside of the process and use the method outlined below.

Outside of the prioritization process, Councilmembers can request that their colleagues (under Council reports at any Council meeting) support placing an item on a future Council meeting agenda for a discussion. The Concord City Attorney has advised councilmembers that they can make a three sentence statement, e.g. "I would like my colleagues' support to agendize [insert item]" or "to send [insert item] to a Council standing committee for discussion." Followed by: "This is an important item to me or a timely item for the Council because [insert reasoning]. Do I have your support?" The other Councilmembers then cannot engage in any detailed discussion or follow up, but may only vote yes or no to agendizing the item.

If two of the Councilmember's colleagues (for a total of 3 out of 5) agree to the request to have the item agendized for a more detailed discussion by Council, then the item will be added to a future agenda for fuller consideration. An additional referral outside the prioritization process is suggested perhaps once every month in Concord, but the Concord City Council usually does not provide the majority vote to agendize these additional items.

### **Sunnyvale**

Of all the cities surveyed, Sunnyvale has the most structured approach for selecting, rating, and focusing on City Council priorities. "Study issues" require support from multiple councilmembers before being included in the annual priority setting, and then must go through a relatively rigorous process to rise to the top as Council priorities. And, perhaps most importantly, policy changes *must* go through the priority setting process to be considered. The Sunnyvale City Council's Policy 7.3.26 Study Issues reads, in part:

*Any substantive policy change (large or relatively small) is subject to the study issues process (i.e. evaluated for ranking at the Council Study Issues Workshop).*

*Policy related issues include such items as proposed ordinances, new or expanded service delivery programs, changes to existing Council policy, and/or amendments to the General Plan. Exceptions to this approach include emergency issues, and urgent policy issues that must be completed in the short term to avoid serious negative consequences to the City, subject to a majority vote of Council.*

If a study issue receives the support of at least two Councilmembers, the issue will go to staff for the preparation of a study issue paper. Council-generated study issues must be submitted to staff at least three weeks ahead of the priority-setting session, with an exception for study issues raised by the public and carried by at least two Councilmembers, if the study issues hearing takes place less than three weeks before the priority setting.

At the Annual Study Issues Workshop, the Council votes whether to rank, defer, or drop study issues. If a majority votes to drop the issue, it may not return the following year; if the issue is deferred, it returns at the following year's workshop; and if a majority votes to rank an issue, it proceeds to the ranking process. Sunnyvale's process uses "forced ranking" for "departments" with ten or fewer issues and "choice ranking" for departments with eleven or more issues. (The meaning of "departments" and the process for determining the number of issues per department are not elucidated within the policy.) Forced ranking involves assigning a ranking to every policy within a given subset, while choice ranking only assigns a ranking to a third of policies within a given subset, with the others going unranked.

After the Council determines which study issues will be moving forward for the year based on the rankings, the City Manager advises Council of staff's capacity for completing ranked issues. However, if the Council provides additional funding, the number of study issues addressed may be increased.

In 2022, Sunnyvale had 24 study issues (including 17 from previous years and only 7 new ones) and **zero** budget proposals. Although Sunnyvale does consider urgency items outside the prioritization process, this generally happens only 1 to 3 times per year and usually pertains to highly urgent items, such as gun violence.

### **Status Quo and Its Effects**

Council currently uses a reweighted range proportional representation voting method to determine which priorities represent both a) a consensus and b) district/neighborhood concerns. This process allows Council to coalesce around a particular common area of concern; but if there is a specific neighborhood or district issue that is not addressed by Council consensus, it also allows for that district's councilmember's top priority to be elevated in the ratings even without broad consensus, so long as there are not multiple items designated as that councilmember's "top" item. More information about this process can be found [here](#). This [system was established](#) in 2016 due to the sheer amount of referrals by Council and the lack of cohesive direction on which of the 100+ referrals the City Manager should act upon.

Subsequent to this effort, Council created a "short-term referral" pool which was intended to be light-lift referrals that could be accomplished in less than 90 days. However, that designation was always intended to be determined by the City Manager, not Council, with respect to what was operationally feasible in terms of the 90 day window. The challenge with Council determining what is a short-term referral is that it is not always realistic given other duties that the staff has to attend to and inappropriate determinations can stymie work on other long term priorities if staff have to drop everything they are doing to attend to an "short-term" or "emergency" referral.

