



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

BERKELEY CITY COUNCIL SPECIAL MEETING

TUESDAY, MAY 28, 2019

2:30 P.M.

2180 Milvia Street, 6th Floor – Redwood Room

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

AGENDA

Roll Call

Public Comment

Review of Agendas

1. **Approval of Minutes: May 13, 2019**
2. **Review and Approve Draft Agendas:**
 - a. 6/11/19 – 6:00 p.m. Regular City Council Meeting
3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
4. **Adjournments In Memory Of**

Scheduling

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

Referred Items for Review

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

- None

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment – Next Meeting Monday, June 10, 2019

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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.*

*The City Clerk shall bring any reports submitted as Time Critical to the meeting of the Agenda Committee. 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.*

*This is a meeting of the Berkeley City Council Agenda Committee. Since a quorum of the Berkeley City Council may actually be present to discuss matters with the Council Agenda Committee, this meeting is being noticed as a special meeting of the Berkeley City Council as well as a Council Agenda Committee meeting.*

*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. After the deadline for submission, residents must provide 10 copies of written communications to the City Clerk at the time of the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 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 981-6418 (V) or 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.

\* \* \*

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 May 23, 2019.



Mark Numainville, City Clerk

## **Communications**

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



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

1

**BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES**

**MONDAY, MAY 13, 2019**

**2:30 P.M.**

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

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

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

**Public Comment** – 5 speakers

**Review of Agendas**

**1. Approval of Minutes: April 29, 2019**

**Action:** M/S/C (Harrison/Wengraf) to approve the Minutes of 4/29/19.

**Vote:** All Ayes.

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

a. 5/28/19 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Harrison/Wengraf) to request changes to the recommendation of the time critical item from Councilmember Bartlett related to traffic circles.

**Vote:** All Ayes.

**Action:** M/S/C (Harrison/Wengraf) to approve the agenda of 5/28/19 with the changes noted below.

**Vote:** All Ayes.

- *Ceremonial Item – Affordable Housing Week*
- *Ceremonial Item – Recognition of Berkeley Green Certified Businesses*
- *Item Added – Traffic Circle at 62<sup>nd</sup> and King (Bartlett)*
- *Item Added – First Student Contract (City Manager)*
- *Item 14 Fire Prevention Audit (City Auditor) – scheduled for June 11, 2019*
- *Item 15 Support SB 48 (Arreguin) – Councilmembers Hahn and Bartlett added as co-sponsors*
- *Item 16 Support HR 40 (Arreguin) – Councilmember Harrison added as a co-sponsor*
- *Item 17 SupplyBank.Org (Arreguin) – Councilmember Davila added as a co-sponsor*
- *Item 21 Stop Signs (Bartlett) – revised item submitted*
- *Item 23 Street Lights (Bartlett) – Councilmembers Harrison and Wengraf added as co-sponsors*
- *Item 26 Paid Internships (Robinson) – Councilmember Bartlett added as a co-sponsor; financial implication revised to show dollar amount on agenda*
- *Item 27 Renters Rights Bills (Robinson) – revised item submitted*
- *Item 29 Support ACA 6 (Robinson) – Councilmembers Harrison, Bartlett, and Davila added as a co-sponsor*
- *Item 35 a/b/c Green Stormwater – scheduled for June 18, 2019*
- *Item 36 Presentation from EBMUD – scheduled for June 11, 2019*
- *Item 37 West Berkeley Service Center (Arreguin) – moved to Consent Calendar*

### Policy Committee Track Items

- Item 38 Tax Exemption (Arreguin) – scheduled for 5/28/19 Action Calendar
- Item 39 Ordinance Moratorium (Davila) – scheduled for 5/28/19 Action Calendar
- Item 40 Sculpture Lighting (Bartlett) – scheduled for 5/28/19 Consent Calendar; Councilmembers Harrison and Davila, and Mayor Arreguin added as co-sponsors
- Item 41 Transportation Division Staffing – scheduled for 5/28/19 Consent Calendar; revised item submitted; Councilmember Robinson added as a co-sponsor
- Item 42 Rename Harold Way (Harrison) – scheduled for 5/28/19 Action Calendar; Councilmember Davila added as a co-sponsor
- Item 43 Kaiser Mental Health (Harrison) – scheduled for 5/28/19 Consent Calendar; Mayor Arreguin and Councilmember Robinson added as co-sponsors
- Item 44 Solano Avenue (Hahn) – scheduled for 5/28/19 Consent Calendar; Councilmembers Wengraf and Harrison, and Mayor Arreguin added as co-sponsors
- Item 45 Fire Safety (Robinson) – referred to the Public Safety Committee; Councilmember Harrison added as a co-sponsor
- Item 46 Refuse Trucks (Robinson) – referred to the Facilities, Infrastructure, Transportation, Environment and Sustainability Committee; Councilmembers Harrison and Davila added as co-sponsors; revised item submitted

### Action Calendar Order of Items

Item 30 Budget Public Hearing #2  
Item 34 City Council Budget Recommendations  
Item 32 Planning Department Fees  
Item 33 Berkeley Economic Dashboards  
Item 31 RHSP Fees  
Item 38 Tax Exemption  
Item 39 Ordinance Moratorium  
Item 42 Rename Harold Way

- 3. Selection of Item for the Berkeley Considers Online Engagement Portal**
  - No item selected
- 4. Adjournments In Memory Of – None**

### **Scheduling**

- 5. Council Worksessions Schedule**
  - Removed UC Housing Item from 9/17/19
  - Moved the Arts and Culture Plan to 9/17/19
  - Added Green Stormwater to 6/18/19
  - Added Council Budget and Strategic Plan Priorities to 6/18/19
- 6. Council Referrals to Agenda Committee for Scheduling – no changes**
- 7. Land Use Calendar – received and filed**

## Referred Items for Review

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

- **None**

## Items for Future Agendas

- **None**

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 3:28 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda and Rules Committee meeting on May 13, 2019.

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Mark Numainville, City Clerk

## Communications

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





# DRAFT AGENDA

2a



## BERKELEY CITY COUNCIL MEETING

Tuesday, June 11, 2019

6:00 PM

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 981-6900.*

*The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

### Preliminary Matters

#### Roll Call:

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

1. Presentation: East Bay Municipal Utility District

**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 by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, 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 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. Speaker cards are not required for this second round of public comment on non-agenda matters.*

## 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.” 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. **Grant from the William and Flora Hewlett Foundation**

**From: City Manager**

**Recommendation:** Adopt a Resolution accepting a \$20,000 grant from the William and Flora Hewlett Foundation for an assessment of arts space affordability challenges, displacement risks and possible strategies to protect affordable spaces for arts organizations, artists and cultural workers in the City of Berkeley.

**Financial Implications:** \$20,000 (grant)

Contact: Jordan Klein, Economic Development, 981-7530

### 2. **Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on June 11, 2019**

**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:** See report

Contact: Henry Oyekanmi, Finance, 981-7300

## Consent Calendar

- 3. FY 2020 Tax Rate: Fund the Maintenance of Parks, City Trees and Landscaping**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding all improvements for the maintenance of parks, City trees, and landscaping in the City of Berkeley at \$0.1729 (17.29 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 4. FY 2020 Tax Rate: Fund the Provision of Emergency Medical Services (Paramedic Tax)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the provision of emergency medical services to Berkeley residents at \$0.0393 (3.93 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 5. FY 2020 Tax Rate: Fund Emergency Services for the Severely Disabled (Measure E)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the provision of emergency services for the disabled at \$0.01638 (1.638 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 6. FY 2020 Tax Rate: Business License Tax on Large Non-Profits**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for Business License Tax on large non-profits at \$0.6420 (64.20 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 7. FY 2020 Tax Rate: Fund Disaster Fire Protection (Measure Q)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the procurement of disaster fire equipment at \$0.0125 (1.25 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300

## Consent Calendar

- 8. FY 2020 Tax Rate: Fund the Debt Service on the Street and Watershed Improvements General Obligation Bonds (Measure M, November 2012 Election)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate funding the debt service on the Street and Integrated Watershed Improvements General Obligation Bonds (Measure M, November 2012) at 0.0065%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 9. FY 2020 Tax Rate: Fund Fire Protection and Emergency Response and Preparedness (Measure GG)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding Fire Protection and Emergency Response and Preparedness in the City of Berkeley at the rate of \$0.05818 (5.818 cents) per square foot of improvements for dwelling units and setting the rate for all other property at \$0.08804 (8.804 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300; David Brannigan, Fire, 981-3473
- 10. FY 2020 Tax Rate: Fund Debt Service on 2015 Refunding General Obligation Bonds (Measures G, S & I)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate funding the debt service on the 2015 consolidation of Measures G, S and I (General Obligation Bonds - Elections of 1992, 1996 and 2002) at 0.0150%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 11. FY 2020 Tax Rate: Fund the Debt Service on the Infrastructure and Facilities General Obligation Bonds (Measure T1, November 2016 Election)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate funding the debt service on the Infrastructure and Facilities Improvements General Obligation Bonds (Measure T1, November 2016) at 0.0092%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300

## Consent Calendar

- 12. FY 2020 Tax Rate: Fund Debt Service on Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the debt service on the Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election) at 0.0075%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 13. FY 2020 Tax Rate: Fund the Debt Service on the Affordable Housing General Obligation Bonds (Measure O, November 2018 Election)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate funding the debt service on the Affordable Housing General Obligation Bonds (Measure O, November 2018) at 0.0062%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 14. FY 2020 Special Tax Rate: Fund the Provision of Library Services**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the provision of Library Services in the City of Berkeley at \$0.2272 (22.72 cents) per square foot for dwelling units and \$0.3435 (34.35 cents) per square foot for industrial, commercial, and institutional buildings.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300; Elliot Warren, Library, 981-6100
- 15. Temporary Appropriations FY 2020**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing a temporary appropriation in the sum of \$50,000,000 to cover payroll and other expenses from July 1, 2019, until the effective date of the FY 2020 Annual Appropriations Ordinance.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300

## Consent Calendar

- 16. Contract: Bay Area Community Resources for the Placement of AmeriCorps Members**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an expenditure contract and any amendments or extensions thereto with Bay Area Community Resources in an amount not to exceed \$56,000 for the period July 1, 2019 through June 30, 2020 for the placement of AmeriCorps members.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 17. Contract: Berkeley Unified School District for Workplace Skills Training for YouthWorks Employment Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a sole-source expenditure contract and any needed amendments or extensions with the Berkeley Unified School District (BUSD) to provide workplace skills training to prepare YouthWorks participants for summer employment in an amount not to exceed \$26,694 for the period June 12, 2019 through August 31, 2022.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 18. Request for Proposals to Sell Single Family Home at 1654 Fifth Street to Operate as Homeless Housing**  
**From: City Manager**  
**Recommendation:** Direct the City Manager to issue a Request for Proposals to select a qualified organization to purchase the single family home at 1654 Fifth Street to operate as housing for the homeless.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 19. Contract No. 9149B Amendment: Advantel Networks assignment to ConvergeOne and for Voice Over IP (VoIP) Telephone System Support and Maintenance**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 9149B with ConvergeOne (formerly Advantel Networks) for Voice Over IP (VoIP) telephone system licensing and maintenance, increasing the contract by \$121,538 for a total not to exceed amount of \$1,509,038, from November 15, 2012 to June 30, 2020.  
**Financial Implications:** See report  
Contact: Savita Chaudhary, Information Technology, 981-6500

## Consent Calendar

- 20. Contract: NEXGEN Asset Management for Computerized Maintenance Management System & Enterprise Asset Management (CMMS/EAM) System**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with NEXGEN Asset Management for software hosting, implementation, maintenance and related services for a Computerized Maintenance Management System and Enterprise Asset Management (CMMS/EAM) system, for an amount not to exceed \$1,017,509 for the period commencing on July 12, 2019 through June 30, 2024.  
**Financial Implications:** Various Funds - \$1,017,509  
Contact: Savita Chaudhary, Information Technology, 981-6500
- 21. Contract No. 10350 Amendment: Technology, Engineering, and Construction, Inc. for Tank Maintenance and Certification Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10350 with Technology, Engineering and Construction, Inc. for the provision of tank maintenance and certification services, extending the term to June 30, 2021 and increasing the contract by \$100,000 for a total contract amount not to exceed \$150,000.  
**Financial Implications:** Various Funds - \$100,000  
Contact: Phillip Harrington, Public Works, 981-6300
- 22. Contract: Gallagher & Burk, Inc. for Measure T1 Street Improvements Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Measure T1 Street Improvements, Adeline Street, Hearst Avenue and Milvia Project, Specification No. 19-11278-C; accepting the bid of Gallagher & Burk, Inc. as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$4,065,906.  
**Financial Implications:** Various Funds - \$4,065,906  
Contact: Phillip Harrington, Public Works, 981-6300
- 23. Contract: GHD for Preparation of a Sanitary Sewer Master Plan**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract, and any amendments and extensions with GHD in an amount not to exceed \$940,000 to provide consultant services for the preparation of a Sanitary Sewer Master Plan for the period July 1, 2019 through June 30, 2022.  
**Financial Implications:** Sewer Capital Program Fund - \$940,000  
Contact: Phillip Harrington, Public Works, 981-6300

## Consent Calendar

- 24. Contract: Zonar Systems, Inc. for Global Positioning System Telematics Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Zonar Systems, Inc. for software hosting, installation of hardware, implementation, maintenance and related services for a global positioning system, for an amount not to exceed \$278,698 for the period commencing on July 12, 2019 through June 30, 2024.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300
- 25. Purchase Orders: National Auto Fleet Group for Ten Toyota Prius Prime Plus (PHEV) Sedans**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell contract bid procedures, and authorizing the City Manager to execute a purchase order for ten (10) new 2020 Toyota Prius Prime Plus Sedans with National Auto Fleet Group in an amount not to exceed \$296,475.  
**Financial Implications:** Various Funds - \$296,475  
Contact: Phillip Harrington, Public Works, 981-6300
- 26. Amending the Commissioners' Manual Regarding Submission of Revised or Supplemental Agenda Material**  
**From: Open Government Commission**  
**Recommendation:** Adopt a resolution revising the Commissioners' Manual to require commissioners and board members be subject to the same procedures as the general public.  
**Financial Implications:** None  
Contact: Emma Soichet, Commission Secretary, 981-6950
- 27. Fire Prevention Inspections: Insufficient Resources Strain Code Compliance**  
**From: Auditor**  
**Recommendation:** We recommend City Council request that the City Manager report back by December 3, 2019, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Fire Department. They have agreed to our findings and recommendations. Please see report for management's response.  
**Financial Implications:** See report  
Contact: Jenny Wong, Auditor, 981-6750



## Council Consent Items

**28. Support AB 1487 – Housing Alliance for the Bay Area**

**From: Mayor Arreguin**

**Recommendation:** Adopt a Resolution in support of AB 1487 (introduced by David Chiu) and to seek amendments from the author. Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and David Chiu.

**Financial Implications:** None

Contact: Jesse Arreguin, Mayor, 981-7100

**29. Measure O Affordable Housing Bonds and a Request for Proposals from the City's Housing Trust Fund** *(Reviewed by the Land Use, Housing & Economic Development Committee)*

**From: Mayor Arreguin**

**Recommendation:** Adopt a Resolution: 1. Directing the City Manager to prepare any documents required to use Measure O bond funds and Housing Trust Funds to fulfill existing funding reservations for the Berkeley Way and 1601 Oxford affordable housing projects; and 2. Directing the City Manager to release a Request for Proposals (RFP) under the City's Housing Trust Fund (HTF) guidelines for affordable housing development with a priority given to projects meeting certain readiness criteria, to be funded by the balance of the first issuance of Measure O funds (estimated at \$30M) and the Housing Trust Fund that remain after fully funding the projects identified above; and 3. Directing the Measure O Bond Oversight Committee: a. To act in any role specified for the Housing Advisory Commission in the HTF Guidelines for the purpose of this RFP for both Measure O and existing HTF funds, b. To be responsible for providing both general priority recommendations and project-specific funding recommendations for Measure O bonds to the City Council; and c. To add the Housing Advisory Commission's Chair to the committee as an ex-officio, non-voting member; and 4. Approving certain waivers of the HTF Guidelines to ensure timely funding awards in this funding round and allow for consideration of a Berkeley Unified School District-sponsored educator housing development serving households at up to 120% of Area Median Income.

**Financial Implications:** See report

Contact: Jesse Arreguin, Mayor, 981-7100

## Council Consent Items

30. **Strike Debt Bay Area's Medical Debt Relief Effort in Cooperation with RIP Medical Debt: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmember Harrison**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$150 from Councilmember Kate Harrison, to Strike Debt Bay Area's Medical Debt Relief Effort (<https://secure.qgiv.com/event/strikedebtbyarea/>), in cooperation with and hosted by RIP Medical Debt, a 501(c)(3) tax-deductible non-profit corporation. Funds would be relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Harrison and any other Councilmembers who would like to contribute.  
**Financial Implications:** Councilmember's Discretionary Funds - \$150  
Contact: Kate Harrison, Councilmember, District 4, 981-7140

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

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

## Action Calendar – Public Hearings

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

**31. Zoning Ordinance Amendments that apply Inclusionary Housing Regulations to Contiguous Lots under Common Control or Ownership (Continued from April 30, 2019)**

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt the first reading of Zoning Ordinance amendments that modify Inclusionary Housing Requirements (BMC Section 23C.12.020: Applicability of Regulations) to apply to new residential development projects on contiguous lots under common ownership or control.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400

**32. FY 2020 Street Lighting Assessments**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion adopt two Resolutions confirming the assessments for Berkeley Street Lighting Assessment District No. 1982-1 and Street Lighting Assessment District 2018, approving the Engineer's Reports, and authorizing the levying and collection of assessments in Fiscal Year 2020.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, 981-6300

## Action Calendar – Old Business

33. **Budget Referral: Remediation of Lawn Bowling, North Green and Santa Fe Right-of-Way, FY2020-2021** *(Continued from May 14, 2019)*  
**From: Councilmember Davila**  
**Recommendation:** Refer to the FY20 (2020/2021) RRV Budget Process for consideration of at least \$150,000 and up to remediate the Lawn Bowlers, North Green and Santa Fe Right-of-Way in advance of Request for Proposal (RFP) for these areas that potentially could provide much needed affordable alternative housing.  
Refer to the Homeless Services Panel of Experts to consider Measure P funds for remediation purposes for these properties.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, 981-7120
34. **Resolution: No U.S. intervention in Venezuela** *(Continued from May 14, 2019. Item contains revised material)*  
**From: Peace and Justice Commission**  
**Recommendation:** Adopt a resolution that affirms the sovereign right of the Venezuelan people to negotiate their political differences free from foreign intervention, and urges that the U.S. government withdraw its illegal, unilateral financial sanctions and refrain from military, economic, or diplomatic intervention in the internal affairs of the sovereign state of Venezuela.  
**Financial Implications:** None  
Contact: Bre Slimick, Commission Secretary, 981-7000

## Action Calendar – New Business

35. **City Council Comments on the FY 2020 & FY 2021 Proposed Biennial Budget**  
**From: City Manager**  
**Recommendation:** Provide comments on the FY 2020 & FY 2021 Proposed Biennial Budget.  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000

## Action Calendar – New Business

### 36a. Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

#### **From: Housing Advisory Commission**

**Recommendation:** Establish policies that will provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

**Financial Implications:** Staff time

Contact: Mike Uberti, Acting Commission Secretary, HHCS (510) 981-5114

## Action Calendar – New Business

### 36b. Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants From: Peace and Justice Commission

**Recommendation:** The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

The Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
3. The City shall explore the use of anti-displacement funds to assist low-income homeowners and/or tenants residing on the premises with legal matters of forced relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

**Financial Implications:** See report

Contact: Bre Slimick, Commission Secretary, 981-7000

## Action Calendar – New Business

**36c. Companion Report: Commission Recommendations Regarding Code Enforcement and Mr. Leonard Powell**

**From: City Manager**

**Recommendation:** The City Manager appreciates the concerns identified by the Peace & Justice Commission and Housing Advisory Commission regarding the effects of code enforcement actions on low-income homeowners, including Mr. Powell. The City Manager believes that current City policies, practices and records demonstrate the proper mechanisms are in place to ensure the outcomes each commission wishes and that additional recommendations are not needed. City staff have worked extensively with Mr. Powell and the receiver to facilitate Mr. Powell's ability to maintain ownership and reside in his property.

**Financial Implications:** See report

Contact: Paul Buddenhagen, City Manager's Office, 981-7000; Kelly Wallace, Housing and Community Services, 981-5400

**37. Law Enforcement Use of Restraint Devices in the City of Berkeley**

**From: Mental Health Commission**

**Recommendation:** Adopt a resolution directing the Berkeley Police Department, and any other law enforcement providing mutual aid in Berkeley, to cease use of restraint devices (spit hoods, spit masks) and replace them with non-restraining safety equipment like N95 masks or an equivalent substitute. The use of spit hoods is traumatizing and escalating, risks asphyxiation and can be a violation of constitutional civil rights, particularly free speech. Stopping their use contributes to humanitarian and compassionate approach to those living with mental illness.

**Financial Implications:** None

Contact: Karen Klatt, Commission Secretary, 981-5400

## Action Calendar – Policy Committee Track Items

**38. Prioritizing Transit Improvements at MacArthur Maze**

**From: Mayor Arreguin**

**Recommendation:** Adopt a Resolution requesting transit priority improvements to mitigate congestion associated with the MacArthur Maze Vertical Clearance Project.

**Financial Implications:** None

Contact: Jesse Arreguin, Mayor, 981-7100

## Action Calendar – Policy Committee Track Items

- 39. Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention**  
**From: Mayor Arreguin**  
**Recommendation:**  
1. Adopt an Ordinance repealing and reenacting BMC Chapter 13.104, Wage Theft Prevention to improve enforcement of the ordinance by requiring a signed acknowledgement of ordinance requirements and signed attestation at completion of the project; and  
2. Direct the City Manager to include standard conditions of approval for zoning permits requiring compliance with the Wage Theft Prevention Ordinance, BMC Chapter 13.104.  
**Financial Implications:** Staff time  
Contact: Jesse Arreguin, Mayor, 981-7100
- 40. Opposition to Revision of Title X Family Planning Regulations Proposed by United States Department of Health and Human Services**  
**From: Councilmember Davila**  
**Recommendation:** Adopt a resolution in opposition of the revision of Title X Family Planning Regulations proposed by the U.S. Department of Health and Human Services. The City Clerk is to mail a copy of the resolution to Alex M Azar II, U.S. Secretary of Health and Human Services and to the President of the United States.  
**Financial Implications:** None  
Contact: Cheryl Davila, Councilmember, District 2, 981-7120
- 41. FY 2020 - FY 2023 General Fund Allocation: Funding for Berkeley Drop-In Center**  
**From: Councilmember Bartlett**  
**Recommendation:** That the City Council grant \$190,015 annually to the FY 2020 - FY 2023 budgets to support homeless people and very-low income residents of Berkeley by funding the Berkeley Drop-In Center, a program of the Alameda County Network of Mental Health Clients.  
**Financial Implications:** \$190,015  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 42. FY 2020 -23 Fund Allocation: Funding for Youth Spirit Artworks**  
**From: Councilmember Bartlett**  
**Recommendation:** That the City Council grant \$198,000 annually to the FY 2020 - FY 2023 budgets to support Youth Spirit Artworks for the BUSD Homeless Student Program: \$55,000 to serve high school aged youth who are in school; the YSA Vocational Arts Program: \$65,000 to serve 130 Berkeley youth with job training services, and for the new YSA Tiny House Village Program: \$78,000 to case manage youth who are in transitional housing services.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130



## Action Calendar – Policy Committee Track Items

43. **FY 2020 -23 General Fund Allocation: Funding for Intercity Services**  
**From: Councilmember Bartlett**  
**Recommendation:** That the City Council grant \$203,286 annually to the FY 2020 - FY 2023 budgets to support the Intercity Services.  
ICS' Workforce Services Proposal requested was for \$203,286; however, the Commission and the City Manager made a Joint Recommendation for \$101,351.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
44. **Berkeley Opportunity Zone Displacement Mitigation Zoning Overlay**  
**From: Councilmember Bartlett**  
**Recommendation:** Direct the City Manager and refer to the Planning Commission to create one or several zoning overlays, and/or recommend any mechanism, which protects Berkeley residents living in one or all of Berkeley's Federal Opportunity Zones from gentrification and displacement. Overlays and/or recommendations may also confer community benefits, including but not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities.  
**Financial Implications:** To be determined  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
45. **Adopt an Ordinance Amending Berkeley Municipal Code Chapter 2.99 to Prohibit City Use of Face Recognition Technology**  
**From: Councilmember Harrison**  
**Recommendation:** Adopt an ordinance amending Berkeley Municipal Code Chapter 2.99 to prohibit the City from acquiring, retaining, requesting, accessing, or using: (1) any face recognition technology, or (2) any information obtained from face recognition technology.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, 981-7140

## Information Reports

46. **Referral Response: Tenant Opportunity to Purchase Act (TOPA) Ordinance**  
**From: City Manager**  
Contact: Kelly Wallace, Housing and Community Services, 981-5400
47. **Animal Care Commission 2019 Work Plan**  
**From: Animal Care Commission**  
Contact: Amelia Funghi, Commission Secretary, 981-6600
48. **FY 2019-20 Commission on the Status of Women Work Plan**  
**From: Commission on the Status of Women**  
Contact: Shallon Allen, Commission Secretary, 981-7000

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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

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

Agendas and agenda reports may be accessed via the Internet at <http://www.cityofberkeley.info/citycouncil> and may be read at reference desks at the following locations:

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

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

#### COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

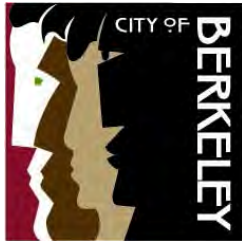
To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

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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CONSENT CALENDAR
June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Open Government Commission
Submitted by: Dean Metzger, Chair, Open Government Commission
Subject: Amending the Commissioners' Manual Regarding Submission of Revised or Supplemental Agenda Material

RECOMMENDATION

Adopt a resolution revising the Commissioners' Manual to require commissioners and board members be subject to the same procedures as the general public.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

At its January 18, 2018 meeting the Open Government Commission reviewed a complaint alleging violation of the Open Government Ordinance and Brown Act at the November 15, 2017 Planning Commission meeting. The complainant alleged, and it was not disputed, that a Planning Commissioner used a memo that was not part of the public packet. It was handed out to the Commission members at the meeting with a copy placed in a binder. The memo, unavailable to the public except for the copy in the binder, was used as the basis for much of the discussion. It became difficult for the public to follow the discussion without ready access to the document. While the Open Government Commission found no violation of the Open Government Ordinance or Brown Act, it was concerned about the difficulty the public had following a discussion among commission members without access to the documents.

The juxtaposition of the complaint suggested to the Commission members that a requirement to create more transparent discussion of items on the City's commissions and boards by providing the public with the same material available to members of the commission and/or board.

At its March 21, 2019 meeting, the Open Government Commission voted to recommend to Council the adoption of a resolution to add the following revision to Chapter V. Commission Procedures, Section E Administrative Procedures to the Commissioners' Manual (*Motion to send report to City Council, including corrections to be made before sent*; M/S/C: Metzger/Blome; Ayes: Blome, Harper, Napoli, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: None):

Submission of Supplemental and Revised Agenda Material after the agenda and packet have been distributed and at or before the meeting.

E. ADMINISTRATIVE PROCEDURES

Commission and Board Documents

The agenda packet for a commission **or board** meeting contains the agenda, reports related to agenda items, and communications from the public received prior to the distribution of the agenda packet.

All writings or documents, including communications from the public, **Commissioners and Board Members** that are related to any item on an agenda and distributed to a majority of the commission or **board members** after the agenda packet is distributed, but before **or at** the meeting must be made available for public inspection at the time the writing or document is distributed to a majority of the commission or **board** at a designated location identified on the agenda. The commission **or board** secretary maintains a public viewing binder for these documents.

All writings or documents, including communications from the public, that are distributed to a majority of the commission **or board members** at the commission **or board** meeting must be made available for public inspection as quickly as possible. Members of the public submitting written communications at commission, **or board** meetings should be encouraged to bring enough copies for all commissioners **and board members**, staff and at least five additional copies for ' members of the public (15 copies total, for most commissions **and boards**). The secretary is not required to immediately make copies of documents provided at the meeting when adequate copies are not provided by the submitting individual. Documents distributed at the meeting will be available in the public viewing binder the next business day.

BACKGROUND

See above.

ENVIRONMENTAL SUSTAINABILITY

No impact on environmental sustainability.

RATIONALE FOR RECOMMENDATION

Berkeley Municipal Code 2.06.190(A)(t)(d) states the Open Government Commission shall advise the City Council of its opinion, conclusion or recommendation as to any complaint.

CITY MANAGER

City Manager takes no position on the recommendation of this report.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Dean Metzger, Chair, Open Government Commission, (510) 549-0379

Secretary Open Government Commission, City Attorney's Office, (510) 981-6998

CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *zw*

Subject: Fire Prevention Inspections: Insufficient Resources Strain Code Compliance

RECOMMENDATION

We recommend City Council request that the City Manager report back by December 3, 2019, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Fire Department. They have agreed to our findings and recommendations. Please see report for management's response.

FISCAL IMPACTS OF RECOMMENDATION

The Berkeley Fire Department (Fire) may need funding if the staffing analysis that we recommend they complete shows that they need additional staffing to effectively manage their fire prevention inspection program. This cost could be at least offset by an increase in revenues from fees and administrative citations due to increased inspections. Fire can also increase its revenues by implementing a process to issue, track, and follow up on citations issued as we recommend.

CURRENT SITUATION AND ITS EFFECTS

Fire is not meeting the mandate to perform required fire prevention inspections and ensure property owners correct code violations. As of June 2018, the Department had nearly 2,500 open violations and had not inspected over 500 properties. Their ability to meet inspection mandates is impacted by the City's extensive code enforcement requirements and growth across the City without a corresponding staffing increase.

Fire's inspection database, RedAlert, does not contain a complete inventory of properties requiring inspections or complete code violation records, making it harder for staff to complete all mandated properties and follow up on code violations. Further, important controls over how users input data are not in place in that database. Such controls provide assurance that staff input data accurately and consistently so the Fire Prevention Unit has all the necessary information needed to perform inspections and address violations, particularly violations posing the most significant safety risks.