An added challenge is that the City Auditor [reported in 2018](#) that the City of Berkeley's Code Enforcement Unit (CEU) had insufficient capacity to enforce various Municipal Code provisions. This was due to multiple factors, including understaffing—some of which have since improved. Nevertheless, the City Auditor wrote,

*"Council passes some ordinances without fully analyzing the resources needed for enforcement and without understanding current staffing capacity. In order to enforce new ordinances, the CEU must take time away from other enforcement areas. This increases the risk of significant health and safety code violations going unaddressed. It also leads to disgruntled community members who believe that the City is failing to meet its obligations. This does not suggest that the new ordinances are not of value and needed. Council passes policy to address community concerns. However, it does mean that the City Council routinely approves policy that may never result in the intended change or protections."*

Subsequent to that report, [an update](#) was published in September of 2022. A staffing and resource analysis for Code Enforcement is still needed to ensure that the laws Council passes can be implemented.

### **Fiscal Impacts**

These reforms are likely to result in significant direct savings related to reduced staff time/overtime as well as potential decreases to costs associated with the recruitment/retention of staff.

### **Alternatives Considered**

Alternatives were considered using effectiveness and efficiency as the evaluative criteria for referrals. One missing criterion that will be necessary in developing this process will be operational considerations so the City of Berkeley can continue to deliver basic services in an efficient manner.

*All-Council determination*

Council could vote *as a body* on the top 10 legislative priorities. The drawback of this method is that it, by default, eliminates any remaining priorities that have been passed by Council. It also eliminates “minority” voices which may disproportionately impact neighborhood-specific concerns as the remainder of the Council may not value district-specific concerns outside of their council district.

*Councilmember parameters*

Councilmembers could select their top two legislative priorities (as a primary author) for the year and the Mayor could select four legislative priorities for the year for a total of 10 legislative priorities per year. These “legislative priorities” would not include resolutions of support, budget referrals for infrastructure or traffic mitigations or other non-substantive policy items.....

*Status Quo Sans Short-Term Referrals*

The status quo of rating referrals is the fairest and most equitable if Council wishes to continue to pass the same quantity of referrals; however, it does not address the overall volume and that certain legislative items skip the prioritization queue due to popularity or perceived community support. Council enacts ordinances that fall outside of the priority setting process and designates items as short-term referrals. This loophole has made this process a bit more challenging. One potential option is to continue the prioritization process but eliminate the short-term referral option unless it is undeniably and categorically an emergency or time-sensitive issue.

**Contact Person**

Councilmember Lori Droste (legislative aide Eric Panzer)  
[erpanzer@cityofberkeley.info](mailto:erpanzer@cityofberkeley.info)  
Phone: 510-981-7180

**Attachments**

Update on Public Works’ Goals, Projects, Measures, and Challenges



Office of the City Manager

November 15, 2022

To: Honorable Mayor and Members of the City Council  
 From: *DWR* Dee Williams-Ridley, City Manager  
 Re: Update on Public Works' Goals, Projects, Measures, and Challenges

This memo shares an update on the department's *Performance Measures* and *FY 2023 Top Goals and Projects*, and identifies the department's highest priority challenge. I am proud of this department's work, its efforts to align its work with City Council's goals, and the department's dedication to improving project and program delivery.

#### *Performance Measures*

The department's performance measures were first placed on the department's website (<https://berkeleyca.gov/your-government/about-us/departments/public-works>) in 2020. They are updated annually in April. Progress continues in preventing trash from reaching the Bay, reducing waste, increasing bike lane miles, reducing the City fleet's reliance on gas, increasing City-owned electric chargers, expanding acres treated by green infrastructure, and reducing the sidewalk repair backlog. Challenges remain with the City's street condition and safety.

#### *Top Goals and Projects*

Public Works' top goals and projects are also on the department's website (<https://berkeleyca.gov/your-government/about-us/departments/public-works>). Department goals are developed annually. This year, after reviewing the 130+ directives from open City Council referrals, FY 2023 adopted budget referrals, audit findings, and strategic plan projects, staff matched existing resources with City Council's direction and the ability to deliver on this direction while ensuring continuity in baseline services.

The *FY 2023 Top Goals and Projects* is staff's projection of the work that the department has the capacity to advance this fiscal year. This list is intended to be both realistic and a stretch to achieve. More than three-quarters of the work on the *FY 2023 Top Goals and Projects* is tied to the existing 130+ directives from City Council referrals, budget referrals, audit findings, and strategic plan projects. The remainder are initiatives internal to the department aimed at increasing effectiveness and/or improving baseline services.