Fire staff need more support to be able to complete mandated inspections. Fire does not perform complete assessments to balance the competing priorities and target high-risk properties. Fire also does not have a sufficient plan for communicating between Prevention and

Suppression staff, and they do not provide enough training. Fire’s communication with the public about the inspection program is not sufficient to help property owners know their responsibilities and options. Without better support, the already overburdened fire prevention program faces deeper challenges in completing the necessary work to keep the City safe.

We recommend that Fire analyze the impact of making changes to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections to align mandates with budgeted resources, and perform a workload analysis to quantify the staff needed now and in the future to comply with inspection requirements.

We also recommend that Fire management support the inspection program by coordinating work plans, use risk-assessment tools to identify high-risk properties, issue formal guidance for managing the program, develop a communication plan, create a public education program, and creating a process for managing administrative citations.

BACKGROUND

Fire prevention inspections help reduce the risk of fire. They also ensure that if a fire does occur, buildings are safer for residents evacuating and for firefighters entering the building. The Fire Prevention Unit has eight staff members, only three of whom are Fire Prevention Inspectors. They have not had a staffing increase since the Hills Fire of 1991. Since 1995, Fire Prevention has had to rely on Suppression staff to perform the majority of the inspections in between responding to fire and medical emergencies, and complying with training and equipment maintenance requirements.

ENVIRONMENTAL SUSTAINABILITY

Our office manages and stores audit workpapers and other documents electronically to significantly reduce our use of paper and ink.

RATIONALE FOR RECOMMENDATION

The Berkeley Fire Department’s fire prevention inspection program is critical to keeping Berkeley safe for those who live, work, and visit the City. When high risk properties go uninspected and violations remain unresolved by property owners, the City exposes the public to fire risks that could have devastating effects.

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor’s Office, 510-981-6750

Attachments:

- 1: Audit Report: Fire Prevention Inspections: Insufficient Resources Strain Code Compliance, issued May 9, 2019

Audit Report
May 9, 2019

Fire Prevention Inspections: Insufficient Resources Strain Code Compliance



BERKELEY CITY AUDITOR



Fire Prevention Inspections: Insufficient Resources Strain Code Compliance

Report Highlights

May 9, 2019

Findings

1. The Fire Department is not meeting inspection mandates. In **fiscal year 2018, the Department's unresolved violations** increased to nearly 2,500 and it did not inspect over 500 properties. Without increased staffing, the Department is strained by both City inspection requirements that go beyond **California's requirements and the impacts of population growth.**
2. **The Fire Department's database does not contain a complete** inventory of properties requiring inspections and lacks controls to ensure complete data.
3. The Fire Department staff need more support to be able to complete mandated inspections. Fire does not perform complete risk assessments or sufficiently communicate within the Department and with the community.

Increased Unresolved Violations, Fiscal Years 2016 to 2018



Source: Auditor analysis of Red Alert database

Why This Audit Is Important

The Berkeley Fire Department's fire prevention inspection program is critical to keeping Berkeley safe. When properties go uninspected and open violations remain unresolved by property owners, the City exposes the public to fire risks that could have devastating effects.

Objectives

1. To what extent has the Fire Department met the mandated inspection requirements?
2. How does the Fire Department manage fire inspections?
3. What challenges within the Fire Department remain in fire inspections?

Recommendations

We recommend that the Fire Department analyze the impact of making changes to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections to align mandates with budgeted resources, and perform a workload analysis to quantify the staff needed now and in the future to comply with inspection requirements.

We also recommend that the Fire Department support the inspection program by coordinating work plans, using risk-assessment tools to identify high-risk properties, issuing formal guidance for managing the program, developing a communication plan, creating a public education program, and implementing a process for managing administrative citations.

The Fire Department agreed with our findings and recommendations.

For the full report, visit:
<http://www.cityofberkeley.info/auditor>



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Page 3	Introduction; Objectives, Scope, and Methodology
Page 4	Background
Page 6	Fire Not Meeting Inspection Mandates; Extensive Code Requirements and Population Growth Impact Staffing Workload
Page 12	Fire Relies on Incomplete Data to Manage Inspections
Page 16	Fire Staff Do Not Have Enough Support to Get Inspections Done
Page 22	Appendix I—Methodology and Statement of Compliance
Page 25	Appendix II—Recommendations and Management Response

Introduction

In June 2018, the San Jose Mercury News released an exposé on fire prevention inspections in the Bay Area. The article reported that the City of Berkeley was not in compliance with state mandated fire prevention inspection requirements. An impetus for the article was the devastating Oakland Ghost Ship fire in December 2016 where 36 people died when a warehouse, illegally used for events, went up in flames. Berkeley cannot allow a similar tragedy to occur by failing to complete life-saving fire prevention inspections.

The Berkeley Fire Chief acknowledged in the article that mandated inspections were not getting done and asked our office to perform an audit. Despite resource constraints, we initiated an audit to understand the extent of this significant life and safety risk and what the Fire Department (Fire) needed to do to address it.

Objectives, Scope, and Methodology

This audit focused on identifying the problems with mandated fire prevention inspections and determining how Fire can better manage this important program to decrease risk. Our objectives were to determine:

1. To what extent has Fire met the mandated inspection requirements?
2. How does Fire manage fire inspections?
3. What challenges within Fire remain in fire inspections?

We examined fire prevention inspection records for fiscal years 2016 through 2018, performed interviews, conducted a survey, reviewed relevant California and Berkeley laws, and reviewed best practices to understand the program. For more information, see p. 22.

Background

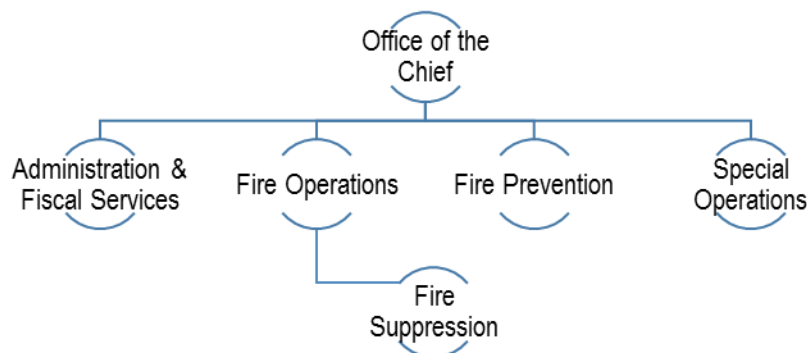
Fire prevention inspections help reduce the risk of fire. They also ensure that if a fire does occur, buildings are safer for residents evacuating and for firefighters entering the building. Fire prevention inspections examine a number of areas including:

- Exits are free from obstructions, do not lock, and are lighted
- Fire extinguishers are easy to access and have been serviced
- Flammable liquids and other hazardous materials have been properly stored
- Smoke and sprinkler systems are properly maintained
- Storage does not block sprinklers or escape routes, or provide fuel to a fire

The Berkeley Fire Department divides fire prevention inspection activities between the Fire Prevention (Prevention) and Fire Suppression (Suppression) Divisions (Figure 1). According to the Fire Chief, Prevention spends 30-40 percent of its time on inspections, which they must balance with other high-priority tasks. Their tasks include:

- Building plan reviews
- Code consultations
- Construction and building permit inspections
- Wildland-urban interface fire areas
- Citizen complaints
- Special permits for events or large parties
- Public education activities
- Group living accommodation inspections
- Inspections of large, complex, or high-risk buildings such as hospitals and schools

Figure 1: Berkeley Fire Department Organizational Chart



Source: City of Berkeley 2018-2019 Biennial Budget

The Fire Prevention Division reports directly to the Office of the Chief. Fire Prevention is overseen by the Fire Marshal and includes the Deputy Marshal, three Fire Prevention Inspectors, two Fire and Life Safety Plans Examiners, and an Assistant Management Analyst. Inspectors focus on field inspections, while Examiners focus on new construction plan reviews. Prevention uses a database system called Red Alert to record and track inspections and violations.

Fire Not Meeting Inspection Mandates; Extensive Code Requirements and Population Growth Impact Staffing Workload

As of June 30, 2018, nearly 2,500 fire code violations were unresolved and over 500 properties were not inspected at all. Fire is not meeting the mandate to perform fire prevention inspections and make sure property owners correct code violations. **Fire’s ability to meet City mandates is impacted by the City’s extensive inspections requirements and growth across the City without a corresponding staffing increase. This puts the City at an increased risk since properties have known unresolved violations or haven’t been inspected at all. This also means Fire cannot confidently state that residents and community members are working, shopping, and living in places that have mitigated the risk of fire.**

Fire is not closing violations or inspecting all properties.

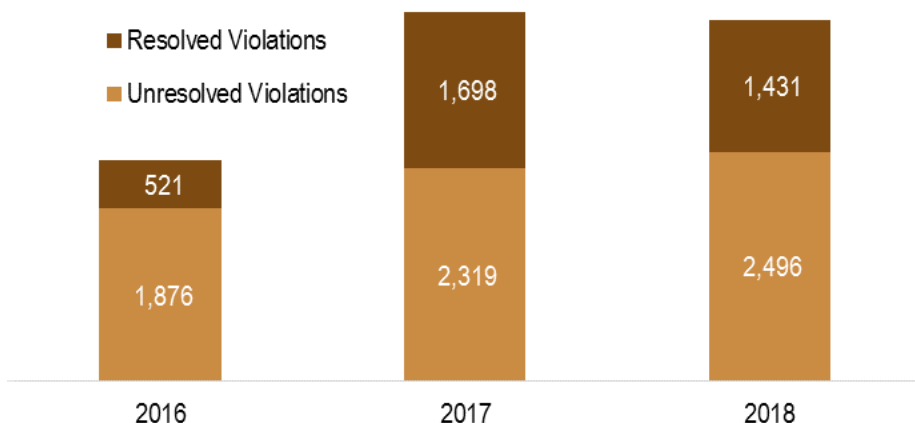
Unresolved violations increased from 1,876 to 2,496 between fiscal years 2016 and 2018 (Figure 2). These unresolved violations are associated with between 1,200 and 1,300 properties throughout the City. Unresolved violations indicate that a property has at least one issue, and at times multiple issues, that increase the risk of fire, loss of property, and loss of life. When Fire performs an inspection and finds violations, they are required to perform reinspections to ensure the violations are addressed by the property owner to reduce risk of fire. The data detailing the types and severity of the unresolved violations was not reliable enough to ascertain the details of the violations, but the number of unresolved violations is growing. Sixty-four percent of violations issued in fiscal year 2018 alone remain unresolved.



The Fire Department issued 3,927 violations in fiscal year 2018.

2,496 remain unresolved.

Figure 2: Unresolved Violations Increased from 1,876 to 2,496 in Fiscal Years 2016 to 2018



Source: Auditor analysis of Red Alert database

The number of uninspected properties has risen from 150 to 563, an increase of 275 percent, over the last three fiscal years (Figure 3). In fiscal year 2016, the number of uninspected properties was 1.9 percent of the total number of mandated inspections; by 2018 that had risen to 6.5 percent of all mandated inspections. While Fire closes most mandated inspections with no violations noted, there is an increase in the number of inspections that were not performed at all. This leaves the public vulnerable to increased fire risk.

Figure 3: Number of Uninspected Properties Increased Between Fiscal Years 2016 and 2018



Source: Auditor analysis of Red Alert database

City’s inspections code goes beyond state requirements.

Berkeley’s mandated fire prevention inspection requirements go well beyond those set by the California Fire Code, dramatically increasing Fire personnel’s workload. Not only does Berkeley require Fire to inspect more structures and properties than the state code, but it also requires that Fire inspect all

mandated properties every year. These additional requirements create a **workload burden that significantly limits Fire’s ability to perform all required inspections** and close unresolved violations. The Suppression staff we interviewed and surveyed pointed to the extensive requirements set forth by the City as a factor in being behind in closing violations and completing all inspections.

The California Fire Code, legislatively known as the California Building Standards Code, mandates most minimum fire safety requirements for new construction, existing buildings and facilities, and hazardous materials storage.¹ The California Health and Safety Code also includes relevant inspection mandates.² In 1973, Berkeley first adopted these codes, and additional requirements specific to Berkeley, into City law under the Berkeley Municipal Code (BMC). In 1982, Berkeley adopted into the BMC a local fire prevention inspections program that requires an additional number and types of inspections, and requires inspections to take place annually (Table 1).³
















Table 1: State and Local Mandated Fire Prevention Inspections

Inspection Requirement	California	Berkeley
All structures used for amusement, entertainment, instruction, deliberation, worship, drinking or dining, awaiting transportation, or education.	✓ Frequency unspecified	✓ Required every year
All organized camps with program and facilities established for the primary purposes of providing an outdoor group living experience for five days or more during one or more seasons a year.	✓ Frequency unspecified	✓ Required every year
All buildings or structures used by more than six persons at any one time for educational purposes through the 12th grade.	✓ Frequency unspecified	✓ Required every year

¹ California Building Standards Code (Cal. Code Regs., Title 24) is available here: <https://www.dgs.ca.gov/BSC/Codes>

² California Health and Safety Code Division 13 is available here: <https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=HSC>

³ Berkeley Municipal Code Chapters 12.50 and 19.48 are available at: <https://www.codepublishing.com/CA/Berkeley/>

Inspection Requirement	California	Berkeley
All buildings or structures in which care or supervision is provided to persons who are or are not capable of self-preservation without physical assistance or in which persons are detained for penal or correctional purposes or in which the liberty of the occupants is restricted.	 Required every two years	 Required every year
All buildings or structures that store, handle, or use regulated hazardous materials.	 Frequency unspecified	 Required every year
All buildings used for sleeping purposes including hotels, motels, lodging houses, and apartment houses.	 Required every year	 Required every year
All high-rise structures with floors used for occupancy located more than 75 feet above the lowest floor level having building access.	 Required every year	 Required every year
All residential structures of three units or more.	 Required every year	 Required every year
All commercial buildings and properties.		 Required every year
All industrial buildings and properties.		 Required every year
All institutional buildings and properties.		 Required every year
All vacant buildings.		 Required every year
All vacant lots.		 Required every year

Source: 2016 California Fire Code and Berkeley Municipal Code

Berkeley grows, but Fire staffing may not be keeping up.

Berkeley’s population grew almost nine percent in the ten years following the 2000 census. The Association of Bay Area Governments projects that the City’s population will grow nearly 25 percent between 2010 and 2040. The resulting development can be seen all over the City as store fronts change hands and large multi-use developments rise to change the skyline. Prevention staffing has not grown to meet those demands, further exacerbating Fire’s ability to meet city inspection mandates.

Berkeley’s growth over the past decade has stretched Fire’s resources.

Projected growth in the next 20 years means that the number of properties that require mandated inspections will stretch resources even more. Large, mixed-use developments put a further strain on Fire. It is more time consuming to review and approve life and safety plans for those structures, and it takes additional time and resources to respond to emergency calls at those buildings.

Fire Prevention has not seen an overall increase in authorized staffing since the Hills fire of 1991. In 1995, special funding for vegetation control in the hills ended. As a result, the Fire Marshal at the time restructured the Prevention Division, reducing staffing from 11.5 to 9.5 employees. Since then, Fire Prevention staffing has been further reduced and often averaged only four employees due to staff vacancies. Recently, Fire added three new positions in Fire Prevention. In July 2016, a new Examiner position was authorized. In July 2018, a new Inspector and a new Management Analyst were authorized. Fire stated that, while the new Inspector could help with some of the inspections backlog, this would not be enough to address all of the unresolved violations and uninspected properties.

Prevention’s limited staffing has led to more reliance on Suppression to perform inspections. This is despite an increase in emergency calls in recent years and no changes in Suppression staffing since at least 2013. This puts a strain on Suppression’s ability to perform all of their job functions, most of which are high-priority vital tasks like responding to 911 calls for service, maintaining fire and life safety equipment, and training. As a result, all of the 20 Suppression staff who responded to our survey stated that there were not enough people performing inspections to handle the workload.



As of July 2018, the Fire Prevention Division was budgeted for 8 FTEs:

- Fire Marshal
- Deputy Fire Marshal
- Sworn Fire Inspector
- Non-sworn Fire Inspector (2)
- Fire and Life Safety Plans Examiner (2)
- Assistant Management Analyst



All of the Suppression Staff who responded to our survey stated that there were not enough people performing inspections to handle the workload.

Despite experiencing a long-term staffing shortage, Fire has not done a complete workload analysis to understand its staffing needs. This impedes its ability to manage the inspection program in the short- and long-term, and to understand its resource needs. The City of Portland and the National Fire Protection Association indicate that, while it is a difficult task to ensure that a department performs all of their required inspections each year due to the higher level of competing priorities, fire departments can take steps to better manage prevention despite staff limitations. In particular, they recommend performing a workload analysis, even if it is high-level or a ballpark, to understand where there may be gaps in coverage between inspections needed and staff available to perform those inspections.⁴ Performing even a high-level workload analysis can help Fire understand where there are gaps in staffing and determine its future course of action to comply with inspection mandates.

Recommendations

To align the inspection mandates with the current and anticipated needs of the City, we recommend the Fire Department:

- 1.1** Analyze the short- and long-term impact of putting forth a change to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections.

To understand the gaps in staffing needed to perform current and anticipated inspections, we recommend the Fire Department:

- 1.2** Perform a workload analysis to quantify the staff needed now and in the future to comply with the local fire prevention inspection requirements.

⁴ Portland's Fire and Rescue Department has taken effective actions on issues similar to those that Berkeley Fire is facing.

Fire Relies on Incomplete Data to Manage Inspections

Fire’s inspection database, Red Alert, contains incomplete data, making it harder for staff to make sure that they are inspecting all mandated **properties and unresolved violations**. Fire’s database does not automatically link with other City databases to ensure new properties and property changes are quickly and accurately reflected in Red Alert. Further, important controls over how users input data are not in place in Red Alert. Such controls provide assurance that staff input data accurately and consistently so Prevention has all the necessary information needed to perform inspections and resolve violations, particularly violations posing the most significant safety risks.

Fire does not have a complete inventory of properties requiring inspections.

Fire’s database does not link to other City databases, which means that Fire does not have a complete inventory of all properties requiring inspection. Fire administrative staff reported that they manually enter new properties and changes to existing properties, such as a new address, new business name, or a change in business type, into Red Alert when they receive updates via interdepartmental mail or email from the Planning Department. Planning captures all data on new construction and changes to existing buildings and businesses in separate systems.

When Fire is not informed of new properties or changes to existing properties, those buildings may not be inspected as required. For example, we found that the new StoneFire Development on the corner of Milvia and University with 8,700 square feet of commercial space and 98 residential **units was not included in Fire’s database (Figure 4)**. StoneFire opened in August 2017 making it due for an annual mandated inspection in the fall of 2018.



The StoneFire Development with 8,700 square feet of commercial space and 98 residential units was not included in the Fire Department’s inspection database.

Figure 4: StoneFire Development



Source: Johnson Lyman Architects

We found seven other large projects that were not in Fire’s database. After we alerted Fire to the issue, staff performed a labor-intensive manual reconciliation between Red Alert and the hard-copy memos sent out by the Planning Department. These memos identify property changes and new properties. As a result, Fire identified an additional 21 properties that require a fire prevention inspection. The new buildings were inspected prior to being occupied. However, because these properties were not included in Fire’s database, they have not since been inspected for compliance with fire prevention codes as required by City mandate. Because Fire’s database does not link to other City databases, there could be even more properties that have not been inspected since the City’s building landscape has changed dramatically over the years.

The Fire database lacks controls to reduce user error and ensure complete data.

Fire’s database does not automatically restrict how users input data, leading to errors and missing information that Fire relies on to monitor whether properties are inspected and violations are resolved. Automated controls help database users enter data systematically, capture required data, and protect records from unauthorized changes. For example, users can be required to



Seven other large projects were not included in the Fire Department’s database.

enter specific data in a field in order to save the record or only select from a list or menu of options. Because of the lack of controls, there's a risk of missing or incomplete data that ultimately affects Fire's ability to perform inspections, monitor properties used for specific purposes, and follow-up on critical code violations.

Throughout Fire's database, we found fields that users were not required to complete to save the inspection record, including fields that listed the property's complete address, the business name, and the inspecting individual's unit, shift, and name. We also found that the drop-down menus for inspection type, inspection status, and violation status fields allowed a user to select a blank option and still save the record. All of these fields are vital for Fire's record keeping to provide complete and accurate information to Prevention and Suppression staff.

We found similar issues with four fields used to record code violations: code number, code description, violation description, and violation location. In each case, users can leave a field blank or replace standard text with other, less specific information. For example, the code description field is intended to be the formal language of the code that is in violation but staff do not always input that information. We saw 196 examples of other text in the code description field such as "See open violations" or "See inspection from before." This removes the ability to easily search records, identify issues, and effectively manage the entire inspections program. Additionally, in 1,043 cases over the three years of our scope, the field reserved for the code number was either blank or did not directly reference a part of the fire code. That greatly impacts a firefighter or inspector's ability to perform comprehensive reinspections to close unresolved violations. It also impacts Fire management's ability to monitor and review the fire prevention inspection program.



Every field in the Fire Department's database is vital for them to capture complete and accurate information about a property.

Recommendations

To ensure complete and accurate inspection records, we recommend the Fire Department:

- 2.1** Develop a process, in consultation with Information Technology Department, for sharing information on property changes and additions between Fire and other City database platforms.
- 2.2** **Work with both the database's software vendor and the** Information Technology Department to strengthen controls over the database, including:
 - Assessing the needs for required fields for processing an inspection, such as unit, shift, inspector name, address, violation details, and violation location.
 - Formatting drop-down menus for inspection status, inspection type, and violation status. Formatting the options available for the code violation numbers and violation description fields.

Fire Staff Do Not Have Enough Support to Get Inspections Done

Fire staff need more support to be able to complete mandated inspections. Fire does not sufficiently take resource constraints, competing priorities, and risk factors into account when planning and assigning inspections. Fire also does not have a sufficient plan for communicating between Prevention and Suppression, nor do they provide enough training to those performing **inspections. Fire's communication with the public about the inspection** program is neither complete nor consistent enough to help property owners know the options available to them. Without better support, the already overburdened fire prevention inspections program faces deeper challenges in completing the necessary work to keep the City safe.

Inspection assignments do not take competing priorities and risk into account.

Suppression staff have a number of important competing priorities that are not fully taken into consideration when Prevention assigns inspections. They perform all of the fire and medical calls in the City; are required to maintain extensive training in firefighting and emergency medical services; and perform most of the mandated inspections.

Prevention is in charge of the program, including assigning inspections to the Captains of the 27 Fire Suppression Companies. In 2018, that ranged from 235 to 310 for each Company. About every three months, the Fire Marshal sends out an email to Battalion Chiefs, the Deputy Chief, and the Chief detailing how many inspections each Company has completed and how many remain. The **Fire Marshal also occasionally reports these numbers during Fire's command** staff weekly meetings, attended by all staff members with a rank of Battalion Chief or higher.

Company Captains are assigned other divisional tasks, such as purchasing, **maintaining, and testing Fire staff's personal protective gear. They also** regularly have a new rookie firefighter in their Company who requires additional training and guidance. Even though fire prevention inspections are very important for mitigating the risk of fire, Suppression staff face the challenge of finding time to conduct inspections in between all of their other vital tasks.



A Fire Company is a single emergency response unit and its personnel. In Berkeley, a company is made up of three individuals on a fire engine or a truck: a fire captain and two firefighters.

Consequently, many Captains focus on completing inspections as quickly as possible rather than spending time focusing on high-risk properties or properties with long-standing issues. Of the 20 Captains that replied to our confidential survey, 55 percent replied that they do not conduct reinspections in a timely manner. One Captain reported in our survey that inspection assignments come out during one of their busy times of year, which makes **managing workload and the Company’s morale difficult.**

Fire does not sufficiently take risk factors into consideration when assigning inspections to Companies, despite resources constraints and competing priorities. Instead, inspections are assigned to Companies geographically based on the location of their fire station. The National Fire Protection Association and professional fire publications like *Firehouse* indicate that, while it is difficult to perform all of the required inspections each year due to the significant competing priorities, cities can address resource limitations using a risk-based approach to inspection assignments. By assessing pending inspections and unresolved code violations by risk such as community demographics, socio-economics, geographical features, building use, and hazards present, cities are able to address the more significant risks with their limited staff and time. Risk assessments can start off as high-level and over time build to become more robust. For example, identifying properties with numerous violations or a history of violations, or high-risk facilities based on occupancy type is a simple yet effective high-level approach to conducting a risk-based assessment.

Captains told us in interviews that they do not have an opportunity to provide input to Prevention on high-risk properties in their service area. These are properties that Suppression staff would like to focus time and resources on to enforce compliance. One Captain said that he uses risk factors to prioritize his **own company’s inspections, but he still has to get all of his assigned** inspections completed, even if a high-risk inspection took longer to close. He **said that if he spends “too much time” closing a high-risk property, he falls behind in completing his other inspections and tasks.**



70%

percent of the

Captain we surveyed said their Firefighters have too many things to focus on to prioritize inspections.



Cities can address resource limitations by using a risk-based approach to inspection assignments.

Fire Management and Prevention do not regularly communicate with Suppression about inspections.

Fire Management does not regularly communicate with Suppression about the importance of the Fire Prevention inspection program. Doing so would **strengthen Fire's ability to perform inspections efficiently and effectively.** The inspection program is managed by Fire Prevention, but Suppression, which takes direction from the Office of the Chief, is assigned the largest portion of mandated inspections. However, there is no regular formal or informal communication plan between Prevention and Suppression that acknowledges the barriers to effective communication in Fire. As a result, there is little communication between the two divisions.

Coordinating how to communicate with over a hundred people on varying schedules stationed across the City is a challenge, but can be accomplished with better communication between those doing the work and those in charge of it. The Fire Marshal attends the weekly command staff meetings with Suppression management, but there is little face-to-face interaction between Fire Prevention and the Companies tasked with performing the work. By comparison, Portland Fire uses both formal and informal methods to communicate with staff, including a weekly video address from the Chief. This varied communication style has led to bolstered motivation and respect through the large department, translating to more efficient and effective work.

Fire's guidance for the inspection program lacks sufficient detail for communicating and coordinating efforts. The General Order for fire prevention inspections has not been revised since 2011. It does not address the overall importance of performing the inspections, describe communication protocols between the Prevention and Suppression divisions, or identify resources for Suppression to use while performing inspections. Fire uses General Orders to communicate policy changes and department-wide initiatives to staff. By not updating the General Order for the prevention program, the department has indicated a lack of management support for the **program's needs.**



The Fire Department's guidance for the inspection program lacks sufficient detail for communicating and coordinating efforts.

Firefighters do not receive hands-on training on performing inspections.

Firefighters do not receive the training they say they need to perform fire prevention inspections. Fire provides only a 4-hour classroom-based training to update firefighters on the changes to the database, including any fire code or process changes. We heard from Captains, both in interviews and in our survey, that this is not what is needed in the field. The National Fire Protection Association recommends that fire departments provide Suppression crews with help, including practical trainings, to increase the quality, efficiency, and consistency of the inspections.

During interviews, some firefighters said that they specifically need training in a real-world environment on how to communicate with property owners during the inspection process, use best practices for managing the workload, and perform inspections in an efficient but effective manner. All Captains complete a 40-hour Fire Inspections and Investigations course, including 29.5 hours of lecture and 3.5 hours of testing. However, in our survey of Captains, only 40 percent stated that they received adequate training to understand their responsibilities for performing inspections and to do their job well. Sixty-five percent of Captains surveyed said that they would like to receive additional training in performing inspections. Adding consistent, hands-on training using experienced Suppression staff will allow Fire to provide real-world training on how to perform inspections in the community.

Fire does not educate property owners about the importance of inspections.

According to Prevention staff, capacity limitations lead to their inability to sufficiently educate the community about fire prevention inspections. This leaves property owners ill-informed about what inspections entail, how to remedy violations, and what the consequences are for noncompliance with fire codes. The National Fire Prevention Association and professional publications recommend that departments educate the community on the inspection **program and why it's important. By informing property owners of the** inspection program and how to identify and address common violations, Fire can perform inspections more efficiently and effectively. Conversely, when property owners lack information, it takes longer to perform inspections and there are more violations. Captains corroborated this when 55 percent of our



65% of

Captains surveyed said that they would like to receive additional training on performing inspections.

survey respondents stated that most people do not know why firefighters are there when they walk in the door to conduct inspections.

Fire’s lack of public information and education also impacts how the community sees inspections. Fire provides a valuable service and alerts property owners to violations that could impact the life and safety of those in their buildings. However, 70 percent of Captains we surveyed thought the community either did not appreciate, or were not sure if they appreciated the inspections. This may be a sign of the lack of public education around this program designed to reduce the risk of fire in the City.

Fire does not have a consistent process for enforcement.

Fire has an enforcement option but is not consistently using it to compel property owners to fix code violations. The administrative citation process is available to Fire Prevention staff and some Fire Suppression management to enforce violations. Administrative citations are a useful tool to require compliance from property owners with unresolved fire code violations.⁵ The City can levy fines of up to \$500 per violation per day of non-compliance and can place a lien on the property to recover those costs. According to Fire, they do not have the staff capacity to track the revenue collected as part of enforcement actions, which could help fund additional resources for the unit.

Fire also has the authority to “red tag” a building, deeming it too dangerous for people to inhabit. Other City divisions, such as Neighborhood Services, use the administrative citation process to bolster their enforcement capacity and target high-risk properties with numerous or long-standing violations.

According to the City’s Code Enforcement Supervisor, Neighborhood Services has seen an increased rate of compliance from property owners since staff have begun emphasizing the use of administrative citations.



Berkeley can levy fines of up to \$500 per code violation per day of non-compliance.

⁵ Berkeley Municipal Code sections 1.20 through 1.28 outline the citation process and those authorized to issue them.

Recommendations

To recognize competing priorities and address the most high-risk properties, we recommend:

- 3.1** The Fire Prevention Division coordinate work plans with Suppression for all mandated fire prevention inspections. These should take into consideration the volume and nature of the other work Suppression performs.
- 3.2** The Fire Department create a risk-assessment plan to identify those properties that are most at risk of a fire.

To facilitate communication with and training for all employees that perform inspections, we recommend:

- 3.3** The Fire Chief issue a General Order to the Department on the importance and necessity of performing fire prevention inspections.
- 3.4** The Fire Marshal and Suppression Management jointly develop a communication plan between Fire Prevention and Suppression.
- 3.5** The Fire Department revise fire prevention inspection training to provide hands-on training, using experienced Suppression staff, on how to conduct inspections and interact with residents and community members during inspections.

To strengthen public outreach and enforcement, we recommend the Fire Department:

- 3.6** Develop and distribute educational information to property owners prior to the beginning of the inspection cycle to provide information on the fire prevention inspection program, common violations, and any upcoming inspections for that area of the City.
- 3.7** Create a process for issuing, tracking, and following up on administrative citations for properties with repeat or high-risk violations, including revenue collections and tracking. That process should collaborate with other City work units that perform enforcement activities to provide consistency.

Appendix I—Methodology and Statement of Compliance

Methodology

We audited the Fire Department's fire prevention activities including processes for performing fire prevention inspections and reinspections, mandates regarding those processes, and inspection results for fiscal years 2016 to 2018. We did not specifically perform work around the designated Wildland-Urban Interface Fire Areas. We performed a risk assessment of the Fire Prevention Division's practices and procedures to identify potential internal control weakness and including fraud risks. While we did identify potential fraud risks, none were specific within context of our audit objective. We found control weaknesses within the context of our audit objectives that could prevent compliance with fire prevention inspection mandates: staffing capacity, incomplete data, and poor communication and coordination protocols. We designed our audit work accordingly. To accomplish our audit objective, we:

- Reviewed Berkeley Municipal Code sections 1.20, 1.28, 12.50, 19.28, and 19.48, and the California Fire Code to understand code inspection and citation requirements, and the variances between local and state codes. We focused on current requirements and did not investigate any proposed **legislative changes that could further impact Fire's workload.**
- Interviewed Fire Prevention, Administrative, and Suppression staff to gain an understanding of their processes for performing and managing inspections, and to obtain their professional perspective as to the constraints that they must work within and the process improvements that would address those constraints.
- Observed the sworn Fire Prevention Inspector performing inspections to understand the workflow of an inspector and the constraints they face in performing their work.
- Surveyed all 27 Fire Captains on their resource capacity, impressions of the fire prevention program, and needs to fully perform their work. Twenty responded.
- Reviewed historical Fire Department documents to understand trends in fire prevention workloads, priorities, funding, and staffing.
- Reviewed professional publications and major newspaper stories to understand the general issues facing fire departments and fire inspection programs.
- **Reviewed other municipalities' audits of fire prevention activities to understand how those audits were conducted and the challenges faced by those fire departments.**
- Analyzed the Red Alert database for violation and inspection trends, and input controls.

- Analyzed departmental reports, planning documents, and communications to understand how Fire manages the fire prevention program and communicates program needs and progress within work units and across the department.
- Reviewed best practices in the industry with respect to how other departments and professional organizations perform fire prevention inspections given limited time and staffing. We specifically relied on a comprehensive fire prevention report by the National Fire Protection Association as the primary standards organization for fire departments across the country. We also used a study of **the City of Portland, Oregon's fire department, which featured their improvements to manage their** fire prevention program more effectively and efficiently when faced with similar challenges as Berkeley.

Data Reliability

We assessed the reliability of the Red Alert data by interviewing data system managers and owners; examining the data for completeness, consistency, and appropriateness; and reviewing system manuals. We found that some data fields were reliable for our purposes while others were not. We amended our audit work accordingly and limited the use of Red Alert data to those fields we found sufficiently reliable. We cited the critical data weaknesses in our findings and conclusions and made recommendations for addressing those weaknesses.

Red Alert data are stored in two separate datasets: inspections and violations. Both use drop-down menus to populate fields and we determined those were reliable for use in our analysis. The status field in the inspection dataset, which identifies whether an inspection has been completed, scheduled, or resulted in a violation, was populated as expected in nearly 100 percent of all records. For our scope, fiscal years 2016, 2017, and 2018, the field was blank in only 0.95, 2.75, and 1.3 percent of the records, respectively, and all populated fields contained a selection from the dropdown menu as expected. We, therefore, determined that the data were sufficiently reliable for the purpose of quantifying the volume of uninspected properties.

Similarly, the violations dataset uses a drop-down menu to indicate whether a cited violation has been resolved or remains unresolved by the property owner. That field was populated as expected in nearly 100 percent of all records. For our scope, fiscal years 2016-2018, the field was blank in only three of 10,344 records, and all populated fields contained a selection from the dropdown menu as expected. We, therefore, determined that the data were sufficiently reliable for the purpose of quantifying the unresolved property violations.

In both datasets, we found that other fields were either left blank too often and/or contained data unsuitable for analysis, e.g., asterisks and references to other records. We, therefore, determined that we could not rely on those data fields for more extensive analysis on the number of uninspected properties by property type; the common types of violations; and the unresolved violations by property type. We also could not reliably

quantify the more severe types of violations that remain unresolved.

Additionally, the City's land management and business license data systems do not have the data fields needed to readily identify properties requiring annual fire prevention inspections. Therefore, we did not plan our work to match properties across platforms to identify properties missing from Red Alert. We limited our **assessment to focus on the lack of an automated process between Red Alert and the City's building permitting** system that leads to a cumbersome, manual process for communicating new construction and building changes to Fire Prevention.

We relied on US Census population and ABAG population predictions to understand population growth trends in Berkeley. We considered both organizations to be known, reliable sources and, therefore, their data to be sufficiently reliable for our purposes. We recognized both the US Census and ABAG offer slightly differing predictive data. However, the purpose of our predictions is to give readers a general understanding of future impact with an understanding that actual population growth will be different.

Statement of Compliance

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II—Recommendations and Management Response

City Management agreed to our findings, conclusions, and recommendations. In our meetings with Fire Department management, they described their current and planned actions to address our audit **recommendations. We found those verbal responses reasonable. Below is the Fire Department’s initial** corrective action plan and proposed implementation dates. As part of the follow-up process, the Berkeley City Auditor will be actively engaging with the Fire Department every six months to assess the process they are making towards complete implementation.

1.1 Analyze the short- and long-term impact of putting forth a change to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections.

Proposed Implementation Plan: Fire needs to research the history and rationale for the local adoption of an annual commercial inspection program. Based on the research results, Fire will evaluate the risk versus benefits of the type and frequency of fire prevention inspection that are not mandated by the state laws.

Proposed Implementation Date: April 1, 2020

1.2 Perform a workload analysis to quantify the staff needed now and in the future to comply with the local fire prevention inspection requirements.

Proposed Implementation Plan: The current Fire Prevention staff cannot complete some essential tasks to maintain a fire safe city. A consultant or other Fire Department staff providing that the resource is available would be best to conduct a comprehensive workload analysis for Fire Prevention.

Proposed Implementation Date: April 1, 2020

2.1 Develop a process, in consultation with the Information Technology Department, for sharing information on property changes and additions between Fire and other City database platforms.

Proposed Implementation Plan: Fire has been working with Information Technology (IT) as well as the Planning Department for the past couple of years. The newly implemented software, Accela, used by the Planning Department has its share of issues communicating with the current fire record management software, Red Alert that the Fire Department has been using. There are similar communicating issues between FUND\$ and Red Alert as experienced **with the implementation of Finance Department’s ERMA software. With support from IT, Fire** is currently seeking a software that can communicate with the software used by the Planning and Finance Department.

Proposed Implementation Date: July 1, 2021

2.2 Work with both the database's software vendor and the Information Technology Department to strengthen controls over the database, including:

- Assessing the needs for required fields for processing an inspection, such as unit, shift, inspector name, address, violation details, and violation location.
- Formatting drop-down menus for inspection status, inspection type, and violation status. Formatting the options available for the violation code numbers and violation description fields.

Proposed Implementation Plan: IT renewed the technical support contract with the software vendor in 2018. Fire Prevention will reach out to Red Alert to determine their ability to customize fields within the software. Additionally, Fire and IT are actively reviewing available software that can meet the needs of Fire and is compatible with software used by the other city departments.

Proposed Implementation Date: January 1, 2020

3.1 The Fire Prevention Division coordinate work plans with Suppression for all mandated fire prevention inspections. These should take into consideration the volume and nature of the other work Suppression performs.

Proposed Implementation Plan: Coordination of the workplan of suppression units will improve with the updated General Order giving clear expectations of inspection policy and procedure. Issues that arise due to the emergency response nature of suppression work will be coordinated across divisions.

Proposed Implementation Date: October 1, 2019

3.2 The Fire Department create a risk-assessment plan to identify those properties that are most at risk of a fire.

Proposed Implementation Plan: Fire Prevention has begun assigning inspections based on occupancy type and state mandated requirements. This basic level of risk assessment is improving compliance and prioritization. A longer term more holistic risk assessment requires algorithms that analyze data that include fire history, various socio-economic indicators, and occupancy type. The Fire Chief is researching the resources needed to conduct such **assessments using other cities' programs as models.**

3.3 The Fire Chief issue a General Order to the Department on the importance and necessity of performing fire prevention inspections.

Proposed Implementation Plan: The Fire Chief will revise the General Order to stress the importance and the expectations of Fire Prevention Inspections to the Suppression personnel.

Proposed Implementation Date: October 1, 2019

3.4 The Fire Marshal and Suppression Management jointly develop a communication plan between Fire Prevention and Suppression.

Proposed Implementation Plan: Beginning in March, Fire Prevention started issuing completion status of the annual inspection to the Battalion Chiefs and Captains with copy to the Fire Chief and Deputy Chief at the beginning of each month. In the long term, with the revised General Order, the designated Shift Fire Inspector will take on a more active role as a resource to guide the suppression staff on conducting annual inspections.

Proposed Implementation Date: October 1, 2019

3.5 The Fire Department revise the fire prevention inspection training to provide hands-on training, using experienced Suppression staff, on how to conduct inspections and interact with residents and community members during inspections.

Proposed Implementation Plan: The revised General Order shall clearly spell out training requirements and expectations of the Suppression Staff. Training Division shall allocate more time for the Suppression staff to be trained on Fire Prevention Inspections. The designated Shift Fire Inspector can provide hands on training to the Suppression staff in the field as needed. Also, Officers Academy shall include a fire prevention inspection module.

Proposed Implementation Date: October 1, 2019

3.6 Develop and distribute educational information to property owners prior to the beginning of the inspection cycle to provide information on the fire prevention inspection program, common violations, and any upcoming inspections for that area of the City.

Proposed Implementation Plan: Short term: The Fire Department is participating in the **City's efforts in revamping the website. It will include additional Fire Prevention and Public Education materials. The Fire Department's Office of Emergency Services will be preparing a comprehensive Wildfire Safety packet to all property owners.** Due to current staffing limitations, there is no capacity to engage in full time public education. Funding for additional staff will be considered in the budget process.

Proposed Implementation Date: July 1, 2020

3.7 Create a process for issuing, tracking, and following up on administrative citations for properties with repeat or high-risk violations, including revenue collections and tracking. That process should collaborate with other City work units that perform enforcement activities to provide consistency.

Proposed Implementation Plan: The Fire Department will review internal policies and procedures then update the Fire Prevention General Order. The Fire Department will make every effort to coordinate **this policy with policies from the City Attorney's office and other city** enforcement units such as Code Enforcement, Environmental Health, Building and Safety, Housing Code Enforcement, etc. to ensure a common experience for the public.

Proposed Implementation Date: July 1, 2020

Mission Statement

Promoting transparency and accountability in Berkeley government.

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Office of the Mayor

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CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Mayor Jesse Arreguín
Subject: Support AB 1487 – Housing Alliance for the Bay Area.

RECOMMENDATION

Adopt a Resolution in support of AB 1487 (introduced by David Chiu) and to seek amendments from the author. Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and David Chiu.

BACKGROUND

Between the end of the Great Recession in 2010 and 2017, a net total of over 105,000 units were created in the Bay Area. During the same time period, the Bay Area's population is estimated to have grown by 600,000. This imbalance has resulted in most Bay Area communities unable to meet their Regional Housing Needs Allocation (RHNA) goals, especially in affordable housing.

There is an estimated annual shortfall of \$2.5 billion to address the Bay Area's housing crisis. In recent years, several ballot measures on the local, regional, and state level have passed to increase funding for affordable housing. This includes Measure U1 (2016) and Measure O (2018) in Berkeley, Measure A1 (2016) across Alameda County, and Proposition 1 (2018) in California. Despite efforts to increase funding for affordable housing, a large funding gap remains.

AB 1487 – introduced by Assemblymember David Chiu, would establish the Housing Alliance for the Bay Area (HABA). The purpose of HABA would be to create funding mechanisms to construct affordable housing across the nine-county Bay Area. Specifically, it empowers HABA to place a series of measures on the ballot, in addition to buying and leasing land, for affordable housing purposes. HABA would not have the power to use eminent domain or regulate/enforce local land use decisions.

On May 10, 2019, a joint meeting of the Metropolitan Transportation Commission (MTC) Legislation Committee and Association of Bay Area Governments (ABAG) Legislation Committee made a recommendation to seek the following amendments to AB 1487:

- 1) Ensure no new responsibilities are assigned to ABAG or MTC without the following:

- a. A guaranteed source of funding that is not dependent upon voter approval;
 - b. A provision for the reevaluation and potential dissolution of HABA in the event that the level of revenue approved is too small to meaningfully address the region’s housing crisis;
- 2) Ensure the bill does not require that MTC staff report to a newly structured board;
 - 3) Exclude sales tax increases from revenue options; and
 - 4) Develop a formula that would distribute more than 25 percent of any employer-based (i.e. non-bond and parcel tax measures) revenue to a regional pool.

This bill is consistent with both the Plan Bay Area 2040’s Action Plan to create a regional self-help funding for affordable housing, and the Committee to House the Bay Area (CASA) Element #10 of the CASA Compact calling for the creation of a Regional Housing Enterprise.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

The creation of housing, especially near transit corridors, is consistent with the goals of the Climate Action Plan.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of AB 1487
- 3: MTC/ABAG Item on AB 1487

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

IN SUPPORT OF AB 1487 – HOUSING ALLIANCE FOR THE BAY AREA

WHEREAS, the housing crisis has had profound effects in the Bay Area, resulting in accelerating displacement of vulnerable communities; and

WHEREAS, between 2010 and 2017, the Bay Area created a net total of approximately 105,000 new units, while the region's population grew by 600,000; and

WHEREAS, this imbalance has resulted in most Bay Area communities inability to meet their Regional Housing Needs Allocation (RHNA) goals, especially in affordable housing; and

WHEREAS, efforts have been made on a local, regional, and statewide level to increase funding for affordable housing, including Measure U1 (2016) and Measure O (2018) in Berkeley, Measure A1 (2016) across Alameda County, and Proposition 1 (2018) in California; and

WHEREAS, despite these efforts, there is an estimated annual shortfall of \$2.5 billion to address the Bay Area's housing crisis; and

WHEREAS, AB 1487 – introduced by Assemblymember David Chiu, would establish the Housing Alliance for the Bay Area (HABA); and

WHEREAS, the purpose of HABA would be to create funding mechanisms to construct affordable housing across the nine-county Bay Area by empowering it to place a series of measures on the ballot in addition to buying and leasing land for affordable housing purposes; and

WHEREAS, this bill is consistent with both the Plan Bay Area 2040's Action Plan to create a regional self-help funding for affordable housing, and the Committee to House the Bay Area (CASA) Element #10 of the CASA Compact calling for the creation of a Regional Housing Enterprise.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports AB 1487 – Housing Alliance for the Bay Area.

BE IT FURTHER RESOLVED that the following amendments are requested:

- 1) Ensure no new responsibilities are assigned to ABAG or MTC without the following:
 - a. A guaranteed source of funding that is not dependent upon voter approval;

- b. A provision for the reevaluation and potential dissolution of HABA in the event that the level of revenue approved is too small to meaningfully address the region's housing crisis;
- 2) Ensure the bill does not require that MTC staff report to a newly structured board;
- 3) Exclude sales tax increases from revenue options; and
- 4) Develop a formula that distributes more than 25 percent of employer-based (i.e. non-bond and parcel tax measures) revenue to a regional pool.

BE IT FURTHER RESOLVED that copies of the Resolution be sent to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and David Chiu.

AMENDED IN ASSEMBLY MAY 16, 2019

AMENDED IN ASSEMBLY APRIL 29, 2019

AMENDED IN ASSEMBLY APRIL 4, 2019

AMENDED IN ASSEMBLY MARCH 26, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1487

Introduced by Assembly Member Chiu
(Coauthors: Assembly Members Mullin and Wicks)
(Coauthor: Senator Wiener)

February 22, 2019

An act to add Title 6.8 (commencing with Section 64500) to the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1487, as amended, Chiu. San Francisco Bay area: housing development: financing.

Existing law provides for the establishment of various special districts that may support and finance housing development, including affordable housing special beneficiary districts that are authorized to promote affordable housing development with certain property tax revenues that a city or county would otherwise be entitled to receive.

This bill, the San Francisco Bay Area Regional Housing Finance Act, would establish the Housing Alliance for the Bay Area (hereafter the entity) and would state that the entity's purpose is to increase affordable housing in the San Francisco Bay area, as defined, by providing for enhanced funding and technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing

production. The bill would establish a governing board of the entity. *The membership, size, and geographic representation of the board shall be determined by the Metropolitan Transportation Commission and the Executive Board of the Association of Bay Area Governments.* The bill would authorize the entity to exercise various specified powers, including the power to raise revenue and allocate funds throughout the San Francisco Bay area, subject to applicable voter approval requirements and other specified procedures, as provided. The bill would also require the board to provide for annual audits of the entity and financial reports, as provided. The bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities within the San Francisco Bay area, including charter cities.

The bill would authorize the entity to, among other things, raise and allocate new revenue by placing funding measures on the ballot in the ~~9 San Francisco Bay area counties~~, revenue, incur and issue indebtedness, and allocate funds to the various cities, counties, and other public agencies and affordable housing projects within its jurisdiction to finance affordable housing development, preserve and enhance existing affordable housing, and fund tenant protection programs, as specified, in accordance with applicable constitutional requirements. *In this regard, the bill would authorize the entity to impose various special taxes, including a parcel tax, certain business taxes, and a transactions and use tax, within its jurisdiction and to issue bonds, including revenue bonds, subject to specified procedures. The bill would also authorize the entity to impose a commercial linkage fee, as defined, and require a city or county in the San Francisco Bay area that has jurisdiction over the approval of a commercial development project, as defined, to collect that fee as a condition of that approval and remit the amount of fee to the entity, as provided. The bill would authorize the Metropolitan Transportation Commission to propose a ballot measure to establish any of those funding mechanisms at the November 3, 2020, election, as specified, provided that the entity assumes administration of the funding mechanism upon the approval of the measure. The bill would require that revenue generated by the entity pursuant to these provisions be used for specified housing purposes and require the entity to distribute those funds as provided.*

This bill would make legislative findings and declarations as to the necessity of a special statute for the San Francisco Bay area.

By adding to the duties of local officials with respect to (1) providing staff for the entity and (2) elections procedures for revenue measures on behalf of the entity, this bill would impose 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. Title 6.8 (commencing with Section 64500) is
2 added to the Government Code, to read:

3

4 TITLE 6.8. SAN FRANCISCO BAY AREA REGIONAL
5 HOUSING FINANCE

6

7 PART 1. FORMATION OF THE HOUSING ALLIANCE FOR
8 THE BAY AREA AND GENERAL POWERS

9

10 CHAPTER 1. GENERAL PROVISIONS

11

12 64500. This title shall be known, and may be cited, as the San
13 Francisco Bay Area Regional Housing Finance Act.

14 64501. The Legislature finds and declares the following:

15 (a) The San Francisco Bay area is facing the most significant
16 housing crisis in the region's history, as countless residents are
17 contemplating moving, spend hours driving every day, are one
18 paycheck away from an eviction, or experience homelessness.

19 (b) The San Francisco Bay area faces this crisis because, as a
20 region, it has failed to produce enough housing at all income levels,
21 preserve affordable housing, protect existing residents from
22 displacement, and address the housing issue regionally.

1 (c) The housing crisis in the San Francisco Bay area is regional
2 in nature and too great to be addressed individually by the region's
3 101 cities and 9 counties.

4 (d) However, the current process is anything but regional;
5 instead each city and county is each responsible for their own
6 decisions around housing.

7 (e) The San Francisco Bay area faces an annual funding shortfall
8 of two billion five hundred million dollars (\$2,500,000,000) in its
9 efforts to address the affordable housing crisis.

10 (f) A regional entity is necessary to help address the housing
11 crisis in the San Francisco Bay area by delivering resources and
12 technical assistance at a regional scale, including:

13 (1) Providing critically needed funding to affordable housing
14 projects across the San Francisco Bay area.

15 (2) Providing staff support to local jurisdictions that require
16 capacity or technical assistance to expedite the preservation and
17 production of housing.

18 (3) Funding tenant services, such as emergency rental assistance
19 and access to counsel, thereby relieving local jurisdictions of this
20 cost and responsibility.

21 (4) Assembling parcels and acquiring land for the purpose of
22 building affordable housing.

23 (5) Monitoring and reporting on progress at a regional scale.

24 64502. For purposes of this title:

25 (a) "Board" or "*entity board*" means the governing board of
26 the Housing Alliance for the Bay Area created pursuant to Section
27 64511.

28 (b) "Entity" means the Housing Alliance for the Bay Area
29 established pursuant to Section 64510.

30 (c) "San Francisco Bay area" means the entire area within the
31 territorial boundaries of the Counties of Alameda, Contra Costa,
32 Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and
33 the City and County of San Francisco.

34 (d) "Lower income households" has the same meaning as that
35 term is defined in Section 50079.5 of the Health and Safety Code.

36 (e) "Low- or moderate-income households" has the same
37 meaning as "persons and families of low or moderate income," as
38 defined in Section 50093 of the Health and Safety Code.

39 64503. The Legislature finds and declares that providing a
40 regional financing mechanism for affordable housing development

1 and preservation in the San Francisco Bay area, as described in
 2 this section and Section 64501, is a matter of statewide concern
 3 and is not a municipal affair as that term is used in Section 5 of
 4 Article XI of the California Constitution. Therefore, this title
 5 applies to all cities within the San Francisco Bay area, including
 6 charter cities.

7
 8 CHAPTER 2. THE HOUSING ALLIANCE FOR THE BAY AREA AND
 9 GOVERNING BOARD

10
 11 64510. (a) The Housing Alliance for the Bay Area is hereby
 12 established with jurisdiction extending throughout the San
 13 Francisco Bay area.

14 (b) The formation and jurisdictional boundaries of the entity
 15 are not subject to the Cortese-Knox-Hertzberg Local Government
 16 Reorganization Act of 2000 (Division 3 (commencing with Section
 17 56000) of Title 5).

18 (c) The entity’s purpose is to increase affordable housing in the
 19 San Francisco Bay area by providing for enhanced funding and
 20 technical assistance at a regional level for tenant protection,
 21 affordable housing preservation, and new affordable housing
 22 production.

23 (d) It is the intent of the Legislature that the entity complement
 24 existing efforts by cities, counties, districts, and other local,
 25 regional, and state entities, related to addressing the goals described
 26 in this title.

27 (e) It is the intent of the Legislature that the entity be staffed by
 28 the existing staff of the Metropolitan Transportation ~~Commission,~~
 29 *Commission and the Association of Bay Area Governments*, or any
 30 successor agency, with the understanding that additional staff with
 31 expertise in affordable housing finance and other aspects of the
 32 entity’s work will be needed.

33 64511. (a) (1) The entity shall be governed by a ~~board~~
 34 ~~composed of _____ voting members. The board. The membership~~
 35 ~~of the board shall consist of commissioners of the Metropolitan~~
 36 ~~Transportation Commission and members of the Association of~~
 37 ~~Bay Area Governments Executive Board.~~

38 (2) *The Metropolitan Transportation Commission and the*
 39 *Executive Board of the Association of Bay Area Governments shall*

1 *serve as the appointing authority and appoint members to the entity*
2 *board.*

3 (3) *The appointing authority shall determine the size and*
4 *geographic representation of the entity board.*

5 (4) *The entity shall form an advisory committee comprised of*
6 *nine representatives with knowledge and experience in the areas*
7 *of affordable housing finance and development, tenant protection,*
8 *resident service provision, and housing preservation.*

9 ~~(2)~~

10 (5) *Each member of the entity board shall serve at the pleasure*
11 *of the appointing authority.*

12 ~~(3)~~

13 (6) *The appointing authority shall fill any vacancy on the entity*
14 *board within 90 days from the date on which the vacancy occurs.*

15 (b) *The board shall select from its members a chair, who shall*
16 *preside over meetings of the board, and a vice chair from its*
17 *members, who shall preside in the absence of the chair.*

18 (c) (1) *A member appointed pursuant to this section may receive*
19 *a per diem for each board meeting that the member attends. The*
20 *board shall set the amount of that per diem for a member's*
21 *attendance, but that amount shall not exceed one hundred dollars*
22 *(\$100) per meeting. A member shall not receive a payment for*
23 *more than two meetings in a calendar month.*

24 (2) *A member may waive a payment of per diem authorized by*
25 *this subdivision.*

26 (d) (1) *Members of the board are subject to Article 2.4*
27 *(commencing with Section 53234) of Chapter 2 of Part 1 of*
28 *Division 2 of Title 5.*

29 (2) *The entity shall be subject to the Ralph M. Brown Act*
30 *(Chapter 9 (commencing with Section 54950) of Part 1 of Division*
31 *2 of Title 5), the California Public Records Act (Chapter 3.5*
32 *(commencing with Section 6250) of Division 7 of Title 1), and the*
33 *Political Reform Act of 1974 (Title 9 (commencing with Section*
34 *81000)).*

35 64512. *A member shall exercise independent judgment on*
36 *behalf of the interests of the residents, the property owners, and*
37 *the public as a whole in furthering the intent and purposes of this*
38 *title.*

1 64513. (a) The time and place of the first meeting of the board
2 shall be at a time and place within the San Francisco Bay area
3 fixed by the chair of the board.

4 (b) After the first meeting described in subdivision (a), the board
5 shall hold meetings at times and places determined by the board.

6 64514. (a) The board may make and enforce rules and
7 regulations necessary for the government of the board, the
8 preservation of order, and the transaction of business.

9 (b) In exercising the powers and duties conferred on the entity
10 by this title, the board may act either by ordinance or resolution.

11
12 CHAPTER 3. POWERS OF THE HOUSING ALLIANCE FOR THE BAY
13 AREA
14

15 64520. In implementing this title, the entity may do all of the
16 following:

17 (a) Raise revenue and allocate funds throughout the San
18 Francisco Bay area, as provided in Part 2 (commencing with
19 Section 64600).

20 (b) Apply for and receive grants from federal and state agencies.

21 (c) Solicit and accept gifts, fees, grants, and allocations from
22 public and private entities.

23 (d) Deposit or invest moneys of the entity in banks or financial
24 institutions in the state, as provided in Chapter 4 (commencing
25 with Section 53600) of Part 1 of Division 2 of Title 5.

26 (e) Sue and be sued, except as otherwise provided by law, in
27 all actions and proceedings, in all courts and tribunals of competent
28 jurisdiction.

29 (f) Engage counsel and other professional services.

30 (g) Enter into and perform all necessary contracts.

31 (h) Enter into joint powers agreements pursuant to the Joint
32 Exercise of Powers Act (Chapter 5 (commencing with Section
33 6500) of Division 7 of Title 1).

34 (i) Hire staff, define their qualifications and duties, and provide
35 a schedule of compensation for the performance of their duties.

36 (j) Use staff provided by the Metropolitan Transportation
37 ~~Commission~~. *Commission and the Association of Bay Area*
38 *Governments*. A person who performs duties as interim or
39 temporary staff pursuant to this subdivision shall not be considered
40 an employee of the entity.

AB 1487

— 8 —

1 (k) Assemble parcels and lease or acquire land for affordable
2 housing development.

3 (l) Collect data on housing production and monitor progress on
4 meeting regional and state housing goals.

5 (m) Provide support and technical assistance to local
6 governments in relation to producing and preserving affordable
7 housing.

8 (n) Provide public information about the entity's housing
9 programs and policies.

10 (o) Any other express or implied power necessary to carry out
11 the intent and purposes of this title.

12 64521. (a) If the entity proposes a measure pursuant to
13 ~~subdivision (a) of Section 64520~~ *Part 2 (commencing with Section*
14 *64600)* that will generate ~~revenues~~, *revenues and that requires*
15 *voter approval pursuant to the California Constitution*, the board
16 of supervisors of the county or counties in which the entity has
17 determined to place the measure on the ballot shall call a special
18 election on the measure. The special election shall be consolidated
19 with the next regularly scheduled statewide election and the
20 measure shall be submitted to the voters in the appropriate counties,
21 consistent with the requirements of Articles XIII A, XIII C, and
22 ~~XIII D~~ *XIII, or Article XVI* of the California Constitution, as
23 applicable.

24 (b) (1) The entity is a district, as defined in Section 317 of the
25 Elections Code. Except as otherwise provided in this section, a
26 measure proposed by the entity that requires voter approval shall
27 be submitted to the voters of the entity in accordance with the
28 provisions of the Elections Code applicable to districts, including
29 the provisions of Chapter 4 (commencing with Section 9300) of
30 Division 9 of the Elections Code.

31 (2) Because the entity has no revenues as of the effective date
32 of this section, the appropriations limit for the entity shall be
33 originally established based on receipts from the initial measure
34 that would generate revenues for the entity pursuant to subdivision
35 (a), and that establishment of an appropriations limit shall not be
36 deemed a change in an appropriations limit for purposes of Section
37 4 of Article XIII B of the California Constitution.

38 (c) The entity shall file with the board of supervisors of each
39 county in which the measure shall appear on the ballot a resolution
40 of the entity requesting consolidation, and setting forth the exact

1 form of the ballot question, in accordance with Section 10403 of
2 the Elections Code.

3 (d) The legal counsel for the entity shall prepare an impartial
4 analysis of the measure. The impartial analysis prepared by the
5 legal counsel for the entity shall be subject to review and revision
6 by the county counsel of the county that contains the largest
7 population, as determined by the most recent federal decennial
8 census, among those counties in which the measure will be
9 submitted to the voters.

10 (e) Each county included in the measure shall use the exact
11 ballot question, impartial analysis, and ballot language provided
12 by the entity. If two or more counties included in the measure are
13 required to prepare a translation of ballot materials into the same
14 language other than English, the county that contains the largest
15 population, as determined by the most recent federal decennial
16 census, among those counties that are required to prepare a
17 translation of ballot materials into the same language other than
18 English shall prepare the translation, or authorize the entity to
19 prepare the translation, and that translation shall be used by the
20 other county or counties, as applicable.

21 (f) Notwithstanding Section 13116 of the Elections Code, if a
22 measure proposed by the entity pursuant to this title is submitted
23 to the voters of the entity in two or more counties, the elections
24 officials of those counties shall mutually agree to use the same
25 letter designation for the measure.

26 (g) The county clerk of each county shall report the results of
27 the special election to the entity.