Public Works conducts quarterly monitoring of progress on the goals and projects, and status updates are shared on the department's website using a simple status reporting



Page 2

November 15, 2022

Re: Update on Public Works' Goals, Projects, Measures, and Challenges

procedure. Each goal or project is coded green, yellow, or red. A project coded green is either already completed or is on track and on budget. A project in yellow is at risk of being off track or over budget. A project in red either will not meet its milestone for this fiscal year or is significantly off track or off-budget. Where a project or goal has multiple sub-parts, an overall status is color-coded for the numbered goal and/or project, and exceptions within the subparts are identified by color-coding. Quarter 1's status update is [here](#). The 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> quarter results will be posted at the same location.

### *Challenge*

Besides the volume of direction, the most significant challenge in delivering on City Council's directions is the department's high vacancy rate. The Public Works Department is responsible for staff retention and serves as the hiring manager in the recruitment and selection process. Both retention and hiring contribute to the department's vacancy rate, and the department collaborates closely with the Human Resources Department to reduce the rate. Over the last year, the vacancy rate has ranged from 12% to 18%, and some divisions, such as Equipment Maintenance (Fleet), Transportation,<sup>1</sup> and Engineering, have exceeded 20%. While the overall vacancy rate is lower than in Oakland and San Francisco, it is higher than in Public Works Departments in Alameda, Albany, Emeryville, and San Leandro.

The high vacancy rate obviously reduces the number of services and projects that staff can deliver. It leaves little room for new direction through the course of the fiscal year and can lead to delays and diminished quality. It also detracts from staff morale as existing staff are left to juggle multiple job responsibilities over long periods with little relief. The department's last two annual staff surveys show that employee morale is in the lowest quarter of comparable public agencies and the vacancy rate is a key driver of morale.

Attachment 1 offers an excerpted list of programs and projects that the department is unable to complete or address in this fiscal year due to the elevated vacancy rate and/or the volume of directives.

Attachment 1: Selected list of program, project, referral, and audit finding impacts

cc: Paul Buddenhagen, Deputy City Manager  
 LaTanya Bellow, Deputy City Manager  
 Jenny Wong, City Auditor  
 Mark Numainville, City Clerk  
 Matthai Chakko, Assistant to the City Manager

---

<sup>1</sup> Three of the City's five transportation planner positions will be vacant by December 3. Before January 1, 2023, the City Manager will share an off agenda memo that explains the impact of transportation-specific vacancies on existing projects and programs.



## **Attachment 1: Selected list of program, project, referral, and audit finding impacts**


### *Project and Program Impacts*

- Major infrastructure planning processes are 6+ months behind schedule, including comprehensive planning related to the City's Zero Waste goal, bicycle, stormwater/watershed, sewer, and streetlight infrastructure.
- Some flashing beacon installations have been delayed for more than 18 months, new traffic maintenance requests can take 2+ months to resolve, and the backlog of neighborhood traffic calming requests stretches to 2019.
- The City may lose its accreditation status by the American Public Works Association because of a lack of capacity to gain re-accreditation.
- Some regular inspections and enforcement of traffic control plans for the City's and others' work in the right of way are missed.
- Residents experience missed waste and compost pickups as drivers and workers cover unfamiliar routes and temporary assignments.
- Illegal dumping, ongoing encampment, and RV-related cleanups are sometimes missed or delayed.
- The backlog of parking citation appeals has increased.
- Invoice and contracting approvals can face months-long delays.
- The Janitorial Unit has reduced service levels and increased complaints.
- Maintenance of the City's fleet has declined, with preventative maintenance happening infrequently, longer repair response times, and key vehicles being unavailable during significant weather events.

### *Prior Direction Deferred or Delayed*

- Referral: Expansion of Paid Parking (DMND0003994)
- Referral: Long-Term Zero Waste Strategy (DMND0001282)
- Referral: Residential Permit Parking (PRJ0016358)
- Referral: Parking Benefits District at Marina (DMND0003997)
- Referral: Prioritizing pedestrians at intersections (DMND0002584)
- Referral: Parking Districts on Lorin and Gilman (DMND0003998)
- Budget Referral: Durant/Telegraph Plaza, 12/14/2021
- Referral: Traffic Calming Policy Revision (PRJ0012444)
- Referral: Public Realm Pedestrianization Opportunities (PRJ0019832)
- Referral: Long-Term Resurfacing Plan (PRJ0033877)
- Referral: Street Sweeping Improvement Plan (DMND0002583)
- Audit: Leases: Conflicting Directives Hinder Contract Oversight (2009)
- Audit: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal (2014)
- Audit: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity (2016)






No Material  
Available for  
this Item

There is no material for this item.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

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