28 (h) (1) Notwithstanding Section 10520 of the Elections Code,
29 for any election at which the entity proposes a measure pursuant
30 to subdivision (a) of Section 64520 that would generate revenues,
31 the entity shall reimburse each county in which that measure
32 appears on the ballot only for the incremental costs incurred by
33 the county elections official related to submitting the measure to
34 the voters with any eligible funds transferred to the entity from
35 the Association of Bay Area Governments or the Metropolitan
36 Transportation Commission.

37 (2) For purposes of this subdivision, “incremental costs” include
38 all of the following:

39 (A) The cost to prepare, review, and revise the impartial analysis
40 of the measure that is required by subdivision (d).

1 (B) The cost to prepare a translation of ballot materials into a
2 language other than English by any county, as described in
3 subdivision (e).

4 (C) The additional costs that exceed the costs incurred for other
5 election races or ballot measures, if any, appearing on the same
6 ballot in each county in which the measure appears on the ballot,
7 including both of the following:

- 8 (i) The printing and mailing of ballot materials.
- 9 (ii) The canvass of the vote regarding the measure pursuant to
10 Division 15 (commencing with Section 15000) of the Elections
11 Code.

12 (i) *If the Metropolitan Transportation Commission proposes a*
13 *measure pursuant to Section 64601, the Metropolitan*
14 *Transportation Commission shall assume all duties delegated to*
15 *the entity under this section.*

16 64522. The entity shall not do either of the following:

- 17 (a) Regulate or enforce local land use decisions.
- 18 (b) Acquire property by eminent domain.

19
20 CHAPTER 4. FINANCIAL PROVISIONS
21

22 64530. The board shall provide for regular audits of the entity's
23 accounts and records and shall maintain accounting records and
24 shall report accounting transactions in accordance with generally
25 accepted accounting principles adopted by the Governmental
26 Accounting Standards Board of the Financial Accounting
27 Foundation for both public reporting purposes and for reporting
28 of activities to the Controller.

29 64531. The board shall provide for annual financial reports.
30 The board shall make copies of the annual financial reports
31 available to the public.

32
33 PART 2. FINANCING ACTIVITIES OF THE HOUSING
34 ALLIANCE FOR THE BAY AREA
35

36 CHAPTER 1. GENERAL PROVISIONS
37

38 64600. The entity may do all of the following:

- 39 (a) (1) Raise and allocate new revenue ~~by placing on the ballot~~
40 ~~in all or a subset of the nine counties in the San Francisco Bay area~~

1 various funding measures, including through the following funding
2 mechanisms:

3 ~~(A) A parcel tax.~~

4 ~~(B) A commercial linkage fee that is either of the following:~~

5 ~~(i) A variable rate fee assessed on new construction, providing~~
6 ~~a credit for a project in a local jurisdiction with an existing linkage~~
7 ~~fee program.~~

8 ~~(ii) A flat rate fee assessed on new construction.~~

9 ~~(C) A gross receipts tax with variable rates according to business~~
10 ~~sector with an exemption for small businesses.~~

11 ~~(D) A business tax based upon the number of employees~~
12 ~~assessed at a variable rate with an exemption for small businesses.~~

13 ~~(E) One-half of one cent (\$0.005) increase in sales tax.~~

14 ~~(F) A general obligation bond to be funded by an ad valorem~~
15 ~~tax on the assessed value of local properties.~~

16 ~~(G) A revenue bond.~~

17 *(A) Special taxes, as provided in Article 1 (commencing with*
18 *Section 64610) of Chapter 2, as follows:*

19 *(i) A parcel tax, as provided in Section 64610.*

20 *(ii) A gross receipts tax, as provided in Section 64611.*

21 *(iii) A special business tax, as provided in Section 64612.*

22 *(iv) A transactions and use tax, as provided in Section 64613.*

23 *(B) A commercial linkage fee, as provided in Article 2*
24 *(commencing with Section 64620) of Chapter 2.*

25 *(C) Bonds, as provided in Article 3 (commencing with Section*
26 *64630) of Chapter 2.*

27 *(2) Any funding mechanism authorized pursuant to paragraph*
28 *(1) that requires voter approval pursuant to the California*
29 *Constitution or this part may be placed on the ballot in all or a*
30 *subset of the nine counties in the San Francisco Bay area. A*
31 *measure placed on the ballot in a subset of those nine counties*
32 *shall apply only in those counties in which the measure was*
33 *submitted to the voters.*

34 ~~(2)~~

35 *(3) It is the intent of the Legislature that the funding measures*
36 *authorized by this subdivision distribute the responsibility of*
37 *addressing the affordable housing needs of the region across*
38 *commercial developers, businesses above a certain size, taxpayers,*
39 *and property owners within the region.*

1 (b) Incur and issue indebtedness and assess fees on any debt
2 issuance and loan products for reinvestment of fees and loan
3 repayments in affordable housing production and preservation.

4 (c) Allocate funds to the various cities, counties, and other public
5 agencies and affordable housing projects within its ~~jurisdiction~~
6 *jurisdiction, as provided in Chapter 3 (commencing with Section*
7 *64650)*, to finance affordable housing development, preserve and
8 enhance existing affordable housing, and fund tenant protection
9 programs, pursuant to this title, in accordance with applicable
10 constitutional requirements.

11 *64601. The Metropolitan Transportation Commission may*
12 *propose a measure pursuant to Part 2 (commencing with Section*
13 *64600) that will generate revenues and that requires voter approval*
14 *pursuant to the California Constitution at the November 3, 2020,*
15 *statewide general election, provided that the following conditions*
16 *are met:*

17 (a) *The purpose of the measure is to raise and allocate revenue*
18 *for the entity through one of the mechanisms authorized by*
19 *paragraph (1) of subdivision (a) of Section 64600.*

20 (b) *The Metropolitan Transportation Commission assumes all*
21 *duties delegated to the entity in Section 64521.*

22 (c) *The measure provides that the entity will assume*
23 *administration of the funding mechanism and all duties required*
24 *under this part upon the approval of the measure.*

25

26 CHAPTER 2. REVENUE

27

28 Article 1. Special Taxes

29

30 *64610. (a) Subject to Section 4 of Article XIII A of the*
31 *California Constitution, the entity may impose, by ordinance or*
32 *resolution, a parcel tax within the San Francisco Bay area*
33 *pursuant to the procedures established in Article 3.5 (commencing*
34 *with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title*
35 *5, Section 64521, and any other applicable procedures provided*
36 *by law.*

37 (b) *“Parcel tax” means a special tax imposed upon a parcel of*
38 *real property at a rate that is determined without regard to that*
39 *property’s value and that applies uniformly to all taxpayers or all*
40 *real property within the jurisdiction of the local government.*

1 “Parcel tax” does not include a tax imposed on a particular class
2 of property or taxpayers.

3 (c) The entity shall provide notice of any parcel tax imposed
4 pursuant to this section in the manner specified in Section 54930.

5 64611. (a) (1) The entity may impose, by ordinance or
6 resolution, a special tax, measured by gross receipts, for the
7 privilege of engaging in any kind of lawful business transacted in
8 the San Francisco Bay area pursuant to the procedures established
9 in Article 3.5 (commencing with Section 50075) of Chapter 1 of
10 Part 1 of Division 1 of Title 5, Section 64521, and any other
11 applicable procedures provided by law.

12 (2) The ordinance or resolution imposing a special tax pursuant
13 to this subdivision may provide for the following:

14 (A) Variable rates based on the business sector of each person
15 subject to the tax.

16 (B) Exemptions for small businesses.

17 (C) Collection of the tax by suit or otherwise.

18 (b) If the entity levies a special tax pursuant to subdivision (a)
19 upon a business operating both within and outside the entity’s
20 taxing jurisdiction, the entity shall levy the tax so that the measure
21 of tax fairly reflects that proportion of the taxed activity actually
22 carried on within the taxing jurisdiction.

23 (c) A special tax levied pursuant to subdivision (a) shall not
24 apply to any nonprofit organization that is exempted from taxes
25 by Chapter 4 (commencing with Section 23701) of Part 11 of
26 Division 2 of the Revenue and Taxation Code or Subchapter F
27 (commencing with Section 501) of Chapter 1 of Subtitle A of the
28 Internal Revenue Code of 1986, or the successor of either, or to
29 any minister, clergyman, Christian Science practitioner, rabbi, or
30 priest of any religious organization that has been granted an
31 exemption from federal income tax by the United States
32 Commissioner of Internal Revenue as an organization described
33 in Section 501(c)(3) of the Internal Revenue Code or a successor
34 to that section.

35 64612. (a) (1) The entity may impose, by ordinance or
36 resolution, a special tax measured by the number of employees
37 employed by the taxpayer for the privilege of engaging in any kind
38 of lawful business activity transacted in the San Francisco Bay
39 area pursuant to the procedures established in Article 3.5
40 (commencing with Section 50075) of Chapter 1 of Part 1 of

1 *Division 1 of Title 5, Section 64521, and any other applicable*
2 *procedures provided by law.*

3 *(2) The ordinance or resolution imposing a special tax pursuant*
4 *to this subdivision may provide for collection of the tax by suit or*
5 *otherwise.*

6 *(b) If the entity levies a special tax pursuant to subdivision (a)*
7 *upon a business operating both within and outside the entity's*
8 *taxing jurisdiction, the entity shall levy the tax so that the measure*
9 *of tax fairly reflects that proportion of the taxed activity actually*
10 *carried on within the taxing jurisdiction.*

11 *(c) A special tax levied pursuant to subdivision (a) shall not*
12 *apply to any nonprofit organization that is exempted from taxes*
13 *by Chapter 4 (commencing with Section 23701) of Part 11 of*
14 *Division 2 of the Revenue and Taxation Code or Subchapter F*
15 *(commencing with Section 501) of Chapter 1 of Subtitle A of the*
16 *Internal Revenue Code of 1986, or the successor of either, or to*
17 *any minister, clergyman, Christian Science practitioner, rabbi, or*
18 *priest of any religious organization that has been granted an*
19 *exemption from federal income tax by the United States*
20 *Commissioner of Internal Revenue as an organization described*
21 *in Section 501(c)(3) of the Internal Revenue Code or a successor*
22 *to that section.*

23 *64613. The entity may impose, by ordinance or resolution, a*
24 *transactions and use tax at a rate of no more than 0.5 percent that*
25 *would, in combination with all taxes imposed in accordance with*
26 *the Transactions and Use Tax Law (Part 1.6 (commencing with*
27 *Section 7251) of Division 2 of the Revenue and Taxation Code),*
28 *exceed the limit established in Section 7251.1 of the Revenue and*
29 *Taxation Code, if all of the following requirements are met:*

30 *(a) The entity adopts an ordinance or resolution proposing the*
31 *transactions and use tax by any applicable voting approval*
32 *requirement.*

33 *(b) The ordinance or resolution proposing the transactions and*
34 *use tax is submitted to the electorate and is approved by the voters*
35 *voting on the ordinance pursuant to Article XIII C of the California*
36 *Constitution and Section 64521 of this code.*

37 *(c) The transactions and use tax conforms to the Transactions*
38 *and Use Tax Law (Part 1.6 (commencing with Section 7251) of*
39 *Division 2 of the Revenue and Taxation Code), other than Section*
40 *7251.1 of Division 2 of the Revenue and Taxation Code.*

1 64614. *An action to determine the validity of any special taxes*
2 *levied pursuant to this article may be brought pursuant to Chapter*
3 *9 (commencing with Section 860) of Title 10 of Part 2 of the Code*
4 *of Civil Procedure.*

5
6 *Article 2. Commercial Linkage Fee*
7

8 64620. *As used in this article:*

9 (a) *“Commercial development project” means any project*
10 *involving the issuance of a permit by an underlying land use*
11 *jurisdiction for construction or reconstruction that is undertaken*
12 *within the San Francisco Bay area for the development of land for*
13 *commercial use, but does not include any project involving solely*
14 *a permit to operate.*

15 (b) *“Commercial linkage fee” means a monetary exaction, other*
16 *than a tax or special assessment, established for a broad class of*
17 *projects by legislation of general applicability that is charged to*
18 *an applicant in connection with the approval of a commercial*
19 *development project by an underlying land use jurisdiction for the*
20 *purpose of addressing the need for additional housing development*
21 *necessitated by that commercial development project, as*
22 *determined pursuant to the nexus study undertaken pursuant to*
23 *subdivision (b) of Section 64621.*

24 (c) *“Underlying land use jurisdiction” means any of the*
25 *following entities, as applicable, that has jurisdiction over the*
26 *approval of a commercial development project:*

27 (1) *The following counties:*

- 28 (A) *The County of Alameda.*
- 29 (B) *The County of Contra Costa.*
- 30 (C) *The County of Marin.*
- 31 (D) *The County of Napa.*
- 32 (E) *The County of San Mateo.*
- 33 (F) *The County of Santa Clara.*
- 34 (G) *The County of Solano.*
- 35 (H) *The County of Sonoma.*

36 (2) *A city that is located within the territorial boundaries of any*
37 *of the counties specified in paragraph (1).*

38 (3) *The City and County of San Francisco.*

39 64621. (a) (1) *The board may establish, increase, or impose*
40 *a commercial linkage fee within the San Francisco Bay area by*

1 *enactment of an ordinance or resolution, in accordance with the*
 2 *requirements of this article, that is in addition to any fee, as defined*
 3 *in Section 66000, that is levied by an underlying land use*
 4 *jurisdiction.*

5 *(2) A commercial linkage fee may be established, increased, or*
 6 *imposed pursuant to this article by an ordinance or resolution of*
 7 *the board that provides for either of the following:*

8 *(A) A variable rate fee assessed on a commercial development*
 9 *project within the San Francisco Bay area that provides that the*
 10 *amount of fee required to be paid to the entity shall be reduced by*
 11 *the amount the applicant is required to pay, if any, for a*
 12 *commercial linkage fee imposed by the relevant underlying land*
 13 *use jurisdiction.*

14 *(B) A flat fee assessed on all commercial development projects*
 15 *within the San Francisco Bay area.*

16 *(b) Before establishing, increasing, or imposing a commercial*
 17 *linkage fee, the entity shall prepare a regional jobs and housing*
 18 *nexus study in order to support the necessity and amount of the*
 19 *fee.*

20 *(c) In any action to establish, increase, or impose a commercial*
 21 *linkage fee, the board shall do all of the following:*

22 *(1) Identify the purpose of the commercial linkage fee.*

23 *(2) Determine how there is a reasonable relationship between*
 24 *the fee's use and the type of commercial development project on*
 25 *which the fee is imposed, based on the regional nexus study*
 26 *prepared pursuant to subdivision (b).*

27 *(3) Determine how there is a reasonable relationship between*
 28 *the need for housing and the type of commercial development*
 29 *project on which the fee is imposed, based on the regional nexus*
 30 *study prepared pursuant to subdivision (b).*

31 *(4) Determine how there is a reasonable relationship between*
 32 *the amount of the fee and the cost of the housing necessitated by*
 33 *the commercial development project that is attributable to the*
 34 *development on which the fee is imposed, based on the regional*
 35 *nexus study prepared pursuant to subdivision (b).*

36 *64622. (a) A commercial linkage fee established, increased,*
 37 *or imposed pursuant to this article shall not exceed the reasonable*
 38 *cost of providing the housing necessitated by the commercial*
 39 *development project for which the commercial linkage fee is*

1 *imposed, as determined in the regional nexus study pursuant to*
2 *subdivision (b) of Section 64621.*

3 *(b) It is the intent of the Legislature in adding this section to*
4 *codify existing constitutional and decisional law with respect to*
5 *the imposition of development fees and monetary exactions on*
6 *developments by local agencies. This section is declaratory of*
7 *existing law and shall not be construed or interpreted as creating*
8 *new law or as modifying or changing existing law.*

9 *64623. (a) Before adopting an ordinance or resolution*
10 *establishing or imposing a new commercial linkage fee or*
11 *approving an increase in an existing commercial linkage fee or*
12 *pursuant to this article, the board shall hold a public hearing, at*
13 *which oral or written presentations can be made, as part of a*
14 *regularly scheduled meeting. Notice of the time and place of the*
15 *meeting, including a general explanation of the matter to be*
16 *considered, shall be published in accordance with Section 6062a.*

17 *(b) Any costs incurred by the entity in conducting the hearing*
18 *required pursuant to subdivision (a) may be recovered as part of*
19 *the commercial linkage fee that is the subject of the hearing.*

20 *64624. (a) Except as otherwise provided in subdivision (c), if*
21 *the board adopts an ordinance, resolution, or other legislative*
22 *enactment establishing or imposing a new commercial linkage fee*
23 *or approving an increase in an existing commercial linkage fee,*
24 *each underlying land use jurisdiction shall, as a condition of*
25 *approving a commercial development project for which it receives*
26 *an application for a conditional use permit or other discretionary*
27 *or ministerial approval, require an applicant to pay the amount*
28 *of commercial linkage fee established, imposed, or increased by*
29 *the entity pursuant to this article. The underlying land use*
30 *jurisdiction shall provide notice to the applicant that does all of*
31 *the following:*

32 *(1) Notifies the applicant that the entity has established,*
33 *increased, or imposed a commercial linkage fee pursuant to this*
34 *article.*

35 *(2) States the amount of commercial linkage fee established,*
36 *increased, or imposed by the entity.*

37 *(3) States that the applicant may protest the commercial linkage*
38 *fee, as provided in Section 64625, and notifies the applicant that*
39 *the 90-day period for that protest and the 180-day period for filing*
40 *an action specified in subdivision (c) of Section 64625 has begun.*

1 (b) Each underlying land use jurisdiction shall collect and, after
 2 deduction of any actual and necessary administrative costs
 3 incurred by the underlying land use jurisdiction, remit the amount
 4 of commercial linkage fee established, increased, or imposed
 5 pursuant to this article to the entity. An underlying land use
 6 jurisdiction shall remit the amounts required by this subdivision
 7 on or before the last day of the month next succeeding each
 8 calendar quarterly period.

9 (c) If any amount of commercial linkage fee established,
 10 increased, or imposed pursuant to this article is found to be invalid
 11 pursuant to Section 64625, each underlying land use jurisdiction
 12 shall immediately cease collection of the commercial linkage fee.

13 64625. (a) Any party may protest the imposition of a
 14 commercial linkage fee imposed on a commercial development
 15 project by the entity pursuant to this article as follows:

16 (1) The party shall pay the total amount of commercial linkage
 17 fee required by the ordinance or resolution enacted pursuant to
 18 Section 64621, or providing satisfactory evidence of arrangements
 19 to pay the commercial linkage fee when due, in accordance with
 20 Section 64624.

21 (2) Serving a written notice on the board and the legislative
 22 body of the relevant underlying land use jurisdiction that contains
 23 all of the following information:

24 (A) A statement that the required payment is tendered or will
 25 be tendered when due under protest.

26 (B) A statement informing the board and legislative body of the
 27 underlying land use jurisdiction of the factual elements of the
 28 dispute and the legal theory forming the basis for the protest.

29 (b) Compliance by any party with subdivision (a) shall not be
 30 the basis for an underlying land use jurisdiction to withhold
 31 approval of any map, plan, permit, zone change, license, or other
 32 form of permission, or concurrence, whether discretionary,
 33 ministerial, or otherwise, incident to, or necessary for, the
 34 commercial development project. This section does not limit the
 35 ability of an underlying land use jurisdiction to ensure compliance
 36 with all applicable provisions of law in determining whether or
 37 not to approve or disapprove a commercial development project.

38 (c) (1) A protest filed pursuant to subdivision (a) shall be filed
 39 at the time of approval or conditional approval of the commercial
 40 development project or within 90 days after the date of the

1 *imposition of the commercial linkage fee to be imposed on a*
2 *commercial development project.*

3 (2) *Any party who files a protest pursuant to subdivision (a)*
4 *may file an action to attack, review, set aside, void, or annul the*
5 *imposition of the commercial linkage fee imposed on a commercial*
6 *development project within 180 days after the delivery of the notice*
7 *required by subdivision (a) of Section 64624. Thereafter,*
8 *notwithstanding any other law, all persons shall be barred from*
9 *any action or proceeding or any defense of invalidity or*
10 *unreasonableness of the imposition. Any proceeding brought*
11 *pursuant to this subdivision shall take precedence over all matters*
12 *of the calendar of the court except criminal, probate, eminent*
13 *domain, forcible entry, and unlawful detainer proceedings.*

14 (d) (1) *If the court grants a judgment to a plaintiff invalidating,*
15 *as enacted, all or a portion of an ordinance or resolution*
16 *establishing, increasing, or imposing a commercial linkage fee,*
17 *the court shall direct the entity to refund the unlawful portion of*
18 *the payment, plus interest at an annual rate equal to the average*
19 *rate accrued by the Pooled Money Investment Account during the*
20 *time elapsed since the payment occurred, or to return the unlawful*
21 *portion of the exaction imposed.*

22 (2) *If an action is filed within 120 days of the date at which an*
23 *ordinance or resolution to establish or modify a commercial*
24 *linkage fee to be imposed on a commercial development project*
25 *takes effect, the portion of the payment or exaction invalidated*
26 *shall also be returned to any other person who, under protest*
27 *pursuant to this section and under that invalid portion of that same*
28 *ordinance or resolution as enacted, tendered the payment or*
29 *provided for or satisfied the exaction during the period from 90*
30 *days prior to the date of the filing of the action which invalidates*
31 *the payment or exaction to the date of the entry of the judgment*
32 *referenced in paragraph (1).*

33 (e) *The imposition of a commercial linkage fee occurs, for the*
34 *purposes of this section, when it is imposed or levied on a specific*
35 *commercial development project.*

36 64626. (a) *In any judicial action or proceeding to validate,*
37 *attack, review, set aside, void, or annul any ordinance or resolution*
38 *providing for the establishment, increase, or imposition of a*
39 *commercial linkage fee pursuant to this article in which there is*
40 *an issue whether the fee is a special tax within the meaning of*

1 Section 50076, the entity shall have the burden of producing
2 evidence to establish that the commercial linkage fee does not
3 exceed the reasonable cost of providing the housing necessitated
4 by the commercial development project for which the commercial
5 linkage fee is imposed, as determined in the regional nexus study
6 pursuant to subdivision (b) of Section 64621.

7 (b) A party may only initiate any action or proceeding pursuant
8 to subdivision (a) if both of the following requirements are met:

9 (1) The commercial linkage fee was directly imposed on the
10 party as a condition of project approval, as provided in Section
11 64624.

12 (2) At least 30 days before initiating the action or proceeding,
13 the party requests that the entity provide a copy of the documents,
14 including, but not limited to, the regional nexus study prepared
15 pursuant to subdivision (b) of Section 64621, that establish that
16 the commercial linkage fee does not exceed the reasonable cost
17 of providing the housing necessitated by the commercial
18 development project for which the commercial linkage fee is
19 imposed. In accordance with subdivision (b) of Section 6253, the
20 entity may charge a fee for copying the documents requested
21 pursuant to this paragraph.

22 (c) For purposes of this section, costs shall be determined in
23 accordance with fundamental fairness and consistency of method
24 as to the allocation of costs, expenses, revenues, and other items
25 included in the calculation.

26 64627. (a) Any person may request an audit in order to
27 determine whether any fee or charge levied by the entity exceeds
28 the amount necessary to cover the reasonable cost of providing
29 the housing necessitated by the commercial development project
30 for which the commercial linkage fee is imposed, as determined
31 in the regional nexus study pursuant to subdivision (b) of Section
32 64621. If a person makes that request, the board may retain an
33 independent auditor to conduct an audit to determine whether the
34 commercial linkage fee is reasonable, but is not required to
35 conduct the audit if an audit has been performed for the same fee
36 within the previous 12 months.

37 (b) If an audit pursuant to this section determines that the
38 amount of any commercial linkage fee or charge does not meet
39 the requirements of this article, the board shall adjust the fee
40 accordingly.

1 (c) *The entity shall retain an independent auditor to conduct*
 2 *an audit only if the person who requests the audit deposits with*
 3 *the entity the amount of the entity’s reasonable estimate of the cost*
 4 *of the independent audit. At the conclusion of the audit, the entity*
 5 *shall reimburse unused sums, if any, or the requesting person shall*
 6 *pay the entity the excess of the actual cost of the audit over the*
 7 *sum which was deposited.*

8 (d) *Any audit conducted by an independent auditor pursuant to*
 9 *this section shall conform to generally accepted auditing standards.*

10 (e) *This section shall not be construed as granting any additional*
 11 *authority to any local agency to levy any fee or charge which is*
 12 *not otherwise authorized by another provision of law, nor shall*
 13 *its provisions be construed as granting authority to any local*
 14 *agency to levy a new fee or charge when other provisions of law*
 15 *specifically prohibit the levy of a fee or charge.*

16 64628. *Any action by the entity or interested person under this*
 17 *article shall be brought pursuant to Chapter 9 (commencing with*
 18 *Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.*

19
 20
 21

Article 3. Bonds

22 64630. *The board may, by majority vote, initiate proceedings*
 23 *to issue bonds, other than revenue bonds subject to Section 64638,*
 24 *pursuant to this chapter by adopting a resolution stating its intent*
 25 *to issue the bonds.*

26 64631. *The resolution adopted pursuant to Section 64630 shall*
 27 *contain all of the following information:*

28 (a) *A description of the facilities or developments to be financed*
 29 *with the proceeds of the proposed bond issue.*

30 (b) *The estimated cost of the facilities or developments, the*
 31 *estimated cost of preparing and issuing the bonds, and the*
 32 *principal amount of the proposed bond issuance.*

33 (c) *The maximum interest rate and discount on the proposed*
 34 *bond issuance.*

35 (d) *The date of the election on the proposed bond issuance and*
 36 *the manner of holding the election.*

37 (e) *A determination of the amount of tax revenue available or*
 38 *estimated to be available, for the payment of the principal of, and*
 39 *interest on, the bonds.*

1 (f) A finding that the amount necessary to pay the principal of,
2 and interest on, the proposed bond issuance will be less than, or
3 equal to, the amount determined pursuant to subdivision (e).

4 64632. (a) Except as otherwise provided in subdivision (b),
5 the clerk of the board shall publish the resolution adopted pursuant
6 to Section 64630 once a day for at least seven successive days in
7 a newspaper published in each county in the San Francisco Bay
8 area at least six days a week, or at least once a week for two
9 successive weeks in a newspaper published in a county less than
10 six days a week.

11 (b) If there are no newspapers meeting the criteria specified in
12 subdivision (a), the resolution shall be posted in three public places
13 within each county in the San Francisco Bay area for two
14 succeeding weeks.

15 64633. (a) The board shall submit the proposal to issue bonds,
16 other than revenue bonds subject to Section 64638, to the voters
17 who reside within the San Francisco Bay area in accordance with
18 Section 64521 and this section.

19 (b) Ballots for the special election authorized by subdivision
20 (a) may be distributed to qualified electors by mail with return
21 postage prepaid or by personal service by the election official.
22 The official conducting the election may certify the proper mailing
23 of ballots by an affidavit, which shall be exclusive proof of mailing
24 in the absence of fraud. The voted ballots shall be returned to the
25 election officer conducting the election not later than the hour
26 specified in the resolution calling the election. However, if all the
27 qualified voters have voted, the election shall be closed.

28 64634. (a) Except for revenue bonds issued pursuant to Section
29 64638, bonds may be issued if two-thirds of the voters voting on
30 the proposition vote in favor of issuing the bonds.

31 (b) If the voters approve the issuance of the bonds as provided
32 by subdivision (a), the board shall proceed with the issuance of
33 the bonds by adopting a resolution that shall provide for all of the
34 following:

- 35 (1) The issuance of the bonds in one or more series.
- 36 (2) The principal amount of the bonds that shall be consistent
37 with the amount specified in subdivision (b) of Section 64631.
- 38 (3) The date the bonds will bear.
- 39 (4) The date of maturity of the bonds.
- 40 (5) The denomination of the bonds.

1 (6) *The form of the bonds.*

2 (7) *The manner of execution of the bonds.*

3 (8) *The medium of payment in which the bonds are payable.*

4 (9) *The place or manner of payment and any requirements for*
5 *registration of the bonds.*

6 (10) *The terms of call or redemption, with or without premium.*

7 (c) *If any proposition submitted to the voters pursuant to this*
8 *part is defeated by the voters, the board shall not submit, or cause*
9 *to be submitted, a similar proposition to the voters for at least one*
10 *year after the first election.*

11 (d) (1) *Every two years after the issuance of bonds pursuant*
12 *to this section, the entity shall contract for an independent financial*
13 *and performance audit. The audit shall be conducted according*
14 *to guidelines established by the Controller. A copy of the completed*
15 *audit shall be provided to the Controller, the Director of Finance,*
16 *and to the Joint Legislative Budget Committee.*

17 (2) *Upon the request of the Governor or of the Legislature, the*
18 *Bureau of State Audits may conduct financial and performance*
19 *audits of districts. The results of the audits shall be provided to*
20 *the board, the Controller, the Director of Finance, and the Joint*
21 *Legislative Budget Committee.*

22 64635. *The board may, by majority vote, provide for refunding*
23 *of bonds issued pursuant to Section 64634. However, refunding*
24 *bonds shall not be issued if the total net interest cost to maturity*
25 *on the refunding bonds plus the principal amount of the refunding*
26 *bonds exceeds the total net interest cost to maturity on the bonds*
27 *to be refunded. The board shall not extend the time to maturity of*
28 *the bonds.*

29 64636. (a) *The board or any person executing the bonds issued*
30 *pursuant to Section 64634 shall not be personally liable on the*
31 *bonds by reason of their issuance. The bonds and other obligations*
32 *of the entity issued pursuant to Section 64634 are not a debt of*
33 *any city or county, or of the state or of any of its political*
34 *subdivisions, other than the entity, and neither a city or county*
35 *nor the state or any of its political subdivisions, other than the*
36 *entity, shall be liable on the bonds, and the bonds or obligations*
37 *shall be payable exclusively from funds or properties of the entity.*
38 *Bonds issued pursuant to Section 64634 shall contain a statement*
39 *to this effect on their face.*

1 (b) If any member of the boards whose signature appears on
 2 bonds issued pursuant to Section 64634 ceases to be a member of
 3 the board before delivery of the bonds, that member's signature
 4 shall be as effective as if the member had remained in office.

5 64637. (a) The bonds issued pursuant to Section 64634 may
 6 be sold at discount not to exceed 5 percent of par at public sale.
 7 At least five days before the sale, notice shall be published,
 8 pursuant to Section 6061, in a newspaper of general circulation
 9 and in a financial newspaper published in the City and County of
 10 San Francisco and in the City of Los Angeles. The bonds may be
 11 sold at not less than par to the federal government at private sale
 12 without any public advertisement.

13 (b) Bonds issued pursuant to Section 64634 are fully negotiable.

14 64638. (a) Notwithstanding any other provision of this article,
 15 the entity may issue bonds, payable from the revenues of any
 16 facility or enterprise acquired or constructed by the entity, in the
 17 manner provided in the Revenue Bond Law of 1941 (Chapter 6
 18 (commencing with Section 54300) of Part 1 of Division 2 of Title
 19 5), as modified by subdivision (b). For purposes of this section,
 20 the entity shall be deemed to be a local agency within the meaning
 21 of Section 54307.

22 (b) For purposes of this section, the provisions of the Revenue
 23 Bond Law of 1941 (Chapter 6 (commencing with Section 54300)
 24 of Part 1 of Division 2 of Title 5) are modified as follows:

25 (1) Notwithstanding Section 54309, the term "enterprise" means
 26 a revenue-producing improvement, building, system, plant, works,
 27 facilities, or undertaking used for or useful for the development
 28 of housing in the San Francisco Bay area by the entity.

29 (2) Notwithstanding Section 54340, the entity shall not acquire
 30 any enterprise by eminent domain.

31 (c) Revenue bonds issued pursuant to this section shall not be
 32 subject to the procedures specified in this article, but shall instead
 33 be issued in accordance with the procedures specified in the
 34 Revenue Bond Law of 1941 (Chapter 6 (commencing with Section
 35 54300) of Part 1 of Division 2 of Title 5), as modified by
 36 subdivision (b). Except as expressly provided in subdivision (b),
 37 if any provision of this title conflicts with the Revenue Bond Law
 38 of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of
 39 Division 2 of Title 5) as to the issuance of revenue bonds by the
 40 entity, the Revenue Bond Law of 1941 (Chapter 6 (commencing

1 with Section 54300) of Part 1 of Division 2 of Title 5) shall be
2 controlling.

3 64639. (a) An action to determine the validity of bonds issued
4 pursuant to Section 64634 may be brought pursuant to Chapter 9
5 (commencing with Section 860) of Title 10 of Part 2 of the Code
6 of Civil Procedure.

7 (b) In accordance with Section 64638, an action to determine
8 the validity of revenue bonds issued pursuant to Section 64638
9 may be brought in the manner specified in Section 54580.

10
11 CHAPTER 2.3. EXPENDITURES

12
13 ~~64610.~~

14 64650. (a) Revenue generated pursuant to ~~Section 64600~~ this
15 part shall be used for the construction of new affordable housing,
16 affordable housing preservation, tenant protection programs, and
17 general funds made available to local jurisdictions as an incentive
18 to achieve affordable housing benchmarks to be established by the
19 entity. ~~Subject~~ entity as follows:

20 (1) Subject to funding eligibility and ~~subject to~~ adjustment
21 pursuant to ~~subdivision (b)~~, paragraph (2), the entity shall
22 distribute the ~~total funds~~ revenues derived from any special tax
23 imposed pursuant to Article 1 (commencing with Section 64610)
24 of Chapter 2 and the proceeds of bonds issued pursuant to Article
25 2 (commencing with Section 64620) of Chapter 2 for the region
26 over a five-year period commencing after revenue is approved by
27 voters as follows:

28 (1)

29 (A) A minimum of 60 percent for production of housing units
30 affordable to lower income households.

31 (2)

32 (B) A minimum of 5 percent and a maximum of 10 percent for
33 tenant protection programs. The entity shall ~~give priority to~~
34 ~~prioritize flexible funding sources for~~ tenant protection ~~programs~~
35 ~~that have flexible funding sources.~~ programs. Funding for tenant
36 protection programs may be used for any of the following:

37 (A) ~~Providing access to counsel for tenants facing eviction.~~

38 (i) Legal aid, including representation in eviction proceedings,
39 mediation between landlords and tenants, preeviction legal
40 services, and legal education and awareness for communities.

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— 26 —

1 ~~(B)~~

2 (ii) Providing emergency rental assistance for lower income
 3 households. *Rental assistance provided pursuant to this clause*
 4 *shall not exceed 48 months for each assisted household, and rent*
 5 *payments shall not exceed two times the current fair market rent*
 6 *for the local area, as determined by the United States Department*
 7 *of Housing and Urban Development pursuant to Part 888 of Title*
 8 *24 of the Code of Federal Regulations.*

9 ~~(C)~~

10 (iii) Providing relocation assistance for lower income
 11 households.

12 ~~(D)~~

13 (iv) Collection and tracking of information related to
 14 displacement risk and evictions in the region.

15 ~~(3)~~

16 (C) A minimum of 15 percent and a maximum of 20 percent
 17 for preservation of housing affordable to low- or moderate-income
 18 households.

19 ~~(4)~~

20 (D) A minimum of 5 percent and a maximum of 10 percent for
 21 general funds awarded to a local government that achieves
 22 affordable housing benchmarks established by the entity. *Subject*
 23 *to any limitations on the funding source, eligible expenditures*
 24 *pursuant to this subparagraph include, but are not limited to,*
 25 *infrastructure needs associated with increased housing production,*
 26 *including, but not limited to, transportation, schools, and parks.*

27 ~~(b)~~

28 (2) ~~The entity may lower the minimum distribution in paragraph~~
 29 ~~(1), (2), (3), or (4) of subdivision (a) shall change the distribution~~
 30 ~~requirements in subparagraph (A), (B), (C), or (D) of paragraph~~
 31 ~~(1) if it adopts a finding pursuant to this subdivision paragraph~~
 32 ~~that the minimum funding amount exceeds the region's needs.~~
 33 *region's needs differ from those requirements.* The finding shall
 34 be placed on a meeting agenda for discussion at least 30 days
 35 before the entity adopts the finding.

36 (3) *The entity shall distribute the revenues derived from a*
 37 *commercial linkage fee established, increased, or imposed pursuant*
 38 *to Article 2 (commencing with Section 64620) of Chapter 2 to each*
 39 *city or county in proportion to the amount of fee collected and*
 40 *remitted by each city and each county pursuant to Section 64624.*

1 *A city or county that receives revenues pursuant to this paragraph*
 2 *shall use that revenue solely for the production of housing units*
 3 *necessitated by a commercial development project on which the*
 4 *fee was imposed, as determined by the entity pursuant to Section*
 5 *64621.*

6 ~~(e) The~~

7 *(b) Except as otherwise provided in paragraph (3) of subdivision*
 8 *(a), the entity may allocate funds directly to a city, a county, a*
 9 *public entity, or a private project sponsor.*

10 ~~(d)~~

11 *(c) (1) Subject to paragraph ~~(2); (3)~~ of subdivision (a), the entity*
 12 *shall distribute funds so that an amount equal to or greater than 75*
 13 *received through the funding measures described in subdivision*
 14 *(a) of Section 64600 as follows:*

15 *(A) Seventy-five percent of the revenue received from a county*
 16 *over a five-year period through funding measures authorized by*
 17 *subdivision (a) of Section 64600 is expended in the county. shall*
 18 *be expended in the county of origin.*

19 *(B) Twenty-five percent of the revenue received shall be*
 20 *collected by the entity for expenditures consistent with the purposes*
 21 *set forth in subdivision (a). These funds can also be leveraged and*
 22 *grown for reinvestment in affordable housing. The entity shall*
 23 *adopt an expenditure plan for the use of such funds by July 1 of*
 24 *each year, beginning in 2021.*

25 *(2) Each county shall submit an expenditure plan to the entity*
 26 *as follows:*

27 *(A) The expenditure plan shall be submitted by July 1 of each*
 28 *year, beginning in 2021.*

29 *(B) To be deemed complete, the expenditure plan shall specify*
 30 *the proposed allocation of funds for the next 12 months, as follows:*

31 *(i) The proposed share of revenues to be allocated to the*
 32 *construction of new affordable housing, affordable housing*
 33 *preservation, and tenant protection programs. The plan shall*
 34 *include a minimum allocation of 40 percent towards construction*
 35 *of new affordable housing, 5 percent towards affordable housing*
 36 *preservation, and 5 percent towards tenant protection programs,*
 37 *unless the county adopts a finding and the entity concurs that those*
 38 *minimum targets are inconsistent with subdivision (a) or are*
 39 *otherwise not feasible.*

1 (ii) *The plan shall include a description of any specific project*
 2 *or program proposed to receive funding, including the location,*
 3 *amount of funding, and anticipated outcomes.*

4 (3) *If the entity determines, by a vote of its board, that a county*
 5 *has not submitted a complete expenditure plan pursuant to the*
 6 *requirements of subparagraph (B) of paragraph (2), the entity*
 7 *may, by a vote of its board, withhold allocation of revenues to a*
 8 *county until the county submits a complete expenditure plan.*

9 (4) *The entity shall post each completed expenditure plan on*
 10 *its internet website.*

11 ~~(2) (A)–~~

12 (5) A county may request to administer all or a portion of the
 13 funds required to be expended in the county pursuant to paragraph
 14 (1). ~~The entity shall approve, deny, or conditionally approve the~~
 15 ~~request based on factors, including, but not limited to, whether the~~
 16 ~~county has a demonstrated track record of successfully~~
 17 ~~administering funds for the purposes listed in subdivision (a) and~~
 18 ~~has sufficient staffing capacity to conduct the work effectively.~~

19 ~~(B) The entity shall distribute funds to a county based on an~~
 20 ~~expenditure plan submitted by the county and approved by the~~
 21 ~~entity. A county's proposed expenditure plan may contain funding~~
 22 ~~amounts different than those listed in subdivision (a). In approving~~
 23 ~~a county's expenditure plan and allocating funds, the entity may~~
 24 ~~adjust the funding amounts to ensure compliance with subdivision~~
 25 ~~(a).~~

26 ~~(C)~~

27 (6) If funds provided to a county for administration pursuant to
 28 this subparagraph (A) are not committed within three years of
 29 collection, the county shall return the funds to the entity.

30 ~~(e)~~

31 (d) The entity may expend up to 3 percent of funds for program
 32 administration.

33 ~~64611.~~

34 64651. The entity shall monitor expenditures in coordination
 35 with local jurisdictions.

36 ~~64612.~~

37 64652. To ensure oversight and accountability, the entity shall
 38 provide an annual report on expenditures which shall include a
 39 tracking of projects funded and the extent to which the minimum
 40 targets in subdivision (a) of Section ~~64610~~ 64650 were achieved.

1 SEC. 2. The Legislature finds and declares that a special statute
2 is necessary and that a general statute cannot be made applicable
3 within the meaning of Section 16 of Article IV of the California
4 Constitution because of the uniquely severe shortage of available
5 funding and resources for the development and preservation of
6 affordable housing and the particularly acute nature of the housing
7 crisis within the nine counties of the San Francisco Bay area region.
8 SEC. 3. If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.

O

**Metropolitan Transportation Commission and the Association of Bay Area Governments
Joint MTC Legislation Committee and
ABAG Legislation Committee**

May 10, 2019

Agenda Item 7c3

AB 1487 (Chiu): Housing Alliance for the Bay Area

- Subject:** AB 1487 (Chiu) would establish the Housing Alliance for the Bay Area (HABA) to increase funding for affordable housing in the nine-county region. The bill authorizes HABA to place on the ballot a series of revenue raising measures, subject to certain return to source provisions, to provide funding and technical assistance to local jurisdictions and affordable housing developers to help produce and preserve affordable housing and pay for tenant protection services. The bill provides that HABA would have the authority to buy and lease land for affordable housing purposes, but not the ability to purchase land by eminent domain or regulate or enforce local land use decisions.
- Background:** Plan Bay Area 2040's Action Plan (adopted jointly by MTC and ABAG in July 2017) called for the creation of regional self-help funding for affordable housing. This position was later incorporated into the Committee to House the Bay Area (CASA) Compact as Element #10. This bill is co-sponsored by the Nonprofit Housing Association of Northern California (NPH) and Enterprise Community Partners, Inc. and calls for the creation of a regional housing entity to raise funds and support local jurisdictions to help achieve the region's bold housing goals.
- Discussion:**
- Funding**
The primary stated purpose of AB 1487 is to raise regional funding for affordable housing to help close an estimated annual funding shortfall of \$2.5 billion to address the region's affordable housing production, preservation and tenant protection needs. Unlike transportation, which has long had access to substantial regional funding through bridge tolls and federal and state funds distributed at the regional level, affordable housing is strictly reliant upon private, local, state and federal funding. A regional funding source would be immensely valuable to help close the funding gap on affordable housing projects that are otherwise struggling to cobble together enough funds across multiple sources, especially for those jurisdictions that have less resources available at the local level.
- Key Concerns**
From a policy perspective, staff agrees that establishing a regional funding source for affordable housing production and protection-related needs is likely a necessity if we are to make serious progress on the housing crisis. Opportunities to build or preserve affordable housing projects are unpredictable, making a more robust regional funding source a useful option, instead of every jurisdiction needing to close the funding gap by levying taxes locally that might not be put to use for many months or even years.
- However, in our various meetings with local elected officials over the last few months we heard concerns about the use of a sales tax or parcel tax for a regional housing program due to concerns this might supplant *future* revenue raising opportunities at the local level. Concerns were also frequently raised regarding the establishment of another regional agency, which may duplicate authorities of existing regional agencies, and/or local governments. While staff does not have a

recommendation on these points per se, we are raising them for discussion given their importance. In addition to those observations, we outline some significant practical and operational concerns we have with the bill.

Start-Up Funding

The bill requires that MTC staff the HABA but does not provide any start-up or sustaining funding associated with imposition of this new role. While the bill authorizes up to 3 percent of voter-approved funds to be reserved for administrative costs, this doesn't address how the agency is to absorb what would be substantial near-term responsibilities before revenues are collected, or address what should occur if any or all contemplated voter-approved measures fail. In addition, the bill requires that either ABAG or MTC reimburse the counties for the cost of placing the measure on the ballot. The RM 3 election cost MTC \$3.2 million in direct charges from county election offices. Neither agency has funding available (or even eligible) to cover this cost if an election fails.

As such, we recommend amendments to ensure that no new responsibilities are assigned to MTC or ABAG without a) providing a guaranteed source of support funding that is not dependent upon voter approval; and b) including a provision for the re-evaluation and potential dissolution of HABA in the event that the compendium of funds approved by the voters are determined to fall substantially short of the amounts needed to meaningfully address the housing crisis across the region.


Governing Board

The current version of the bill has removed all references to ABAG and MTC as the foundational membership for the HABA governing board, to provide for further discussion of this critical question at the regional level. Nonetheless, we remain concerned that the bill could require MTC staff to serve a new and separate board, potentially placing staff in a conflicted situation. While we have no specific recommendation on the governance question, we believe it is critical that we communicate to the author and bill supporters that neither ABAG nor MTC can support an outcome where MTC staff are assigned to directly report to a newly structured board.

Recommendation: Seek Amendments

Bill Positions: See attached

Attachments: Attachment A: Bill Positions


Therese W. McMillan

Official Positions on AB 1487 (Chiu)

Support

Bay Area Council
Bay Area Housing Advocacy Coalition
Burbank Housing Development Corporation
California Community Builders
California YIMBY
Chan Zuckerberg Initiative
Enterprise Community Partners, Inc.
Greenbelt Alliance
Habitat For Humanity East Bay/Silicon Valley
Non-Profit Housing Association Of Northern California (Nph)
Pico California
Silicon Valley At Home (Sv@Home)
Techequity Collaborative
TMG Partners
Urban Displacement Project, Uc-Berkeley

Support If Amended

Community Legal Services In East Palo Alto
Genesis
Monument Impact
City of Oakland
Public Advocates Inc.
San Francisco Foundation
City of Vallejo

Oppose

California Taxpayers Association
Howard Jarvis Taxpayers Association

Oppose Unless Amended

Alameda County Transportation Commission



Office of the Mayor

2a.29

CONSENT CALENDAR
June 11, 2019

To: Members of the City Council
From: Mayor Jesse Arreguin
Subject: Measure O Affordable Housing Bonds and a Request for Proposals from the City's Housing Trust Fund

RECOMMENDATION

Adopt a Resolution:

1. Directing the City Manager to prepare any documents required to use Measure O bond funds and Housing Trust Funds to fulfill existing funding reservations for the Berkeley Way and 1601 Oxford affordable housing projects; and
2. Directing the City Manager to release a Request for Proposals (RFP) under the City's Housing Trust Fund (HTF) guidelines for affordable housing development with a priority given to projects meeting certain readiness criteria, to be funded by the balance of the first issuance of Measure O funds (estimated at \$30M) and the Housing Trust Fund that remain after fully funding the projects identified above; and
3. Directing the Measure O Bond Oversight Committee:
 - a. To act in any role specified for the Housing Advisory Commission in the HTF Guidelines for the purpose of this RFP for both Measure O and existing HTF funds,
 - b. To be responsible for providing both general priority recommendations and project-specific funding recommendations for Measure O bonds to the City Council; and
 - c. To add the Housing Advisory Commission's Chair to the committee as an ex-officio, non-voting member; and
4. Approving certain waivers of the HTF Guidelines to ensure timely funding awards in this funding round and allow for consideration of a Berkeley Unified School District-sponsored educator housing development serving households at up to 120% of Area Median Income.

POLICY COMMITTEE RECOMMENDATION

On May 16, 2019, the Land Use, Housing & Economic Development Committee adopted the following action: M/S/C (Arreguin/Hahn) to send the item to the full Council with a Positive Recommendation. Vote: All Ayes.

BACKGROUND

On November 6, 2018, Berkeley voters approved Measure O, authorizing the City to issue up to \$135M in general obligation bonds to support the development,

rehabilitation, and preservation of affordable housing for extremely low-, very low-, low-, median-, and middle-income households, including teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations. The City's bond counsel indicated that up to \$30M in Measure O funds can be reserved through the first issuance in late 2019 or early 2020. In addition to a predevelopment loan, Council reserved \$23.5M for Berkeley Way. Of that Berkeley Way reservation, \$14M will be for the project's capitalized operating reserve which is not a Measure O-eligible expense and will require a local funding source, such as mitigation fees in the HTF or General Funds received pursuant to Measure U1. The BHA's recent approval of project-based Section 8 vouchers is expected to greatly reduce this need. Council also reserved \$6M in funding for 1601 Oxford on October 16, 2018. All funds requested for 1601 Oxford are Measure O eligible. To date, Council has not identified sources of funding for the reservations.

On May 9, 2019, the Berkeley Housing Authority board voted to allocate a total of 75 project-based Section 8 vouchers to the project, including 53 for the permanent supportive housing component. If the project can satisfy all of the voucher program's requirements during this calendar year, these vouchers will significantly reduce the need for the \$14M capitalized operating reserve. The project may still need to include a smaller, funder-required operating reserve; BRIDGE is currently revising the budget in preparation for work with City staff on examining this issue. Since the project is still waiting on state funding awards and the operating subsidies still require closer examination, the attached resolution does not yet specify the sources for meeting the project's funding reservation. Staff will work with BRIDGE with a goal of reducing the total amount of City funds needed and minimizing the amount of non-Measure O funds (i.e. General Funds received pursuant to Measure U1, mitigation fee revenue, and other funding sources for the Housing Trust Fund.)

On June 13, 2017, with Resolution 68,025-NS, Council made the full funding of the Berkeley Way project the first priority for funds allocated to the HTF program. Until the reserve needs of that project have been finalized, HTF program funds are not available for other projects. Therefore, although projects can apply for HTF predevelopment funding at any time, there are no funds currently available. Staff have determined that Measure O funds cannot be used for predevelopment, but the City could provide a predevelopment loan from another source for example, General Funds received pursuant to Measure U1, and then a Measure O funded loan could repay the predevelopment loan at the time of construction start and stay in the project as permanent financing. Satellite Affordable Housing Associate's predevelopment loan for 2527 San Pablo Avenue has been recommended for funding by the Housing Advisory Commission, but is still outstanding since no funds are currently available for predevelopment loans. The Council could consider making a pool of General Funds available for predevelopment loans.

The HTF program has a current balance of approximately \$4.5M. HTF funds include funds generated through local impact and mitigation fees and approximately \$1M in federal HOME funds. The HOME funds carry commitment and expenditure requirements, and staff would need to review existing projects and proposed projects for suitability with the HOME program requirements. The HTF Guidelines were adopted to formalize the processes and standards for awarding City HTF funds. The guidelines include certain thresholds for borrower eligibility, and standards for developer capacity.

The HTF Guidelines require projects to restrict at least 60% of the units to households earning below 30% and 60% AMI. The guidelines identify the Housing Advisory Commission as the public body designated to make recommendations on funding priorities and recommendations for affordable housing. HTF guidelines are being updated to remove duplicative requirements and help streamline processes, but the revisions will not be finalized prior to the RFP issuance.

CURRENT SITUATION AND ITS EFFECTS

Assuming a \$30M issuance of Measure O bond funds later this year, the City will have approximately \$34.5M in Measure O bond funds and HTF funds for affordable housing developments. The City has already reserved \$29.5M for the Berkeley Way and 1601 Oxford projects for which funding sources have not previously been identified.

The attached resolution prioritizes using those funds for \$29.5M in existing reservations for Berkeley Way and 1601 Oxford. However, due to Berkeley Way's proposed funding including up to \$14M for a capitalized operating reserve it is likely that the \$29.5M could be greatly reduced or eliminated due to project-based Section 8 vouchers approved by the Berkeley Housing Authority and described in more detail in the Background, resulting in these funds being returned to the Measure O/HTF pool of funds and available for other projects. The purpose of the capitalized operating reserve is to subsidize homeless tenant rents for about 16 years, and it is not Measure O- or HOME-eligible; these funding requires another local source (general fund/U1). Staff will be working with BRIDGE to minimize the impact of the funding need from local sources.

The Measure O funds and HTF funds remaining after both Berkeley Way and 1601 Oxford are fully funded can then be combined into a Request for Proposals (RFP). This RFP would make approximately \$14.5M in Measure O funds available; HTF funds will be dependent on the need to capitalized Berkeley Way's operating reserve noted above. Due to the anticipated demand for City funding, it is recommended that projects are prioritized based on how far along they are in the predevelopment process, in addition to typical criteria such as developer capacity and project feasibility. Eligible proposals include applications for acquisition, development, or renovation of projects for the purpose of creating or preserving affordable housing units. Since HTF guidelines allow projects to apply for predevelopment funding at any time, the emphasis of this RFP would be development loans for permanent financing, provided at the time of construction.

The RFP would be issued based on the HTF Guidelines, with certain sections waived to mitigate duplicative processes and facilitate the expedient reservation of funds. Specifically, the City would waive sections related to noticing neighbors within a certain radius of the proposed project, which is already required by Planning as part of the entitlement process. The City would also waive the requirement to solicit feedback on RFP priorities and applications from City commissions, other than the Measure O Bond Oversight Committee, which can add several months to the RFP process, particularly during the summer when commissions meet less frequently. This would in no way preclude commissions from providing feedback at any point in the process.

Based on actions taken by the Land Use, Housing & Planning Policy Committee on May 16, 2019, the resolution creates the opportunity for Berkeley Unified School District-

sponsored projects serving educator households earning up to 120% of the Area Median Income to be considered in this RFP. These projects would otherwise not meet the HTF guidelines' affordability requirements.

In addition, the attached Resolution establishes the Measure O Bond Oversight Committee as the body to assume any roles delegated to the Housing Advisory Commission in the HTF Guidelines for the purpose of this RFP. This includes providing input on RFP priorities, reviewing applications, and making funding recommendations to Council for both the Measure O funds and any available balance of the HTF program that is left after fully funding Berkeley Way.

At its May 15, 2019 meeting, the Measure O Bond Oversight Committee approved correspondence (Attachment 1) expressing interest in providing both general recommendations on priorities for Measure O bond funds and the distribution of funds to eligible areas, and specific recommendations on the use of Measure O funds for specific projects. The attached resolution provides that direction. Staff recommend that for each new priority area, the City develop administrative guidelines and competitive processes before awarding funds for specific projects.

The proposed HTF Program RFP, using both Measure O bond funds and the HTF balance, subject to input and recommendations by the Measure O Bond Oversight Committee, is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

RATIONALE FOR RECOMMENDATION

Allocating Measure O and HTF funds to Berkeley Way and 1601 Oxford will facilitate moving these projects forward to construction on schedule and help the City identify the types and amounts of funding available for other affordable housing projects. Issuing an RFP will allow the City to identify a pipeline for future projects and facilitate a transparent and fair public process to provide financial support for affordable housing developments. These recommendations were discussed and supported by the Land Use, Planning & Economic Development Policy Subcommittee at its May 16, 2019 meeting and at Staff presentations on January 15, 2019 Measure O worksession report, and the Land Use, Housing & Economic Development Policy Committee reports from April 25, 2019 and May 2, 2019.

FISCAL IMPACTS OF RECOMMENDATION

These recommendations will commit up to \$30M in Measure O funds and up to the available balance of the Housing Trust Fund (currently approximately \$4.5M) to affordable housing developments.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Mayor Jesse Arreguín, 510-987-7100

Attachments:

- 1: May 15, 2019 Correspondence from the Measure O Bond Oversight Committee
- 2: Resolution

Attachment 1: Correspondence from the Measure O Bond Oversight Commission

May 15, 2019

Dear Honorable Members of the Land Use, Housing and Economic Development Policy Committee:

The Measure O Bond Oversight Committee (“MOBOC”) respectfully submits this letter in order to share our desired role and responsibilities.

As you know, the Measure O ballot question stated that the use of Measure O funds would be “subject to citizen oversight and independent audits.” Additionally, the Measure O impartial analysis stated, in part, that Measure O “include[d] financial accountability requirements to ensure that the expenditure of Bond proceeds will be used only for the purpose of financing affordable housing projects and related costs. Financial accountability measures include an annual independent financial audit and oversight by an independent oversight committee to ensure that Bond proceeds are expended to finance affordable housing projects.” MOBOC enthusiastically embraces its role as an independent oversight committee and we look forward to fulfilling this required responsibility.

MOBOC is also interested in, and believes it has the expertise to be entrusted with, additional responsibilities regarding the use of Measure O funds and affordable housing funds more broadly. MOBOC respectfully requests that it be tasked with the following responsibilities:

- To provide **general recommendations** to the City Council on (a) the priorities for Measure O funds as well as (b) the distribution of Measure O funds for eligible program areas
- To provide **specific recommendations** as to the use of Measure O funds for specific projects (e.g., Berkeley Way)

To the extent the Land Use, Housing & Economic Development Policy Committee feels that it is appropriate and would not contribute to procedural duplication, MOBOC also would be interested in taking on the same responsibilities (i.e., providing general and specific recommendations) with respect to other affordable housing funding sources (e.g., General Fund.)

At its May 15, 2019 meeting, the MOBOC took the following vote in support of this letter:

Action: M/S/C (Tregub/Calavita) to send a letter, with edits noted, to the Land Use, Housing and Economic Development Policy Committee outlining the Committee’s desired roles and responsibilities.

Vote: Ayes: Calavita, Cutler, Daniels, Marthinsen, Smith and Tregub. Noes: None. Abstain: None. Recused: Oatfield. Absent: Carr (excused) and Williams (unexcused).

June 11, 2019

Thank you for your consideration.

Sincerely,

Josh Daniels, Chair

On Behalf of the Measure O Bond Oversight Committee

June 11, 2019

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

RESERVING MEASURE O AND HOUSING TRUST FUND PROGRAM FUNDS FOR
BERKELEY WAY AND 1601 OXFORD, AND ISSUING A REQUEST FOR
PROPOSALS FOR AFFORDABLE HOUSING DEVELOPMENT PROJECTS

WHEREAS, on November 6, 2018, Berkeley voters approved Measure O, a \$135 million affordable housing bond measure to support the acquisition, development, and renovation of property for the creation or preservation of affordable housing; and

WHEREAS, the City's bond counsel indicated that approximately \$30 million is available for the first issuance of Measure O bonds; and

WHEREAS, City Council established a Housing Trust Fund Program (the "HTF Program") to assist in the development and expansion of housing affordable to low and moderate income persons who either work or reside within the City of Berkeley; and

WHEREAS, the HTF Program has approximately \$4.5 million in uncommitted funds, which, combined with the first issuance of Measure O bonds, creates \$34.5 million in City funds available to support affordable housing development projects; and

WHEREAS, on June 26, 2018 and December 4, 2018, Council made two reservations of development funding for Berkeley way totaling \$23.5 million, of which \$9.5 million is Measure O-eligible; and

WHEREAS, on October 16, 2018, Council reserved \$6 million for the development of 1601 Oxford; and

WHEREAS, City Council did not identify the source(s) of funds to be used for the Berkeley Way and 1601 Oxford reservations; and

WHEREAS, City Council appointed a Measure O Bond Oversight Committee to oversee Measure O funding and confirm that expenditures meet the intent of the measure; and

WHEREAS, City Council adopted HTF guidelines (the "Guidelines"), as revised on April 5, 2016, and authorized the City Manager to implement the HTF Program in accordance with the Guidelines; and

WHEREAS, the HTF Guidelines designate the Housing Advisory Commission to make funding recommendations to Council for HTF funds; and

WHEREAS, the City has not adopted Measure O-specific guidelines for administering and reserving the bond funds; and

WHEREAS, the HTF Guidelines currently require developments that receive HTF funding to establish rent limits below the threshold criteria for Moderate Income households that would exclude many households employed by the Berkeley Unified School District.

June 11, 2019

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to prepare any documents required to use funds from the Measure O bond and Housing Trust Fund Program to fulfill existing funding reservations for the Berkeley Way and 1601 Oxford affordable housing projects.

BE IT FURTHER RESOLVED, the City Manager is hereby authorized to issue a Request for Proposals for the balance of the Measure O and HTF Program funds remaining after the Berkeley Way and 1601 Oxford reservations are fulfilled, estimated at up to \$19 million, which will be made available for affordable housing developments and prioritized for projects meeting certain readiness criteria.

BE IT FURTHER RESOLVED, that the Measure O Bond Oversight Committee will:

1. Act in any role specified for the Housing Advisory Commission in the HTF Guidelines for the purpose of both Measure O and funds in the Housing Trust Fund balance for this RFP; and
2. In the implementation of Measure O, provide both general priority recommendations and project-specific funding recommendations to the Council; and
3. Add the Housing Advisory Commission's Chair to the committee as an ex-officio, non-voting member.

BE IT FURTHER RESOLVED, that the Request for Proposals will be issued in accordance with the HTF Guidelines, with the following sections waived to encourage an expedient process:

1. Section VI.C.5, which requires that staff solicit recommendations for housing priorities from interested commissions.
2. Section VI.B.3.c and VI.B.3.d, which require that staff forward proposal summaries to the Planning Commission, Zoning Adjustments Board, and the Commission on Disability.
3. Section VI.B.3.e, which requires that written notice of the public hearing be given to neighbors within 300 feet of the proposed project.
4. For applications for educator-serving housing sponsored by the Berkeley Unified School District (BUSD), Section VI.A.1.a which establishes rent restrictions. Units funded in BUSD-sponsored educator housing will be limited to households earning up to Moderate Income with associated rent limits. The Guidelines define Moderate Income as up to 120% of the Area Median Income.



Kate Harrison
Councilmember District 4

2a.30

CONSENT CALENDAR
June 11th, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Strike Debt Bay Area's Medical Debt Relief Effort in Cooperation with RIP Medical Debt: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds.

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$150 from Councilmember Kate Harrison, to Strike Debt Bay Area's Medical Debt Relief Effort (<https://secure.ggiv.com/event/strikedebtbayarea/>), in cooperation with and hosted by RIP Medical Debt, a 501(c)(3) tax-deductible non-profit corporation. Funds would be relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Harrison and any other Councilmembers who would like to contribute.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; \$150 is available from Councilmember Kate Harrison's Council Office Budget discretionary account.

ENVIRONMENTAL SUSTAINABILITY

None.

BACKGROUND

Strike Debt Bay Area is a local activist group dedicated to fighting against unjust debt. In partnership with RIP Medical Debt, a non-profit corporation with extensive experience in the medical debt market, they are conducting a campaign to raise at least \$15,000 to buy up and then annul more than \$1,000,000 in unpaid medical debt owed by residents of Berkeley, Alameda County and the greater East Bay. RIP Medical Debt has partnered with many local groups across the country in similar campaigns, including nurses in Michigan, high school students in Florida and a church in Annapolis. In existence since 2012, Strike Debt Bay Area has taken part in the campaigns to Save the Downtown Berkeley Post Office from Privatization and for an East Bay Public Bank, supported the country's only nonprofit check-cashing operation, and worked with KPFA on a set of debt-related radio segments, among its many projects.

In America, 41% of people are struggling to pay their medical bills or have accumulated medical debt over time.¹ 60% of all uninsured and underinsured people have medical debt of some kind and, of every person with medical debt, the largest share, 11%, were 27 years old², as they are no longer under parents' insurance. Escalating debt over time can affect people's ability to buy houses or automobiles or even have children. With such a large share of people in debt being millennials, debt is now a generational issue.

RIP Medical Debt and other organizations like it purchase bundles of medical debt on the market, allowing them to pay it off for pennies on the dollar. Bundle purchasing of this kind is often the best chance people have of paying off their debt for good. Several hundred dollars for the Berkeley City Council can relieve thousands of dollars in medical debt for people in Berkeley and the Bay Area.

CONTACT PERSON

Kate Harrison, District 4 510-981-7140

ATTACHMENT: 1: Resolution

¹ <https://www.commonwealthfund.org/publications/newsletter-article/survey-79-million-americans-have-problems-medical-bills-or-debt>

² <https://www.pbs.org/newshour/health/millennials-rack-up-the-most-medical-debt-and-more-frequently>

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE
EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR RIP
MEDICAL DEBT

WHEREAS, medical debt is a large and rapidly growing problem that can suddenly confront anyone, even those with insurance coverage; and

WHEREAS, the United States is the only G20 nation to allow its citizens to incur massive medical debt; and

WHEREAS, many individuals in the United States end up in medical debt to the tune of tens of thousands, and even hundreds of thousands, of dollars, with no possibility of being able to pay it off; and

WHEREAS, being in such debt causes serious stress, with deleterious mental and psychological effects; and

WHEREAS, RIP Medical Debt is a non-profit tax-exempt corporation created to buy up the right to collect debts at pennies or less on the dollar and cancel said debts; and

WHEREAS, RIP Medical Debt has already bought up and cancelled hundreds of millions of dollars of such debt, both through its own fundraising efforts and in partnership with local organizations and activist groups around the country; and

WHEREAS, Strike Debt Bay Area is a local activist organization which has participated in the campaign to save the Downtown Berkeley Post Office from privatization, the ongoing campaign for an East Bay Public Bank, supported the country's only nonprofit check-cashing operation, and has worked with Berkeley-based KPFA on a set of debt-related radio segments, among other campaigns; and

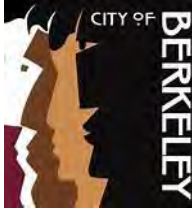
WHEREAS, Strike Debt Bay Area is partnered with RIP Medical Debt; and

WHEREAS, RIP Medical Debt seeks funds for their campaign, the *Strike Debt Bay Area Fundraiser* to eliminate more than \$1,000,0000 of the unpaid medical debts of unspecified and presently unknown individuals in the East Bay; and

WHEREAS, Strike Debt Bay Area has already raised, locally, over \$9000 for RIP Medical Debt to buy East Bay medical debt on the debt market;

THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from discretionary funds up to \$250 per office shall be granted to RIP Medical Debt's *Strike Debt Bay Area Fundraiser*; and

THEREFORE BE IT FURTHER RESOLVED that the funds either be donated online at the campaign website or a check be made out to RIP Medical Debt and sent to: RIP Medical Debt, Strike Debt Bay Area 2019 Campaign, 80 Theodore Fremd Ave., Rye, NY 10580.



Councilmember
Cheryl Davila
District 2

ACTION CALENDAR

June 11, 2019

(Continued from May 14, 2019)

To: Honorable Mayor and Members of the City Council
From: Councilmember Cheryl Davila
Subject: Budget Referral: Remediation of Lawn Bowling, North Green and Santa Fe Right-of-Way, FY2020-2021

RECOMMENDATION

Refer to the FY20 (2020/2021) RRV Budget Process for consideration of at least \$150,000 and up to remediate the Lawn Bowlers, North Green and Santa Fe Right-of-Way in advance of Request for Proposal (RFP) for these areas that potentially could provide much needed affordable alternative housing.

Refer to the Homeless Services Panel of Experts to consider Measure P funds for remediation purposes for these properties.

FISCAL IMPACTS OF RECOMMENDATION

Costs of remediation are estimated to range from \$150,000- \$TBD.

BACKGROUND

The City Attorney advised that in order to put a RFP out for the Lawn Bowler's and the North Green properties that remediation must be completed by the City first. Funding the currently needed reclamation is critical to preservation of these valuable City of Berkeley land assets and preventing further deterioration which would result in greater future costs of remediation.

Phase 1 and Phase 2 analysis was completed approximately four years ago. This item is seeking to confirm provision of either the General Fund or Measure P funds required to restore these areas which could provide an opportunity to create affordable tiny homes communities with gardens for the entire community.

RATIONALE FOR RECOMMENDATION

Remediation of these green spaces is in keeping with Berkeley's commitment of creating equitable housing opportunities for Berkeley residents. These properties would be ideal to create tiny home communities with food forests and gardens.

FINANCIAL IMPLICATIONS

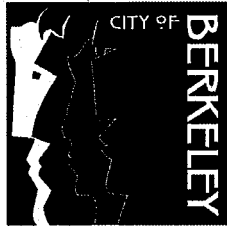
Depending on assessment of the level of remediation required, costs are estimated to range from \$150,000 – \$TBD.

ENVIRONMENTAL SUSTAINABILITY

Preservation of green spaces through remediation adds significantly to the environmental quality of life in Berkeley and operates to offset impacts of greenhouse gases affecting the overall environment.

CONTACT PERSON

Councilmember Cheryl Davila 510.981.7120



Kate Harrison
Councilmember, District 4

RECEIVED AT
COUNCIL MEETING OF: **2a.34**
MAY 14 2019

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

REVISED AGENDA MATERIAL

Meeting Date: May 14th, 2019

Item Number: 57

Item Description: Resolution: No U.S. Intervention in Venezuela

Submitted by: Councilmember Harrison

Changes made in consultation with members of the Peace and Justice Commission following comments from the April 30th Council meeting. Removes mentions of Maduro and of sanctions from the United States to clarify that this is an anti-intervention resolution.

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

NO U.S. INTERVENTION IN VENEZUELA

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code Chapter 3.68.070); and

WHEREAS, Trump administration officials have openly declared their intention to overthrow the duly elected ~~militarily intervene in the government of Venezuela~~ President Nicolás Maduro,¹ have urged the Venezuelan military to overthrow the Maduro government, has recognized a self-appointed opposition politician as president and vetoed any possibility of dialogue despite the efforts of Maduro, the governments of Venezuela, Mexico, and Uruguay, and Pope Francis; and

WHEREAS, the U.S. has tightened illegal-unilateral economic sanctions,² including the seizure of Venezuela's oil properties and bank accounts in the United States and financial sanctions that prevent Venezuela from producing its oil or securing credit or refinancing debt, thereby increasing the hardship on the people of Venezuela by preventing them from accessing imported foods and medicines, while hypocritically seeking to promote a military confrontation by forcing truckloads of aid across the Brazilian and Colombian borders;³ and

~~WHEREAS these unilateral sanctions are in violation of the UN and OAS⁴ Charters; and~~

WHEREAS, the U.S. has historically used its economic power to destabilize independent-minded countries, most famously Chile in the early 1970's, making the economy "scream,"⁵ as well as Nicaragua in the 1980's, and then using the peoples' economic misery as a pretext for military intervention;⁶ and

WHEREAS, Venezuela has the largest oil reserves in the world, and leading administration foreign policy officials have made clear the Trump administration's intention to turn Venezuela's oil over to U.S oil companies for exploitation;⁷ and

WHEREAS, Elliott Abrams has been named President Trump's Special Envoy to Venezuela, and is notorious for his central role in the 1980's as a top advisor to Presidents Reagan and Bush in the Iran-Contra scandal, which led to his conviction on criminal charges, and the arming of the Nicaraguan contras, the Salvadoran death squad government, and the genocidal regime in Guatemala responsible for the massacres of hundreds of thousands of indigenous people in that country;⁸ and

WHEREAS, the U.S. campaign of regime change in Venezuela is in violation of international law,⁹ against the interests of the people of Venezuela and the people of the United States;

NOW THEREFORE BE IT RESOLVED that the Council of the City of Berkeley affirms the sovereign right of the Venezuelan people to negotiate their political differences free

from foreign intervention, and urges that the U.S. government withdraw its illegal, unilateral financial sanctions and refrain from military, or diplomatic intervention in the internal affairs of the sovereign state of Venezuela; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley requests the City Clerk to send a copy of this resolution to Congresswoman Barbara Lee, Congresswoman Nancy Pelosi, Senator Dianne Feinstein, Senator Kamala Harris, President Trump, and Secretary of State Mike Pompeo.



Peace and Justice Commission

ACTION CALENDAR
June 11, 2019
(Continued from May 14, 2019)

To: Honorable Mayor and Members of the City Council
From: Berkeley Peace and Justice Commission
Submitted by: Igor Tregub, Chairperson, Peace and Justice Commission
Subject: Resolution: No U.S. intervention in Venezuela

RECOMMENDATION

Adopt a resolution that affirms the sovereign right of the Venezuelan people to negotiate their political differences free from foreign intervention, and urges that the U.S. government withdraw its illegal, unilateral financial sanctions and refrain from military, economic, or diplomatic intervention in the internal affairs of the sovereign state of Venezuela.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Trump administration officials have openly declared their intention to overthrow the duly elected government of Venezuelan President Nicolás Maduro. Years of U.S. sanctions have contributed to a severe economic crisis, following a decades-old pattern of destabilization of U.S. adversaries.

Using the crisis it helped create as a pretext, the U.S. administration recognized opposition leader Juan Guaidó as interim president of Venezuela, launching a diplomatic front to the campaign to undermine the elected government. Administration leaders have called on Venezuelan armed forces to mutiny, and have threatened that all military options are on the table to achieve regime change.

At its regular meeting on March 4, 2019, the Peace and Justice Commission recommended the Council of the City of Berkeley affirm the right to self-determination of the Venezuelan people, and urge that the U.S. government refrain from intervention in the internal affairs of the sovereign state of Venezuela.

M/S/C: Bohn/Lippman

Ayes: al-Bazian, Bohn, Chen, Gussman, Lippman, Meola, Morizawa, Pierce, Rodriguez, Tregub

Resolution: No U.S. intervention in Venezuela

ACTION CALENDAR
June 11, 2019

Noes: Maran

Abstain: None

Absent: Han, Pancoast

BACKGROUND

At its regular meeting on March 4, 2019, the Peace and Justice Commission recommended the Council of the City of Berkeley affirm the right to self-determination of the Venezuelan people, and urge that the U.S. government refrain from intervention in the internal affairs of the sovereign state of Venezuela.

The City of Berkeley has long expressed its opposition to U.S. military intervention and economic destabilization of sovereign nations in Asia, Africa, and Latin America.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The City of Berkeley has acknowledged that foreign interventions have a disastrous impact on life in cities such as Berkeley. The mandate of the Berkeley Peace and Justice Commission finds that: "The intentional destruction of cities in war is the rule and not the exception. The wealth to help the poor, heal the sick, house the homeless, educate the children, and care for the elderly is now spent on ever more costly weapons of mass destruction...Our best protection lies in initiating, devising, and promulgated peaceful and just policy alternatives." (Berkeley Municipal Code Chapter 3.68.010). As Rev. Martin Luther King Jr. put it in 1967, "The bombs we drop in North Vietnam are exploding in the ghettos and barrios of the U.S."

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

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

CONTACT PERSON

Igor Tregub, Chairperson, Peace and Justice Commission

Breanne Slimick, Commission Secretary, City Manager's Office (510) 981-7018

Attachments:

1: Resolution

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

NO U.S. INTERVENTION IN VENEZUELA

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code Chapter 3.68.070); and

WHEREAS, Trump administration officials have openly declared their intention to overthrow the duly elected government of Venezuelan President Nicolás Maduro,¹ have urged the Venezuelan military to overthrow the Maduro government, has recognized a self-appointed opposition politician as president and vetoed any possibility of dialogue despite the efforts of Maduro, the governments of Mexico and Uruguay, and Pope Francis; and

WHEREAS, the U.S. has tightened illegal unilateral economic sanctions,² including the seizure of Venezuela's oil properties and bank accounts in the United States and financial sanctions that prevent Venezuela from producing its oil or securing credit or refinancing debt, thereby increasing the hardship on the people of Venezuela by preventing them from accessing imported foods and medicines, while hypocritically seeking to promote a military confrontation by forcing truckloads of aid across the Brazilian and Colombian borders;³ and

WHEREAS these unilateral sanctions are in violation of the UN and OAS⁴ Charters; and

WHEREAS, the U.S. has historically used its economic power to destabilize independent-minded countries, most famously Chile in the early 1970's, making the economy "scream,"⁵ as well as Nicaragua in the 1980's, and then using the peoples' economic misery as a pretext for military intervention;⁶ and

WHEREAS, Venezuela has the largest oil reserves in the world, and leading administration foreign policy officials have made clear the Trump administration's intention to turn Venezuela's oil over to U.S oil companies for exploitation;⁷ and

WHEREAS, Elliott Abrams has been named President Trump's Special Envoy to Venezuela, and is notorious for his central role in the 1980's as a top advisor to Presidents Reagan and Bush in the Iran-Contra scandal, which led to his conviction on criminal charges, and the arming of the Nicaraguan contras, the Salvadoran death squad government, and the genocidal regime in Guatemala responsible for the massacres of hundreds of thousands of indigenous people in that country;⁸ and

WHEREAS, the U.S. campaign of regime change in Venezuela is in violation of international law,⁹ against the interests of the people of Venezuela and the people of the United States;

NOW THEREFORE BE IT RESOLVED that the Council of the City of Berkeley affirms the sovereign right of the Venezuelan people to negotiate their political differences free from foreign intervention, and urges that the U.S. government withdraw its illegal, unilateral financial sanctions and refrain from military, or diplomatic intervention in the internal affairs of the sovereign state of Venezuela; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley requests the City Clerk to send a copy of this resolution to Congresswoman Barbara Lee, Congresswoman Nancy Pelosi, Senator Dianne Feinstein, Senator Kamala Harris, President Trump, and Secretary of State Mike Pompeo.



[Commission Name]

¹ “Trump's declaration on Venezuela sets stage for 'confrontational moment',” CNN, January 24, 2019,

<https://www.cnn.com/2019/01/23/politics/venezuela-us-showdown/index.html>

² “Coercion, whether military or economic, must never be used to seek a change in government in a sovereign state,” said Idriss Jazairy, a UN special rapporteur concerned with the negative impact of sanctions.” From article: “The US is orchestrating a coup in Venezuela,” Marjorie Cohn, professor emerita at Thomas Jefferson School of Law, former president of the National Lawyers Guild, deputy secretary general of the International Association of Democratic Lawyers, February 2, 2019, <https://truthout.org/articles/the-us-is-orchestrating-a-coup-in-venezuela/>

³ The United Nations and the Red Cross have refused to participate in Washington’s controversial aid plan to Venezuela. “We will not be participating in what is, for us, not humanitarian aid.” From article: “Red Cross, UN slam ‘Politicised’ USAID Humanitarian Assistance to Venezuela,” February 11, 2019, <https://venezuelanalysis.com/news/14316>

⁴ OAS Charter--Article 15: “No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements.”

ARTICLE 16: “No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.”

<https://treaties.un.org/doc/Publication/UNTS/Volume%20119/volume-119-I-1609-English.pdf>

⁵ “Measures were undertaken in 1970 to try to prevent a free and democratic election. There was a huge amount of black propaganda about how if Allende won, mothers would be sending their children off to Russia to become slaves-stuff like that. The US also threatened to destroy the economy, which it could-and did-do.

“Q: Nevertheless, Allende won. A few days after his victory, Nixon called in CIA Director Richard Helms, Kissinger and others for a meeting on Chile. Can you describe what happened?”

“A: As Helms reported in his notes, there were two points of view. The “soft line” was, in Nixon’s words, to “make the economy scream.” The “hard line” was simply to aim for a military coup.

“Our ambassador to Chile, Edward Korry, who was a Kennedy liberal type, was given the job of implementing the ‘soft line.’ Here’s how he described his task: ‘to do all within our power to condemn Chile and the Chileans to utmost deprivation and poverty.’ That was the soft line.”

Secrets, Lies, and Democracy, Noam Chomsky, 1994, <https://chomsky.info/secrets04/>

⁶ “These sanctions have cut off the means by which the Venezuelan government could escape from its economic recession, while causing a dramatic falloff in oil production and worsening the economic crisis, and causing many people to die because they can’t get access to life-saving medicines. Meanwhile, the US and other governments continue to blame the Venezuelan government — solely — for the economic damage, even that caused by the US sanctions,” Noam Chomsky, former UN Rapporteur Alfred de Zayas, Phyllis Bennis, Boots Riley, and some 65 other academics and experts, January 24, 2019, <https://www.commondreams.org/news/2019/01/24/open-letter-over-70-scholars-and-experts-condemns-us-backed-coup-attempt-venezuela>

“The threats, the economic war, the financial blockade and the sanctions violate both the UN Charter and the OAS Charter.” February 23, 2019, <https://dezayasalfred.wordpress.com/2019/02/23/open-letter-to-the-united-nations-secretary-general-antonio-guterres-and-to-the-high-commissioner-for-human-rights-michelle-bachelet/>

⁷ Perhaps most brazenly, [National Security Adviser John] Bolton appeared in [an interview on Fox Business](#) and disclosed that the U.S. government was in talks with American corporations on how to capitalize on Venezuela's oil reserves, which are proven to be the [world's largest](#). We're in conversation with major American companies now," he said. "I think we're trying to get to the same end result here. ... It will make a big difference to the United States economically if we could have American oil companies really invest in and produce the oil capabilities in Venezuela," Time Magazine, January 30, 2019, <http://time.com/5516920/inside-john-boltons-month-long-p-r-campaign-against-venezuelas-government/>

⁸ "Why Ilhan Omar and Elliott Abrams Tangled Over U.S. Foreign Policy," <https://www.nytimes.com/2019/02/14/us/politics/ilhan-omar-elliott-abrams.html>

"Guatemalan Army Waged 'Genocide,' New Report Finds," <https://www.nytimes.com/1999/02/26/world/guatemalan-army-waged-genocide-new-report-finds.html>

⁹ UN Charter—Article 2: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." <http://www.un.org/en/sections/un-charter/un-charter-full-text/>

See also OAS Charter, above



Housing Advisory Commission

2a.36a

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Housing Advisory Commission
Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission
Subject: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

RECOMMENDATION

Establish policies that will provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved.

Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

FISCAL IMPACTS OF RECOMMENDATION

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

BACKGROUND

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The HAC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations?

The Housing Advisory Action adopted the following motion at its March 7, 2019 meeting:

Action: M/S/C (Tregub/Wolfe) to recommend to City Council that it set in place the policies that would provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. In addition, the HAC recommends that the City Council commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

Vote: Ayes: Abdesahian, Johnson, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: Lord. Absent: Owens (excused) and Sargent (excused).

ENVIRONMENTAL SUSTAINABILITY

This recommendation to undertake fact finding into what happened at 1911 Harmon Street does not impact the environment directly. However, if this recommendation ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

RATIONALE FOR RECOMMENDATION

This recommendation is an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. Both renters and homeowners can be negatively impacted by these code violations. Therefore efforts to address them in a constructive and expeditious manner would be consistent with the HAC's and City of Berkeley's other ongoing priorities.

ALTERNATIVE ACTIONS CONSIDERED

The Housing Advisory Commission will be examining ways to assist lower- and moderate-income homeowners in the future whose homes have code violations, but who lack the financing to abate all the violations in a timely manner.

CITY MANAGER

See companion report.

CONTACT PERSON

Mike Uberti, Acting Commission Secretary, HHCS, (510) 981-5114



Peace and Justice Commission

2a.36b

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Peace and Justice Commission
Submitted by: Igor Tregub, Chairperson, Housing Advisory Commission
Subject: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants

RECOMMENDATION

The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

The Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged

code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and

3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. “Reimburse” Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

FISCAL IMPACTS OF RECOMMENDATION

Staff time and up to \$68,000 if recommendation (5) above is adopted.

CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley’s code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City’s Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

BACKGROUND

At its regularly scheduled March 4, 2019 meeting, the PJC took the following action:

Action: To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

Motion by: Lippman

Seconded by: Bohn

Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

Noes: None

Abstain: None

Absent: Han, Pancoast

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The PJC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations? Further, the PJC feels that adoption of these recommendations would ensure that the City take steps to make Mr. Powell whole and allow him to recover possession of his property upon the abatement of any remaining code violations.

ENVIRONMENTAL SUSTAINABILITY

These recommendations do not impact the environment directly. However, if the application of these recommendations ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

RATIONALE FOR RECOMMENDATION

These recommendations are an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. They are also consistent with the Peace and Justice Commission's charter and goals.

ALTERNATIVE ACTIONS CONSIDERED

Several additional recommendations were also suggested to the PJC by community members. The PJC elected to focus only on those recommendations that it deemed to be most constructive toward the achievement of the goals enumerated above and resulting in interests that further equity and justice for Berkeley homeowners and tenants.

CITY MANAGER

See companion report.

CONTACT PERSON

Breanne Slimick, Associate Management Analyst, 981-7018

Attachments:

1. Letter to Judge Brand

**RESOLUTION
IN SUPPORT OF BRINGING JUSTICE TO MR. LEONARD POWELL AND TO
CHANGE CERTAIN POLICIES TO ENSURE HOUSING STABILITY FOR
HOMEOWNERS AND TENANTS**

Whereas Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family; and

Whereas since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him; and

Whereas the conversion from a duplex to a single family home was done without permits and inspections; and

Whereas several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell; and

Whereas although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed; and

Whereas since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance; and

Whereas many more repairs were made than were requested, bringing the total costs to over \$600,000; and

Whereas the house is now certified by the City for occupancy; and

Whereas Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans; and

Whereas Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised; and

Whereas at its regularly scheduled March 4, 2019 meeting, the Berkeley Peace and Justice Commission (PJC) took the following action:

Action: To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

Motion by: Lippman

Seconded by: Bohn

Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

Noes: None

Abstain: None

Absent: Han, Pancoast; and

; and

Whereas the Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements; and

Whereas PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds; and

Now, Therefore, Be it Resolved that the Berkeley City Council adopt the actions recommended by the PJC.

[Month] [Day], 2019

The Honorable Jeffrey Brand
Judge, Alameda County Superior Court
24405 Amador Street, Department 511
Hayward, California 94544

Fax: (510) 690-2824
Email: dept511@alameda.courts.ca.gov

Re: **Mr. Leonard Powell - Alameda County Case No. RG1576267**
1911 Harmon Street
Berkeley, California

Dear Judge Brand:

The Berkeley City Council writes to express concern over the case of Mr. Leonard Powell, a longtime resident, homeowner and valued member of our community. We write to thank you for the fairness and justice of your recent decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and for allowing Mr. Powell and his friends and family time to make the necessary financial arrangements. We hope to see a speedy and just resolution to this longtime case.

This case began when police accompanied by Berkeley Code Enforcement entered Mr. Powell's home during the investigation of an alleged drug crime by a family member. No criminal charges were levied. However, code violations originally estimated at between \$200,000 and \$300,000 have now ballooned to more than \$700,000, threatening Mr. Powell and his family with the loss of their home, loss of the inheritance, loss of their equity and security.

While we understand that the court appointed a receiver to correct the outstanding code violations, the work appears to have exceeded the original purpose and now the outstanding fines are too much for Mr. Powell to pay. Certainly Mr. Powell should not have let conditions deteriorate to the point of requiring such drastic action. However, given his age and limited income, we hope that you continue to exercise your discretion toward an outcome that is in the interest of justice.

Thank you for your time and consideration.

Sincerely,

Jesse Arreguin
Mayor, City of Berkeley
On behalf of the Berkeley City Council



Mental Health Commission

2a.37ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Berkeley/Albany Mental Health Commission

Submitted by: boona cheema, Mental Health Commission Chair

Subject: Law Enforcement Use of Restraint Devices in the City of Berkeley

RECOMMENDATION:

Adopt a resolution directing the Berkeley Police Department, and any other law enforcement providing mutual aid in Berkeley, to cease use of restraint devices (spit hoods, spit masks) and replace them with non-restraining safety equipment like N95 masks or an equivalent substitute. The use of spit hoods is traumatizing and escalating, risks asphyxiation and can be a violation of constitutional civil rights, particularly free speech. Stopping their use contributes to humanitarian and compassionate approach to those living with mental illness.

FISCAL IMPACTS OF RECOMMENDATION:

None.

CURRENT SITUATION AND ITS EFFECTS

Currently the Berkeley Police Department uses spit hoods when detaining or arresting someone who they are concerned may transfer or transmit fluids (saliva and mucous) to others. According to BPD guidelines, "Spit masks may be placed upon persons in custody when the officer reasonably believes the person will spit, either on a person or in an inappropriate place. They are generally used during application of a physical restraint, while the person is restrained, or during or after transport."¹

Often these are applied in situations in which someone is having a mental health crisis and/or an interaction with a police officer escalates into a mental health episode. The experience of police covering the head of those suffering a mental health crisis or episode and/or drug reaction with a restraint device which is both traumatizing and devastating. It almost always creates alarming fear, distress, panic and humiliation. There is also risk of serious injuries or death (such as asphyxiation), particularly as there is limited visual ability to observe individual's face and head while in crisis.

¹ Berkeley Police Department Law Enforcement Services Manual, Policy 302.5, Page 3.

As such, Amnesty International has publicly commented on how use of spit hoods can be “a cruel and dangerous form of restraint.”² The use of spit hoods may result in a wrongful death action, as well as constitute cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. In addition, its use may violate the United Nations Convention on Torture and Other Inhuman, Cruel and Degrading Treatment or Punishment (UNCAT), as well as the UN Convention on the Rights of People with Disabilities.

In Berkeley, the number of police calls for people having a mental health crisis is 35 percent or more (Dinkelspiel, Berkeleyside; 2015).³ Over the past 5 years, police have seen a 43 percent increase in calls for 5150s or people who are a danger to themselves or others (Dinkelspiel, Berkeleyside, 2015).⁴ Given that the Berkeley Police Department is often and increasingly called as a first responders to individuals who are experiencing severe mental illness and/or substance use disorder crises, it’s important that we not allow this cruel and dangerous practice to continue.

BACKGROUND

Historically, spit hoods device have been used in perpetuating extreme human brutality, systemic oppression and monstrous human atrocities. Its use today can immediately traumatize individuals, as well as perpetuate and reinforce intergenerational trauma and horrifying symbolism, especially considering its use against minorities to degrade, torture and execute.

As documented in the UK, using restraint devices such as spit hoods can have a disproportionate and discriminatory impact on minorities.⁵ Their use may violate the exercise of civil rights, particularly free speech, and/or result in discriminatory treatment towards them under civil rights law. Furthermore, human and civil rights have been violated when police use restraint devices in these types of crises to control or coerce people into police custody.

Police claim there is a need to protect their health from individuals who spit and the use of restraint devices like spit hoods will keep them safe. However, such a drastic overriding of human or civil rights violations and application of psychological and physical harms requires justification based on evidence and lack of alternatives. The evidence suggests that no real risk exists. A systematic review of studies concluded that

² The Independent. (2018). Police could get 'a good kicking' if spit guards extended, Met chief says. [online] Available at: <https://www.independent.co.uk/news/uk/home-news/police-good-kickingspitguards-scotland-yard-cressida-dick-a8524176.html> [Accessed 2 Mar. 2019].

³ Dinkelspiel, F. (2015). Mental health calls #1 drain on Berkeley police resources. [online] Berkeleyside. Available at: <https://www.berkeleyside.com/2015/04/16/mental-health-calls-are-1-drain-onberkeleypolice-resources> [Accessed 2 Mar. 2019].

⁴ Ibid

⁵ Gayle, D. (2017). Concern over Met police use of spit hoods on black detainees. [online] the Guardian. Available at: <https://www.theguardian.com/uk-news/2017/sep/02/concern-over-met-police-use-of-spithoods-on-black-detainees> [Accessed 2 Mar. 2019].

the risk of transmitting HIV through spitting as no risk, and further concluded that even the risk of transmission through biting to be negligible.⁶ In addition, a systematic literature review of Hepatitis C and B transmission concluded the risk of acquiring Hepatitis C (HCV) through spitting as negligible and as very low for Hepatitis B (HBV), and also showed the risk as low for acquiring HBV and HCV through biting.⁷

Not only is the violation of civil and human rights and brutality of spit masks not justified by the evidence, well-documented and easily accessible alternatives exist including N95 masks, eye guards, and, when absolutely necessary, mouth guards.

At the February 28, 2019 Commission meeting, the Mental Health Commission passed the following motion:

M/S/C (Fine, Posey) Motion to pass the spithood resolution and to submit the resolution to the City Council for approval

Ayes: Castro, cheema, Fine, Heda, Ludke, Posey; Noes: None; Abstentions: None; Absent: Davila (attended City Council Work Session).

At the April 25, 2019 Commission meeting the Mental Health Commission passed the following motion:

M/S/C (Davila, Castro) Withdraw the resolution that was previously passed regarding spithoods and replace it with the Council Item including a new resolution that is before us today.

Ayes: Castro, cheema, Davila, Fine, Heda, Kealoha-Blake, Ludke, Posey; Noes: None; Abstentions: None; Absent: None.

ENVIRONMENTAL SUSTAINABILITY

Not applicable

RATIONALE FOR RECOMMENDATION

The harm, cruelty and potential violation of civil and human rights, as well as the likelihood of intensifying a mental health or substance use intervention rather than de-escalating one, suggests an immediate end to the use of spit hoods and the substitution of them for least harmful and equally effective substitutes.

⁶ Cresswell, F., Ellis, J., Hartley, J., Sabin, C., Orkin, C. and Churchill, D. (2018). A systematic review of risk of HIV transmission through biting or spitting: implications for policy. Available at: <https://onlinelibrary.wiley.com/doi/epdf/10.1111/hiv.12625> [Accessed 2 Mar. 2019].

⁷ Pintilie, H. and Brook, G. (2018). Commentary: A review of risk of hepatitis B and C transmission through biting or spitting. Available at: <https://onlinelibrary.wiley.com/doi/pdf/10.1111/jvh.12976> [Accessed 2 Mar. 2019].

ALTERNATIVE ACTIONS CONSIDERED

The alternatives actions considered are the recommended less harmful, more humane use of N95 masks, eye guards and when absolutely necessary, mouth guards.

CITY MANAGER

See Companion Report

CONTACT PERSON

Karen Klatt, Mental Health Commission Secretary, HHCS, (510) 981-7644

ATTACHMENT

Resolution

Exhibit A: Background Information on Restraint Devices

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

LAW ENFORCEMENT USE OF RESTRAINT DEVICES IN THE CITY OF BERKELEY

WHEREAS, the use of restraint devices such as spit hoods may violate the United Nations Treaty on Torture, and Other Inhuman, Cruel and Degrading Treatment or Punishment (UNCAT); and

WHEREAS, Amnesty International has publicly commented on how use of spit hoods can be a cruel and dangerous form of restraint; and

WHEREAS, human and civil rights can be violated by law enforcement who use restraint devices such as spit hoods to arrest, detain, question, take into custody and/or incarcerate individuals; and

WHEREAS, law enforcement using restraint devices can have a disproportionate and discriminatory impact on minorities; and

WHEREAS, individuals can be traumatized by a devastating experience of law enforcement using restraint devices such as spit hoods and risk serious injury or death; and

WHEREAS, law enforcement is specially trained to use crisis intervention responses to assist individuals who are experiencing severe mental illness in public spaces; and

WHEREAS, law enforcement and Berkeley Mental Health are intended to work collaboratively to respond to mental health crises in the City of Berkeley.

NOW THEREFORE, BE IT RESOLVED, be it resolved that law enforcement shall not use restraint devices such as spit hoods in the line of duty.

BE IT FURTHER RESOLVED, be it resolved that law enforcement shall only use their own N95 masks or an equivalent substitute in the line of duty.

Proposed 2-Page Memo re: Police Use of Restraint Device, Spit Hoods, to Submit to the Berkeley City Council if Approved by Mental Health Commission¹

Police Use of Restraint Devices—Spit Hoods—to Respond to
People Experiencing Severe Mental Illness and/or Substance Use Disorder Crises

The Berkeley Police Department is often called as a first responder to individuals who are experiencing severe mental illness and/or substance use disorder crises in the community. In Berkeley, the number of police calls for people having a mental health crisis is 35 percent or more (Dinkelspiel, Berkeleyside; 2015).² Over the past 5 years, police have seen a 43 percent increase in calls for 5150s or people who are a danger to themselves or others (Dinkelspiel, Berkeleyside, 2015). As a result, the Berkeley Police Department has committed resources to address those individuals as first responders with crisis interventions and not force, coercion and punishment in the line of duty.

Specifically, the Berkeley Police Department (BPD) specially trains police officers to use crisis intervention responses; the Department has a Crisis Intervention Team. Further, the BPD has a formal partnership with the Division of Mental Health for the Cities of Berkeley and Albany to serve these individuals who need first responders to assist them during crises. Both the Police Department and this Division provide multiple details for coordinated crisis intervention response on their websites, as well as listing other resources.

It is evident the BPD and the Division of Mental Health are designed to work in tandem to respond in these types of crises. Overall BPD serves adults with severe mental illness and substance use disorder who are served by the Adult Clinic of the Division of Mental Health for the Cities of Berkeley and Albany—the public mental health system (“Berkeley Mental Health”).

Currently, however, the BPD is reconsidering the use of restraint devices—spit hoods—as an option to address people who engage in spitting and biting during a police encounter. For people needing crisis intervention services in the community, the use of this restraint device can create psychological and physical harms. Consequently, it may result in human and civil rights violations, especially if a crisis escalates. Additionally, some individuals living with severe mental illness and substance use disorder may also live primarily in public spaces so they are more exposed to policing than people who can afford to partly or entirely live in private.

¹The sole purpose of this memo is submission to the Mental Health Commission and the public in order for the Commission to consider passing a motion to submit it to the Berkeley City Council with the Resolution.

²Dinkelspiel, F. (2015). Mental health calls #1 drain on Berkeley police resources. [online] Berkeleyside. Available at: <https://www.berkeleyside.com/2015/04/16/mental-health-calls-are-1-drain-onberkeleypolice-resources> [Accessed 2 Mar. 2019].

Police Use of Restraint Devices—Spit Hoods—to Respond to
People Experiencing Severe Mental Illness and/or Substance Use Disorder Crises

Most important, human and civil rights can be violated when police use restraint devices in these types of crises to control or coerce people into police custody. It may violate the United Nations Convention on Torture, and Other Inhuman, Cruel and Degrading Treatment or Punishment (UNCAT). Amnesty International has publicly commented on how use of spit hoods can be “a cruel and dangerous form of restraint.”³ The use of spit hoods may further violate the United Nations Convention on the Rights of People with Disabilities.

Using restraint devices such as spit hoods can have a disproportionate and discriminatory impact on minorities.⁴ Their use can possibly violate the exercise of civil rights and/or result in discriminatory treatment towards them under civil rights law. It is also notable that mental illness and substance use disorder can both manifest as psychosis to where the diagnoses are indistinguishable and thus, may invoke disability rights protections.

Third, there is the likelihood individuals will be traumatized by a devastating experience of police covering their head with a restraint device; it can create alarming fear, distress, panic and humiliation. There is also risk of serious injuries or death (such as asphyxiation), particularly as there is limited visual ability to observe individual’s face and head while in crisis. Using both restraint devices—spit hoods and hand cuffs—can further injure an individual.

Historically, this restraint device has been used in perpetuating extreme human brutality, systemic oppression and monstrous human atrocities. Its use today can immediately traumatize individuals, as well as perpetuate and reinforce generational trauma and horrifying symbolism, especially considering its use against minorities to degrade, torture and execute.

Police claim there is a need to protect their health from individuals who spit and bite and the use of restraint devices like spit hoods will keep them safe. In this regard, there must be an evidence-based approach by city government to justify overriding any human or civil rights violations and likely psychological and physical harms. People living with severe mental illness and substance use disorder are likely more vulnerable than others without disabilities.

³The Independent. (2018). Police could get 'a good kicking' if spit guards extended, Met chief says. [online] Available at: <https://www.independent.co.uk/news/uk/home-news/police-good-kickingspitguards-scotland-yard-cressida-dick-a8524176.html> [Accessed 2 Mar. 2019].

⁴Gayle, D. (2017). Concern over Met police use of spit hoods on black detainees. [online] the Guardian. Available at: <https://www.theguardian.com/uk-news/2017/sep/02/concern-over-met-police-use-ofspithoods-on-black-detainees> [Accessed 2 Mar. 2019].

Police Use of Restraint Devices—Spit Hoods—to Respond to People Experiencing Severe Mental Illness and/or Substance Use Disorder Crises

The systematic literature review of scientific studies addressing transmission of HIV and Hepatitis B and C from spitting and biting can serve as an evidenced-based approach to determining the level of risk, if any, from these types of behaviors. First, a systematic review of studies concluded the risk of transmitting HIV through spitting as no risk, and further concluded the risk through biting as negligible (Cresswell, et al; 2018; 1).⁵

In addition, a systematic literature review of Hepatitis C and B transmission concluded the risk of acquiring Hepatitis C (HCV) through spitting as negligible and as very low for Hepatitis B (HBV)(Pintillie & Brooks, 2018; 1).⁶ This review also showed the risk as low for acquiring HBV and HCV through biting (Pintillie & Brooks, 2018; 1). It is notable that the former study on HIV focused on police, while the later study addressed emergency workers.

Overall it is considerably more important to preserve human and civil rights when an evidence-based approach shows this result and there is likely an alternative to using these restraint devices against people experiencing severe mental illness and substance use disorder crises. There are face guards that police can choose to use. Emergency medical and mental health workers may use them in assisting people experiencing these crises and in other roles.

In some localities, mental health clinicians are first responders who accompany police to assist individuals experiencing a severe mental health and substance use disorder crises in the community. The aim again is not to use force, coercion and/or punishment. If anything, the use of restraint devices like spit hoods may result in more severe harms.

For these reasons, the Berkeley Police Department should not use restraint devices like spit hoods in the line of duty. Thank you for your time.

⁵ Cresswell, F., Ellis, J., Hartley, J., Sabin, C., Orkin, C. and Churchill, D. (2018). A systematic review of risk of HIV transmission through biting or spitting: implications for policy. Available at: <https://onlinelibrary.wiley.com/doi/epdf/10.1111/hiv.12625> [Accessed 2 Mar. 2019].

⁶ Pintillie, H. and Brook, G. (2018). Commentary: A review of risk of hepatitis B and C transmission through biting or spitting. Available at: <https://onlinelibrary.wiley.com/doi/pdf/10.1111/jvh.12976> [Accessed 2 Mar. 2019].



Office of the Mayor

2a.38

CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Mayor Jesse Arreguín
Subject: Prioritizing Transit Improvements at MacArthur Maze

RECOMMENDATION

Adopt a Resolution requesting transit priority improvements to mitigate congestion associated with the MacArthur Maze Vertical Clearance Project.

BACKGROUND

The California Department of Transportation (Caltrans) is planning a project to increase the vertical clearance on some roadways within the MacArthur Maze. The project calls for either reconstructing, raising, lowering or replacing the following connectors:

- Westbound I-80 to eastbound I-580
- Westbound I-580 to westbound I-80
- Westbound I-80 to southbound I-880
- Eastbound I-80 to eastbound I-580

The project is huge, “probably running a close second to the building of the eastern span of the Bay Bridge” according to a Caltrans spokeswoman¹. The stated purpose of the rebuild is to bring the Maze’s connectors into compliance with state and national guidelines that call for a minimum clearance of 16 feet, 6 inches. The current connectors are 1 to 2 feet short. Currently, trucks that do not clear the Maze have to make lengthy detours.

Caltrans has issued a draft Environmental Impact Report (EIR) for this proposed project with a ‘negative declaration’, asserting the project will have no effect on air quality, transportation and traffic, with a less than significant impact on noise.

The construction associated with the project will likely divert significant automobile, freight, and transit traffic onto the streets of Berkeley and our neighbors in Emeryville and Oakland. The proposed infrastructure project centers around one of the most impactful choke points of the San Francisco/East Bay commute affecting 14,000 daily

¹ <https://www.sfchronicle.com/bayarea/philmatier/article/Rebuild-of-MacArthur-Maze-gets-tangled-up-in-East-13799916.php?psid=4Y0fP>

trips, projected to grow by a third by 2025. This will lead to increased gridlock, traffic backup, delayed commutes and more polluted air. Furthermore, nearly every driver or bus transit user that enters the interstate from Berkeley at Gilman, University or Ashby would be impacted by this project in their commute or daily travels. The Maze provides access to the South Bay, Highway 24, Downtown Oakland, Hayward and more. AC Transit has 14,000 riders on weekday transbay buses that would be delayed and 13,000 daily passengers on major surface streets that could be affected by diverted motorists.

With these significant impact to our transit systems and environment it is critical that this project prioritize transit improvements to mitigate congestion on our streets. Berkeley would join Oakland, and the AC Transit Board in supporting this resolution.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

Additional traffic congestion caused by this project during construction will likely increase greenhouse gas emissions. However, a design that results in time savings for transit or HOV travel can promote a mode shift toward more sustainable means of transportation.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: AC Transit Letter to Caltrans regarding MacArthur Maze Project

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

A RESOLUTION REQUESTING TRANSIT PRIORITY IMPROVEMENTS TO MITIGATE
CONGESTION ASSOCIATED WITH MACARTHUR MAZE VERTICAL CLEARANCE
PROJECT

WHEREAS, the California Department of Transportation (Caltrans) has issued a draft Environmental Impact Report (EIR) for a proposed project to increase vertical clearance on some roadways within the MacArthur Maze; and

WHEREAS, the Alameda-Contra Costa Transit District (District or AC Transit) operates nearly 1,000 bus trips each day through the MacArthur Maze, carrying more than 14,000 passengers through the interchange each weekday; and

WHEREAS, the construction associated with the project will likely divert significant automobile, freight and transit traffic onto the streets in the cities of Berkeley, Emeryville, and Oakland; and

WHEREAS, this change in traffic patterns will result in significant delays for transit operations and customers as well as negatively impact conditions for bicyclists and pedestrians; and

WHEREAS, this additional traffic will likely lead to an increase in traffic backup, gridlock, delayed commutes, and worse air quality in Berkeley; and

WHEREAS, once complete, the project will lead to an increase in freight traffic through the interchange, competing for already limited space for transit and leading to delays on AC Transit; and

WHEREAS, the region has made relieving congestion and reducing automobile traffic across the San Francisco-Oakland Bay Bridge a priority, including the completion of the Metropolitan Transportation Commission's Core Capacity Transit Study and through the recent passage of Regional Measure 3; and

WHEREAS, funding from Regional Measure 3 will result in a 30-percent increase in AC Transit Transbay service through the area which should be supported through opportunities to prioritize this increase in transit capacity; and

WHEREAS, the Alameda County Transportation Commission has prioritized improvements to local bus transit service through its County-wide Transportation Plan, which has resulted in such efforts as the San Pablo Avenue Corridor Project; and

WHEREAS, the inclusion of elements supporting transit priority and facilitating complete streets (include transit, bicycles, and pedestrians) within the MacArthur Maze Vertical

Clearance Project is necessary mitigation for the impact from construction and increased freight movement through the interchange; and

NOW, THEREFORE, the Council of the City of Berkeley does resolve as follows:

Section 1. Request that Caltrans include transit-only lanes on all roadways in the project where AC Transit currently operates transit service.

Section 2. Request that Caltrans include measures to mitigate transit service disruption and prioritize transit service in identified mitigations during the construction phase of the project through improvements including but not limited to: dedicated transit lanes, transit signal priority, transit queue-jump lanes, bus stop optimization and traffic signal coordination/actuation.

Section 3. Request that Caltrans coordinate with the cities of Berkeley, Emeryville & Oakland to provide dedicated transit lane access to the Bay Bridge.

Section 4. Request that Caltrans ensure any elements of the project or mitigations associated with the project or its construction conform to and support existing regional plans being developed or already adopted by MTC; ACTC; the District; and the cities of Berkeley, Emeryville, and Oakland.



Alameda-Contra Costa Transit District

Michael Hursh, General Manager

April 23, 2019

Rebecca De Pont, Associate Environmental Planner
California Department of Transportation, District 4
PO Box 23660, MS 8B
Oakland, CA 94623

Dear Rebecca De Pont,

The MacArthur Maze Vertical Clearance Project will affect a key regional junction for AC Transit service. As proposed, the project has the potential to greatly disrupt and delay Transbay Express and local bus services, with no benefit to transit as either a project construction mitigation or project outcome.

This letter details AC Transit's concerns with the project as proposed in the Initial Study (IS). It also advocates for larger project scoping, including transit enhancements to benefit the region's growth at a potentially marginal increase in project cost and scale, depending on the alternative pursued.

AC Transit currently runs Transbay Express buses on I-580 leading up to the approaches to the San Francisco-Oakland Bay Bridge, including lines B, E, NX, NX1, NX2, NXC, NX3, NX4, P and V. On the I-880 to westbound I-80 connector, AC Transit operates lines 800, O, OX, S, SB and W. Along I-80, AC Transit operates lines C, F, FS, G, H, L, LA and Z. Any weekday delays on these Transbay lines will affect over 14,000 passengers per day, while weekend delays will impact over 3,000 passengers per day.

Major local bus lines on surface streets that could be affected by traffic congestion caused by diverting motorists include lines 72, 72M, 72R and 800 serving San Pablo Avenue and Line NL serving West Grand Avenue and Grand Avenue. These lines alone carry over 13,000 daily passengers. Construction detours could also affect Emeryville traffic and impact over 9,000 daily passengers on lines 57, 36, 29 operating on and around Powell St.

By proposing a Negative Declaration for this project, Caltrans asserts there will be no effect on Air Quality, Transportation and Traffic, with a less than significant impact on noise. AC Transit strongly disagrees with these assertions, which consider none of the impacts during the construction period. Also, this proposed major infrastructure project centers around the most impactful choke points of the San Francisco/East Bay commute affecting 14,000 daily trips, projected to grow by a third by 2025. It would be a regional wasted opportunity if Caltrans did not use this project to both meet its vertical height clearance goals but also improve the daily commute for all Bay Area residents.

Section 1.2 Purpose and Need

The IS states the purpose of the project is to meet the Caltrans standards for vertical height clearance, which would allow access for oversized freight vehicles through the maze. While there are stated worthy goals of reducing the numbers of oversized vehicles diverting through local streets, and subsequent reduction in Vehicle Miles Traveled (VMT) and Greenhouse Gas (GHG) emissions, the numbers of these affected vehicles (and therefore the scale of this impact) is not specified. This *need* is not articulated anywhere in the IS document. The lack of information on which to initiate a project of this scale, let alone see it through to an initial study is a critical flaw.

Section 1.4.2 Construction Impacts

All the alternatives would create delays to existing Transbay Express bus service, resulting in added operating costs and lost ridership. This should be detailed in the IS. Based on the time required for closures, the construction of Alternative C would cause the highest level of impact to Transbay buses and Alternative B would have the least disruption to existing operations. In addition, all project alternatives would cause traffic to divert onto local streets during construction, creating delays to local bus lines described above.

Section 1.4.2 Project Alternatives

AC Transit recommends any alternative selected should include significant improvements to transit priority in its scope. The most suitable Alternative to include transit priority is Alternative C, which could include widened connector ramps to provide HOV or transit-only lanes. The lanes would benefit AC Transit Transbay Bus service and other HOVs.

Section 1.4.2 Transportation System Management & Transportation Demand Management

The IS states that “No TDM or TSM measures have been incorporated into the build alternatives for this project.” AC Transit urges Caltrans to re-consider the scope of this project to include transit benefits to facilitate regional growth and mode shift to transit and help meet the state’s GHG reduction goals.

The Traffic Management Plan should include mitigations that reduce construction delay to Transbay and local bus service. Overnight or weekend closures should be undertaken to minimize impacts to transit and best management practices to shorten construction times.

Section 2. Affected Environment

- AC Transit’s Major Corridors Plan and Multimodal Design Guidelines should be considered under the local plans and programs list. There will be local impacts during the construction phase and Caltrans should refer to these documents to consider the type of improvements for local arterials as mitigations.
- The Metropolitan Transportation Commission’s (MTC’s) Regional Transportation Plan should be considered under the regional plans and programs list. The plan discusses the Freight Emissions Reduction Action Plan that supports the purpose of this project. It also details recommendations from the Core Capacity Transit Study that outline the importance of transit improvements to support focused growth and reduce GHGs, specifically on the capacity of the

Bay Bridge corridor. Caltrans should explore any synergies from combining these goals into one project. It could be more cost effective than pursuing these goals individually.

- AC Transit disagrees with the statement on the negligible impacts to growth:

“There would be no changes in access to employment, shopping, or other destinations, or permanent impacts to travel times, travel behavior, trip patterns, or the attractiveness of some areas to development.”

There are two points Caltrans needs to consider:

1. This project explicitly allows for increased truck movements through the maze. It will increase slow moving traffic with the potential to increase travel times for all vehicles. Caltrans needs to quantify this impact.
2. The opportunity cost of not including transit/HOV lanes in the project scope is not included. The project could lead to lower regional growth and reduction in attractiveness for development etc., due to the increased congestion projected through 2040.

Section 2.5.4 Construction Mitigation for Traffic and Transportation/Pedestrian and Bicycle Facilities

There is no mention of the impacts to transit as part of the potential construction closures. AC Transit requests the following mitigation measures for any of the alternative’s construction phases:

1. **Install temporary bus lanes** on I-580, new or modified connectors and on the following surface streets: West Grand between I-580 and the bridge, San Pablo Avenue between 20th Street and 40th Street.
2. **Fund and expedite the planning and design phases of the Powell St On-Ramp Westbound I-80 transit priority project.** This intersection could be critical during any construction phase with detoured traffic. Expediting and funding this project would help mitigate transit impacts if traffic is detoured to I-80.

Our Board of Directors is expected to pass a resolution on April 24th, 2019, officially supporting these mitigation measures as part of the project.

Long-Term Project Impacts - Greenhouse Gas (GHG) Emissions Reductions

Senate Bill 391 sets greenhouse gas emission targets. The IS asserts that estimates of greenhouse gases cannot be made at the project alternative level. By considering construction impacts alone, the IS asserts that all the alternatives would have similar GHG impacts. However, there can be a significant difference in GHG emissions between alternatives during a lifetime of operations. For example, a design that results in time savings to transit or HOV travel time can promote a mode shift toward more sustainable means of transportation. This can be modeled and the GHG emission reductions calculated. Neglecting to include designs that meet both the project purpose and support the mode shift is a significant oversight that must be remedied before a final project alternative is selected.

A modification to the project could produce long-term emission reductions during the operation of the facility. In this regard, the project alternatives do not have the same climate change impacts based only on the embedded energy of construction. The section on “State Efforts” for GHG reduction, while noteworthy is not relevant to this project.

This approach encourages planning for sustainable highways by addressing climate risks while balancing environmental, economic, and social values—“the triple bottom line of sustainability.”¹⁰ Program and project elements that foster sustainability and resilience also support economic vitality and global efficiency, increase safety and mobility, enhance the environment, promote energy conservation, and improve the quality of life. Addressing these factors up front in the planning process will assist in decision making and improve efficiency at the program level, and will inform the analysis and stewardship needs of project-level decision-making.

From SB 391

(b) A strategies element that shall incorporate the broad system concepts and strategies synthesized from the adopted regional transportation plans prepared pursuant to Section 65080. The California Transportation Plan shall not be project specific.


Section 3.3.4 CEQA Conclusion

This section is mostly irrelevant regarding the GHG emissions of the various project alternatives. Caltrans is making a dubious claim that the state’s policies, programs or projects (including those done by Caltrans elsewhere in the State) obviate the need and desirability to reduce GHG emissions associated with the long term operation of the project. Focusing only on construction impacts limits the necessary public disclosure of cumulative impacts.

The lack of transit and HOV accommodation in these design alternatives is a major oversight. Currently, buses and carpools on I-580 experience the same congestion as in the general purpose lanes. Enshrining this situation for the 40-year life of the project is not acceptable and under no circumstances should this project be undertaken in a manner that precludes needed improvements to the transit and HOV network.

We thank you for the opportunity to comment on the project. Unfortunately, the current iteration of the IS is lacking in a discussion of environmental impacts to AC Transit’s service and riders as a result of the project and project construction. We look forward to seeing our comments addressed in the next iteration of the environmental documents and project scope.

Sincerely,



Michael Hursh
General Manager

Cc: AC Transit Board of Directors
Tony Tavares, Caltrans District 4 Director
Sabrina Landreth, Oakland City Manager
Christine Daniel, Emeryville City Manager
Eric Levitt, Alameda City Manager
Dee Williams-Ridley, Berkeley City Manager
Therese McMillan, MTC Executive Director



Office of the Mayor

2a.39

ACTION CALENDAR

June 11, 2019

To: Members of the City Council

From: Mayor Jesse Arreguin

Subject: Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention

RECOMMENDATION

1. Adopt an Ordinance repealing and reenacting BMC Chapter 13.104, Wage Theft Prevention to improve enforcement of the ordinance by requiring a signed acknowledgement of ordinance requirements and signed attestation at completion of the project; and
2. Direct the City Manager to include standard conditions of approval for zoning permits requiring compliance with the Wage Theft Prevention Ordinance, BMC Chapter 13.104

FINANCIAL IMPLICATIONS

Staff time to enforce requirements of the ordinance through the building permit process.

BACKGROUND

The City of Berkeley is committed to protecting the public health, safety and welfare. The construction industry involves unique labor standards compliance challenges. Construction workers who do not receive all of their wages and mandatory benefits are likely to discover that despite the best efforts of State enforcement officials, many employees continue to be victims of wage theft because they are unaware of their rights or the State lacks adequate resources to advocate on their behalf. General contractors and Developer/Owners who receive City-issued permits and licenses and who benefit from the construction workers' labor may disclaim responsibility for making underpaid workers whole.

Testimony presented to the State of California's "Little Hoover" Commission stated that existing studies suggest that "the underground economy" is at least a \$10 billion problem in California. Statewide, the construction industry is the industry with the second highest level of labor standards violations (as measured by State Labor Commissioner penalty assessments), surpassed only by the restaurant industry. Deputy Labor Commissioners conducted 985 inspections in the private construction industry in 2012-13, yielding 595 citations that assessed \$5.3 million in penalties. Enforcement actions, however, are dwarfed by the number of contractors and projects in California, including projects in Berkeley. Over 300,000 state-licensed contractors performed about \$48 billion worth of private construction work in the State in 2014. The mismatch between the resources of the State and the scope of the issue of fundamental wage

projections through disclosure and transparency requires the involvement of local government police powers.

Assembly Bill 469, also known as the Wage Theft Protection Act of 2011, went into effect on January 1, 2012, adding section 2810.5 to the Labor Code. The act requires that all employers provide each employee with a written notice containing specified information at the time of hire.

This Chapter will ensure compliance with the Wage Theft Protection Act of 2011 by requiring confirmation by owners, contractors and subcontractors of the rate of pay and other legally required information regarding mandatory and voluntary fringe benefits pursuant to Labor Code section 2810.5.

In response to a growing number of complaints over lack of compliance with state construction wage and employment laws, the Berkeley City Council in 2016 adopted a Wage Theft Prevention Ordinance, BMC Chapter 13.104. Since that time staff has met with the Alameda County Building and Construction Trades Council and Carpenters Union Local 713 regarding how to enforce the requirements of the ordinance. There was no clear department or division responsible for enforcement, and projects have been approved without informing applicants of the requirements of the Wage Theft Ordinance.

Despite this ordinance, there are a number of current construction jobs in Berkeley where contractors have willingly violated state wage laws, resulting in judgements by the state Labor Commissioner. Additionally with the growing amount of residential development occurring in Berkeley, it is critical that this ordinance be revised to develop a streamlined compliance and enforcement process to ensure that workers are paid the wages they are owed. The ordinance requires a series of attestations to ensure knowledge of and compliance with the requirements.

The revised Wage Theft Prevention Ordinance will require that permit applicants provide the city with a Pay Transparency Acknowledgement. The form includes an attestation under penalty of perjury that the permit applicant has reviewed Chapter 13.104 and following project completion, if the City cannot make a finding of compliance with the provisions of the Wage Theft Prevention Ordinance, then the permit applicant will be responsible for demonstration either compliance with Labor Code Sections 226 and 2810.5 or the existence of a Labor Payment or a Lien Release Bond pursuant to BMC Section 13.104.070(B). The revised ordinance also requires the Contractor to sign a Pay Transparency Acknowledgement.

The revised ordinance requires that a Pay Transparency Attestation be executed under penalty of perjury to attest to compliance with the Wage Theft Prevention Ordinance and state wage laws.

The ordinance also requires posted noticed of the requirements of the Wage Theft Prevention Ordinance and where workers can report violations of the labor code to the Labor Commissioner and current contact information of the Labor Commissioner.

Finally the revised ordinance requires that the City make a finding of compliance with the provisions of the Chapter prior to the issuance of a Certificate of Occupancy.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects from adopting this ordinance.

CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

Attachments:

- 1: Ordinance
- 2: PERMIT APPLICANT PAY TRANSPARENCY ACKNOWLEDGMENT
- 3: CONTRACTOR PAY TRANSPARENCY ACKNOWLEDGMENT
- 4: PAY TRANSPARENCY ATTESTATION

ORDINANCE NO.

REPEALING AND REENACTING BERKELEY MUNICIPAL CODE CHAPTER 13.104,
WAGE THEFT PREVENTION

Section 1. That Berkeley Municipal Code Chapter 13.104 is hereby repealed and reenacted as follows:

Chapter 13.104
WAGE THEFT PREVENTION

Sections:

- 13.104.010 Findings.
- 13.104.020 Definitions.
- 13.104.030 Pay Transparency Acknowledgments from Permit Applicant, Contractor, and Qualifying Subcontractor.
- 13.104.040 Pay Transparency Attestations Following Project Completion.
- 13.104.050 Posting of Ordinance.
- 13.104.060 Determination of Construction Pay Transparency Compliance.
- 13.104.070 Issuance of a Certificate of Occupancy.
- 13.104.080 Private Right of Action.
- 13.104.090 City Manager Regulations.
- 13.104.100 Severability.

13.104.010 Findings.

A. The City of Berkeley is committed to protecting the public health, safety and welfare. The construction industry involves unique labor standards compliance challenges. Construction workers who do not receive all of their wages and mandatory benefits are likely to discover that despite the best efforts of State enforcement officials, many employees continue to be victims of wage theft because they are unaware of their rights or the State lacks adequate resources to advocate on their behalf. General contractors and Developer/Owners who receive City-issued permits and licenses and who benefit from the construction workers' labor may disclaim responsibility for making underpaid workers whole.

B. Testimony presented to the State of California's "Little Hoover" Commission stated that existing studies suggest that "the underground economy" is at least a \$10 billion problem in California. Statewide, the construction industry is the industry with the second highest level of labor standards violations (as measured by State Labor Commissioner penalty assessments), surpassed only by the restaurant industry. Deputy Labor Commissioners conducted 985 inspections in the private construction industry in 2012-13, yielding 595 citations that assessed \$5.3 million in penalties. Enforcement actions, however, are dwarfed by the number of contractors and projects in California, including projects in Berkeley. Over 300,000 state-licensed contractors performed about \$48 billion worth of private construction work in the State in 2014. The mismatch between the resources of the State and the scope of the issue of fundamental wage projections through disclosure and transparency requires the involvement of local

government police powers.

C. Assembly Bill 469, also known as the Wage Theft Protection Act of 2011, went into effect on January 1, 2012, adding section 2810.5 to the Labor Code. The act requires that all employers provide each employee with a written notice containing specified information at the time of hire.

D. This Chapter will ensure compliance with the Wage Theft Protection Act of 2011 by requiring confirmation by owners, contractors and subcontractors of the rate of pay and other legally required information regarding mandatory and voluntary fringe benefits pursuant to Labor Code section 2810.5.

13.104.020 Definitions.

Whenever used in this chapter, the following terms shall have the meanings set forth below.

A. "City" shall mean the City of Berkeley.

B. "Completion of the project" means that construction is complete and the project is eligible for a Certificate of Occupancy or Temporary Certificate of Occupancy.

C. "Contractor" shall mean the prime contractor for the Project.

D. "Labor Commissioner" shall mean the Office of the Labor Commissioner within the State of California's Department of Industrial Regulations.

E. "Owner" shall mean the person or persons, firm, corporation or partnership exercising ownership of the Project.

F. "Permit Applicant" shall mean Owner, developer, or Contractor who applied for the building permit for the Project.

G. "Project" shall mean a new construction project of greater than 30,000 square feet that is not subject to local, state or federal prevailing wage requirements or does not have a valid Project Labor or Community Workforce Agreement.

H. "Project construction employees" shall mean employees of the Contractor or Subcontractor.

I. "Qualifying Subcontractor" shall mean a subcontractor of any tier whose portion of the work exceeds \$100,000 or one percent (1%) of the value of the construction cost of the Project.

J. "Responsible Representative" shall mean an officer (if a corporation), general partner (if a partnership or a limited partnership), managing member (if a limited liability company) or qualifying person associated with the Owner, contractor and/or subcontractor. A qualifying person is defined in Section 7068 of the California Business and Professions Code.

13.104.030 Pay Transparency Acknowledgments from Permit Applicant, Contractor, and Qualifying Subcontractor.

A. Within 30 days of issuance of a building permit, the Permit Applicant shall provide to the City a Permit Applicant Pay Transparency Acknowledgment on a form approved by the City for this purpose. The form shall include an attestation under penalty of perjury under the laws of the State of California by a Responsible Representative of the Permit Applicant that: (i) the Permit Applicant has reviewed Chapter 13.104 of the Berkeley

Municipal Code; and (ii) following Project completion, if the City cannot make a finding of compliance with the provisions of this Chapter pursuant to section 13.104.060, the Permit Applicant will be responsible for demonstrating either (a) compliance with Labor Code sections 226 and 2810.5 or (b) the existence of a Labor Payment or a Lien Release Bond(s) pursuant to 13.104.070(B).

B. Within 30 days of the issuance of a building permit if the Contractor(s) and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor's first day of work on the Project, for each Contractor and Qualifying Subcontractor, the Permit Applicant shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. On each Contractor Pay Transparency Acknowledgment, a Responsible Representative of the Contractor or Qualifying Subcontractor must attest under penalty of perjury under the laws of the State of California, that: (i) the Contractor or Qualifying Subcontractor has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (ii) either (a) Project construction employees will receive Labor Code Section 2810.5 compliant notices and Labor Code Section 226(a) compliant itemized wage statements, or (b) Project construction employees meet one or more of the criteria of Labor Code section 2810.5(c).

13.104.040 Pay Transparency Attestations Following Project Completion.

Within 10 days of the completion of the Project, for each Contractor and Qualifying Subcontractor, Permit Applicant shall provide to the City a Pay Transparency Attestation on a form approved by the City for this purpose. On each Pay Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor must attest under penalty of perjury under the laws of the State of California that: (i) the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code; and (ii) either (a) Project construction employees received complete and accurate information pursuant to Labor Code Sections 226 and 2810.5, or (b) Project construction employees met one or more of the criteria of Labor Code section 2810.5(c).

13.104.050 Posting of Ordinance.

Each day work is performed on the Project, the Permit Applicant shall post and keep posted in a conspicuous location frequented by Project construction employees, and where the notice may be easily read by Project construction employees during the hours of the workday, a notice that: (i) contains the text of Chapter 13.104 of the Berkeley Municipal Code; (ii) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (iii) provides current contact information, including office address, telephone number, and email address of the Labor Commissioner of the State of California.

13.104.060 Determination of Construction Pay Transparency Compliance.

Prior to approval of a Certificate of Occupancy for the Project, the City shall make a finding of compliance with the provisions of this Chapter. Such finding shall be issued if: (i) the City determines after review of the information provided pursuant to

sections 13.104.030 and 13.104.040 that the Permit Applicant, Contractor and all Qualifying Subcontractor(s) have complied with the provisions of this Chapter; and (ii) the City has not received any information that a complaint is pending before the Labor Commissioner, or that the Labor Commissioner has issued a final order of enforcement, regarding violations of Labor Code Sections 226 or 2810.5 by any Contractor or Qualifying Subcontractor at the Project.

13.104.070 Issuance of a Certificate of Occupancy.

A. The City shall issue a Certificate of Occupancy to the Permit Applicant if it makes a finding of Construction Pay Transparency Compliance pursuant to 13.104.060 and all requirements of the building code are met.

B. If the City cannot make a finding of compliance with the provisions of this Chapter pursuant to section 13.104.060 , the City will approve a Certificate of Occupancy only if:

- (i) the Permit Applicant demonstrates that the Permit Applicant, Contractor, and all Qualifying Subcontractors have complied with Labor Code sections 226 and 2810.5; or
- (ii) the Permit Applicant demonstrates the existence of a Labor Payment or a Lien Release Bond(s) for the Project. The bond shall be in an amount equal to 20 percent of the combined value of the contract(s) of all Contractor(s) and/or Qualifying Subcontractor(s) for which the City lacks Pay Transparency Acknowledgment or Attestations, or 125 percent of the amount of any Project-related, Labor Commissioner issued Civil Wage and Penalty Assessment(s) or mechanics lien(s), whichever is greater.

13.104.080 Private Right of Action.

Nothing in this chapter shall be interpreted to authorize a right of action against the City.

13.104.090 City Manager Regulations.

The City Manager may promulgate regulations for the administration and enforcement of this Chapter.

13.104.100 Severability.

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

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

PERMIT APPLICANT PAY TRANSPARENCY ACKNOWLEDGMENT

Chapter 13.104, Berkeley Municipal Code

1. I, _____, the _____ of
(Name) (Title)
_____, _____ (“Permit Applicant”), who has applied for a
(Permit Applicant) (LIC#)
building permit for _____, have the authority to act for and on behalf of
(Project)
Permit Applicant.

2. Permit Applicant has reviewed Berkeley Municipal Code Chapter 13.104 (“Wage Theft Prevention Ordinance”), which is attached to this form.

3. Permit Applicant understands that all contractors on the Project listed above (“Project”) must comply with Labor Code section 226. Semi-monthly or at the time of each payment of wages, each contractor must provide each of its employees on the Project with accurate itemized wage statements showing the following:

- Gross wages earned,
- Total hours worked by the employee, unless the employee is exempt under Labor Code section 226(j);
- Number of piece-rate units earned and any applicable piece rate, if the employee is paid on a piece-rate basis;
- All deductions, provided that deductions requested by the employee may be aggregated and shown as one item, and all deductions are properly dated, showing month, day, and year;
- Net wages earned;
- Inclusive dates of the period for which the employee is being paid;
- Name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- Contractor’s correct legal name and address; and
- All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

4. Permit Applicant understands that all contractors on the Project must comply with Labor Code section 2810.5 by satisfying one of the following requirements:

- The contractor will provide complete and accurate information to employees not exempt under section 2810.5(c), including the following:

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 30 days of the issuance of a building permit if the Contractor and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor’s first day of work on the Project.

PERMIT APPLICANT PAY TRANSPARENCY ACKNOWLEDGMENT

Chapter 13.104, Berkeley Municipal Code

- At the time of hiring, a written notice, in the language the contractor normally uses to communicate employment-related information to the employee, containing the following information:
 - The rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any overtime rates, as applicable;
 - Any benefits provided by the contractor;
 - Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
 - The regular payday designated by the contractor in accordance with the requirements of this code;
 - The name of the contractor, including any “doing business as” names;
 - The physical address of the contractor’s main office or principal place of business, and a mailing address, if different;
 - The telephone number of the contractor;
 - The name, address, and telephone number of the contractor’s workers’ compensation insurance carrier; and
 - That an employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

- A notification in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies: (1) all changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226, or (2) notice of all changes is provided in another writing required by law within seven days of the changes.

-OR-

- All employees of the contractor are covered by a valid collective bargaining agreement that (1) expressly provides for wages, hours of work, and working conditions and (2) provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.**

5. Permit Applicant understands that, pursuant to Berkeley Municipal Code section 13.104.030, Permit Applicant must submit all Pay Transparency Acknowledgment forms to the City within thirty (30) days of the issuance of a building permit. Permit Applicant must submit this Permit Applicant Pay Transparency Acknowledgment form and Contractor Pay Transparency Acknowledgment forms from the prime contractor of the Project (“Contractor”) and all subcontractors of any tier whose portion of the work exceeds \$100,000 or one percent (1%) of the value of the construction cost of the Project (“Qualifying Subcontractors”). Contractor Pay Transparency Acknowledgment forms must be submitted within thirty (30) days of the issuance of a building permit if the Contractor(s) and Qualifying Subcontractor(s) have been selected by then, but in any event no later than the Contractor(s) or Qualifying Subcontractor(s) first day of work on the Project.

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 30 days of the issuance of a building permit if the Contractor and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor’s first day of work on the Project.

PERMIT APPLICANT PAY TRANSPARENCY ACKNOWLEDGMENT

Chapter 13.104, Berkeley Municipal Code

6. Permit Applicant understands that, pursuant to Berkeley Municipal Code section 13.104.040, it is Permit Applicant's responsibility to submit all Pay Transparency Attestation forms to the City within 30 days of issuance of the building permit for the Project. Pay Transparency Attestations must be completed by each Contractor and Qualifying Subcontractor of the Project.

7. Permit Applicant understands that, following Project completion, if the City cannot make a finding of compliance with Berkeley Municipal Code Ch. 13.104, Permit Applicant will be responsible for demonstrating one of the following:

- Permit Applicant, Contractor, and all Qualifying Subcontractors have complied with Labor Code sections 226 and 2810.5; OR
- Permit Applicant has obtained a Labor Payment or Lien Release Bond(s) in an amount equal to 20 percent of the combined value of the contract(s) of all Contractor(s) and/or Qualifying Subcontractor(s) for which the City lacks a Pay Transparency Acknowledgment or Attestation, or 125 percent of the amount of any Project-related, Labor Commissioner-issued Civil Wage and Penalty Assessment(s) or mechanics lien(s), whichever is greater.

6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

Name: _____

Signature: _____

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 30 days of the issuance of a building permit if the Contractor and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor's first day of work on the Project.

CONTRACTOR PAY TRANSPARENCY ACKNOWLEDGMENT

Chapter 13.104, Berkeley Municipal Code

1. I, _____, the _____ of
 _____ (Name) _____ (Title)
 _____, _____ (“Contractor”) performing work at
 _____ (Contractor or Qualifying Subcontractor¹) _____ (LIC#)
 _____ for _____, _____, have the
 _____ (Project) _____ (General Contractor) _____ (LIC#)

authority to act for and on behalf of Contractor.

2. I declare that Contractor has reviewed Berkeley Municipal Code Chapter 13.104 “Wage Theft Prevention Ordinance”), which is attached to this form.

3. I declare that Contractor will comply with Labor Code section 226 on the Project listed above (“Project”). Semi-monthly or at the time of each payment of wages, Contractor will provide each of its employees on the Project with accurate itemized wage statements showing the following:

- Gross wages earned,
- Total hours worked by the employee, unless the employee is exempt under Labor Code section 226(j);
- Number of piece-rate units earned and any applicable piece rate, if the employee is paid on a piece-rate basis;
- All deductions, provided that deductions requested by the employee may be aggregated and shown as one item, and all deductions are properly dated, showing month, day, and year;
- Net wages earned;
- Inclusive dates of the period for which the employee is being paid;
- Name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- Contractor’s correct legal name and address; and
- All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

4. I declare that Contractor will comply with Labor Code section 2810.5 by satisfying one of the following requirements (please check which applies):

- All employees of this Contractor not exempt under section 2810.5(c) will receive complete and accurate information including the following:

¹ Berkeley Municipal Code Ch. 13.104 defines “Qualifying Subcontractor” as all subcontractors of any tier whose portion of the work exceeds \$100,000 or one percent (1%) of the value of the construction cost of the Project.

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 30 days of the issuance of a building permit if the Contractor and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor’s first day of work on the Project.

CONTRACTOR PAY TRANSPARENCY ACKNOWLEDGMENT

Chapter 13.104, Berkeley Municipal Code

- At the time of hiring, a written notice, in the language Contractor normally uses to communicate employment-related information to the employee, containing the following information:
 - The rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any overtime rates, as applicable;
 - Any benefits provided by Contractor;
 - Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
 - The regular payday designated by Contractor in accordance with the requirements of this code;
 - The name of Contractor, including any “doing business as” names;
 - The physical address of Contractor’s main office or principal place of business, and a mailing address, if different;
 - The telephone number of Contractor;
 - The name, address, and telephone number of Contractor’s workers’ compensation insurance carrier; and
 - That an employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

- A notification in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies: (1) all changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226, or (2) notice of all changes is provided in another writing required by law within seven days of the changes.

-OR-

- All employees are covered by a valid collective bargaining agreement that (1) expressly provides for wages, hours of work, and working conditions and (2) provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.**

If the box above is checked, please list the Union(s) to which Contractor is signatory:

5. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 30 days of the issuance of a building permit if the Contractor and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor’s first day of work on the Project.

CONTRACTOR PAY TRANSPARENCY ACKNOWLEDGMENT

Chapter 13.104, Berkeley Municipal Code

Date: _____

Name: _____

Signature: _____

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 30 days of the issuance of a building permit if the Contractor and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor's first day of work on the Project.

PAY TRANSPARENCY ATTESTATION

Chapter 13.104, Berkeley Municipal Code

1. I, _____, the _____ with authority to
 (Name) (Title)
 act for and on behalf of _____, _____, certify under
 (Contractor or Qualifying Subcontractor¹) (LIC#)
 penalty of perjury that the work performed by _____ at
 (Contractor or Qualifying Subcontractor)
 _____ for _____, _____, complied with
 (Project) (General Contractor) (LIC#)

Labor Code sections 226 and 2810.5, and Berkeley Municipal Code Ch. 13.104 (“Wage Theft Prevention Ordinance”).

2. Contractor or Qualifying Subcontractor listed above (“Contractor”) complied with Labor Code section 226. Semi-monthly or at the time of each payment of wages, Contractor provided each of its employees on the Project listed above (“Project”) with accurate itemized wage statements showing the following:

- Gross wages earned,
- Total hours worked by the employee, unless the employee is exempt under Labor Code section 226(j);
- Number of piece-rate units earned and any applicable piece rate, if the employee is paid on a piece-rate basis;
- All deductions, provided that deductions requested by the employee may be aggregated and shown as one item, and all deductions are properly dated, showing month, day, and year;
- Net wages earned;
- Inclusive dates of the period for which the employee is being paid;
- Name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- Contractor’s correct legal name and address; and
- All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

3. Contractor also complied with Labor Code section 2810.5 by satisfying one of the following requirements (*please check which applies*):

¹ Berkeley Municipal Code Ch. 13.104 defines “Qualifying Subcontractor” as all subcontractors of any tier whose portion of the work exceeds \$100,000 or one percent (1%) of the value of the construction cost of the Project.

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 10 days of the completion of the Project.

PAY TRANSPARENCY ATTESTATION

Chapter 13.104, Berkeley Municipal Code

- All employees of this Contractor not exempt under section 2810.5(c) received complete and accurate information including the following:**
 - At the time of hiring, a written notice, in the language Contractor normally uses to communicate employment-related information to the employee, containing the following information:
 - The rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any overtime rates, as applicable;
 - Any benefits provided by Contractor;
 - Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
 - The regular payday designated by Contractor in accordance with the requirements of this code;
 - The name of Contractor, including any “doing business as” names;
 - The physical address of Contractor’s main office or principal place of business, and a mailing address, if different;
 - The telephone number of Contractor;
 - The name, address, and telephone number of Contractor’s workers’ compensation insurance carrier; and
 - That an employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.
 - A notification in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies: (1) all changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226, or (2) notice of all changes is provided in another writing required by law within seven days of the changes.

-OR-

- All employees are covered by a valid collective bargaining agreement that (1) expressly provides for wages, hours of work, and working conditions and (2) provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.**

If the box above is checked, please list the Union(s) to which Contractor is signatory:

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 10 days of the completion of the Project.

PAY TRANSPARENCY ATTESTATION

Chapter 13.104, Berkeley Municipal Code

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

Name: _____

Signature: _____

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 10 days of the completion of the Project.



2a.40

Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Cheryl Davila
Subject: Opposition to Revision of Title X Family Planning Regulations
Proposed by United States Department of Health and Human Services

RECOMMENDATION

Adopt a resolution in opposition of the revision of Title X Family Planning Regulations proposed by the U.S. Department of Health and Human Services. The City Clerk is to mail a copy of the resolution to Alex M Azar II, U.S. Secretary of Health and Human Services and to the President of the United States.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

Supporting a woman's rights including the right to choose and upholding Roe v. Wade (1973) is environmentally sustainable and has been for decades.

BACKGROUND

On March 4, 2019, new final regulations for Title X grants were published in the Federal Register, with a phased-in implementation period that commences on May 3, 2019. The regulations make many changes to the requirements for Title X projects that will significantly reshape the program and provider network available to low-income people through Title X. Specifically, the regulations prohibit Federal Title X funds from going to any family planning site that also provides abortion services. The Title X statute specifies that no federal funds appropriated under the program “shall be used in programs where abortion is a method of family planning.” Throughout most of the history of the program, the ban has generally been

interpreted to mean that Title X funds cannot be used to pay for or support abortion, as is the policy under the current regulations.

The final regulation requires that Title X funded activities have full physical and financial separation from abortion-related activities. Moreover, in addition to separate accounting and electronic and paper health records, providers need to have separate treatment, consultation, examination and waiting rooms, office entrances and exits, workstations, signs, phone numbers, email addresses, educational services, websites, and staff. This new requirement essentially disqualifies any provider from receiving Title X funds if they also offer abortions. It also prohibits Title X projects from using Title X funds to participate in a variety of “activities that encourage abortion” including lobbying, attending an event during which they engage in lobbying, or paying dues to a group that uses the funds for lobbying or supporting a candidate for office.

The proposed regulations are nearly identical to regulations issued under President Reagan, which were legally challenged by Title X projects and providers, and were ultimately upheld by the Supreme Court in Rust v. Sullivan in 1991. However, the Reagan era regulation was never fully implemented as President Clinton issued an executive order to suspend the regulations and then issued new regulations that were in place until the new regulation was published on March 4, 2019.

CONTACT PERSON

Cheryl Davila
Councilmember
District 2

510.981.7120

ATTACHMENT 1: Resolution

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

**Opposition to Revision of Title X Family Planning Regulations
Proposed by U.S. Department of Health and Human Services**

WHEREAS, Title X, enacted in 1970, is the only federal program specifically dedicated to supporting the delivery of family planning care; and

WHEREAS, Administered by the HHS Office of Population Affairs (OPA), and funded at \$286.5 million for Fiscal Year 2018, the program serves over 4 million low-income, uninsured, and underserved clients; and

WHEREAS, in 2017, nearly 4,000 clinics nationwide relied on Title X funding to help serve 4 million people. The sites include specialized family planning clinics such as Planned Parenthood centers, community health centers, state health departments, as well as school-based, faith-based, and other nonprofit organizations; and

WHEREAS, Title X grants made up about 19% of revenue for family planning services for participating clinics in 2017, providing funds to not only cover the direct costs of family planning services, but also pay for general operating costs such as staff salaries, staff training, rent, and health information technology; and

WHEREAS, the current White House Administration's new final regulations published on March 4, 2019, for the Federal Title X family planning program make significant changes to the program and will:

- Block the availability of federal funds to family planning providers that also offer abortion services;
- Prohibit sites that participate in Title X from referring pregnant clients to abortion providers;
- Eliminate current requirements for Title X sites to provide non-directive pregnancy options counseling that includes information about prenatal care/delivery, adoption, and abortion;
- Prioritize providers that offer comprehensive primary health care services over those that specialize in reproductive health services; and
- Encourage participation by “non-traditional” organizations such as those that only offer one method of family planning, such as fertility awareness-based methods; and

WHEREAS, if implemented, the changes to Title X will shrink the network of participating providers and could reduce the scope of services offered to low-income and uninsured people that rely on Title X-funded clinics for their family planning care;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council hereby records its opposition to revisions of Title X family planning regulations proposed by the U.S. Department of Health and Human Services.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley request that the City Clerk mail a copy of this resolution to Alex M Azar II, U.S. Secretary of Health and Human Services and to the President of the United States.



Councilmember Ben Bartlett

City of Berkeley, District
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
PHONE: 510-981-7130
EMAIL: bbartlett@cityofberkeley.info

CONSENT CALENDAR
June 11, 2019

To: Berkeley City Council
From: Councilmember Ben Bartlett
Subject: FY 2020 - FY 2023 General Fund Allocation: Funding for Berkeley Drop-In Center

RECOMMENDATION

That the City Council grant \$190,015 annually to the FY 2020 - FY 2023 budgets to support homeless people and very-low income residents of Berkeley by funding the Berkeley Drop-In Center, a program of the Alameda County Network of Mental Health Clients.

FINANCIAL IMPLICATIONS

\$190,015.

BACKGROUND

The City of Berkeley is allocating funding for community agencies for a four-year funding cycle. The \$190,015 budget referral represents annual funding for the Berkeley Drop-In Center for the following sub-programs: Alcohol and Other Drug reduction/prevention (\$22,199); Homeless Drop-In Services (\$73,515); Supportive Housing/Case Management (\$47,033); and Representative Payee Services (\$47,268).

The Berkeley Drop-In Center (BDIC) is a multi-purpose South Berkeley peer to peer community center run by and for past and present mental health clients and persons undergoing varying ranges of emotional distress. The BDIC runs several programs to create a safe place for people to meet and socialize, as well as participate in peer to peer activities and support groups. In 2017, of clients that voluntarily chose to sign in the front desk, the BDIC had 12,377 annual contracts.

The BDIC has the following basic service, that without the proposed budget referral will be cut or reduced: Daytime drop-in service (mailboxes for people suffering housing insecurity); Housing advocacy and case management; payee services; arts and crafts; alcohol and other drug counseling; mail services; and women's and men's groups;

volunteer/job training. The BDIC was selected as the recipient of the 2019 City of Berkeley Mental Health's Achievement Award.

RATIONALE FOR RECOMMENDATION

The BDIC is the only Drop-In Center in South Berkeley and has served the Berkeley no-income and very low-income mental health / homeless community for 30 years. Many of the staff identify as individuals with lived experience meaning they have experience living with mental health challenges, they have been homeless, and/or they understand the journey of sobriety. The BDIC is GRASSROOTS.

It is important to look at what has happened with past allocations and contracts.

- Historical inequities in contract deliverables. The contracts in the past have never truly covered the expense of the services the agency provides.
- No Cost of Living increases to contracts places the agency out of compliance with Living wage / Minimum wage requirements
- South Berkeley serves primarily African American mentally distressed men and women who have been displaced by the decade-long gentrification.
- Vital services such as housing services and payee representation are key components to combat the potential risk of homelessness and breaks in mental health services.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Ben Bartlett
James Chang

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510-981-7131



Councilmember Ben Bartlett

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CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett
Subject: FY 2020 -23 Fund Allocation: Funding for Youth Spirit Artworks

RECOMMENDATION

That the City Council grant \$198,000 annually to the FY 2020 - FY 2023 budgets to support Youth Spirit Artworks for the BUSD Homeless Student Program: \$55,000 to serve high school aged youth who are in school; the YSA Vocational Arts Program: \$65,000 to serve 130 Berkeley youth with job training services, and for the new YSA Tiny House Village Program: \$78,000 to case manage youth who are in transitional housing services.

BACKGROUND

Youth Spirit Artworks (YSA) is a twelve-year old interfaith jobs and job training non-profit located in South Berkeley which is committed to empowering and transforming the lives of homeless and other underserved low-income Bay Area young people, ages 16-25. YSA is a proven community leader in youth-initiated and led efforts, providing innovative jobs training in seven vocational areas, as well as jobs placement involving over 150 youth each year.

YSA engages youth as leaders in running their own art gallery and store with a regular, youth-led public events program. It is deeply involved in community revitalization efforts. YSA participants have created more than a dozen murals adorning public space in South Berkeley, with more murals being executed every year toward creation of its Alcatraz Alley Mural Park.

YSA engages young people in leadership through publication of *Street Spirit*, the 24 year old East Bay homeless newspaper, which serves as a fundamental economic anchor for eighty homeless and unstably housed adult street vendors in any given month.

YSA's Youth Tiny House Village project is part of its larger ten-year organizing campaign to create "100 Homes for Homeless Youth." With the strong leadership of homeless and other YSA youth leaders and over twenty-five committed community volunteers, YSA has been working for over 18 months on plans to develop a model, first-in-nation youth Tiny House Village (THV). This project involves completion of up to 22 tiny houses for homeless and unstably housed Berkeley young people, three on-site resident manager living units & two support buildings.

YSA began its Tiny House Village organizing efforts with the design and construction of a tiny house prototype, teaching youth construction skills. In addition to housing homeless and unstably-housed couchsurfing youth, the project empowers over 20 YSA underserved young adults with job skills through engagement in construction efforts, community outreach and organizing, and project management.

YSA's tiny house prototype has been featured in multiple local publications, including a prominent *SF Chronicle* front-page article highlighting innovative, model tiny house solutions to the current Bay Area housing crisis.

Six volunteer-led working groups are currently actively engaged in organizing and design efforts related to the Village. The Tiny House Village project plans rely primarily on private funding for construction and development of the village.

Construction of tiny houses will involve YSA youth trainees and groups of volunteers from the interfaith religious community in an active "Adopt-A-Tiny House" program, with 100 volunteers per day building houses in two sets of three weekend build days, twelve houses at a time in 2019/20. Fifty-five community Build Leaders are leading volunteers engaged with the project Aug 17, 18, 24, 25, Sept. 7 & 8.

In March and April 2019 "Build Leaders" training to lead volunteers in 12-house builds constructed two additional tiny houses which are currently engaged on a tiny house congregation tour, involving the interfaith religious community in supporting YSA's efforts.

The strong focus of YSA's Tiny House Village Program Model is on youth jobs training and placement as well as academic success of Berkeley youth, with wrap around case management services and deep support in a caring community for all residents through rootedness in Youth Spirit Artwork's activities.

Multiple local non-profit partners are being organized to collaborate as partners in this effort, carrying out elements of the work to ensure the project is a success.

Collaborators enlisted in YSA's Tiny House Village development and programs already include: Rising Sun Energy, The Berkeley School, Planting Justice, Berkeley Youth Alternatives, The Way Christian Center, Lifelong Medical Center, YEAH Shelter, Urban Adamah, Berkeley City College, and UC Berkeley Public Service Center.

CURRENT SITUATION & NEED

On any given night as many as 400 Berkeley young people (ages 18 to 25) find themselves homeless, couchsurfing, sleeping in unstable housing settings, and/or desperately in need of consistent, basic care and other supports necessary for success. Youth facing housing instability have difficulties pursuing academic excellence and their vocational goals, and face life-threatening challenges and risks. Many of our African American and Latino youth face challenges of displacement from the Berkeley neighborhoods where their families have lived for decades, which impacts our historic diversity and cultural richness. Youth hold the key to our future and while working to pursue goals and dreams, our community seeks ways to provide stabilizing housing to these transitional aged young people in poverty. We are in an emergency housing crisis that is growing worse.

Providing the necessary funding for YSA to sustain current activities benefiting youth is a way to directly address youth homelessness and other issues many youth face and struggle with in the City of Berkeley.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

In response to the growing homelessness crisis locally and regionally, the City Council voted unanimously on January 19, 2016 to declare a Homeless Shelter Crisis. This resolution was reaffirmed in 2017 and is currently operating. The initiative serves as a key step in both expediting actions needed toward solving the problems of homelessness, minimizing the red tape of potential solutions, as well as encouraging creative partnerships and innovative solutions.

ACTIONS/ALTERNATIVES CONSIDERED

YSA provides its youth art vocational students with stipends to incentive them to attend classes consistently and to stay connected to YSA support services. No one is charged a fee for participation. YSA has a diverse funding portfolio of individual, business, and foundation donors and grant makers, and holds a contract with the AlaCosta Regional Center to serve neurodiverse young adults, and a new contract with Berkeley Mental Health to provide case management services to youth with a serious emotional disturbance that affects their ability to function. Approximately 15% of revenues come from the City of Berkeley's CDBG funds to partially cover the services to Berkeley youth. Currently, YSA holds two of these grant contracts. One, to serve 40 homeless

high school aged youth in the Berkeley Unified School District (\$50,000 per year), and the other, to provide Vocational Arts training to an additional 60 low income City of Berkeley youth (\$33,777 per year). This translates to a financial contribution from the City of \$833 per youth per year.

OVERVIEW AND RESULTS

YSA has historically met and exceeded its service goals, and last fiscal year served 69 Berkeley High School youth and 74 additional Berkeley youth with Vocational Arts programming, at an average actual cost to Berkeley of \$585 per youth per year. Annual goals met or exceeded for Berkeley students included improvements in grades, math scores, school attendance, enrollment in post-secondary education, and a decrease in suspension days. Each youth in Vocational Arts was offered 22 weeks of programming, and each averaged over 200 hours of instruction, with stipends, life skills classes, youth empowerment meetings, case management, and peer support services. Supportive relationships developed, and peers and housing providers worked to place youth in housing.

RATIONALE FOR RECOMMENDATION

YSA has increased its size and budget by over 100% in the past 3 years to meet the needs of a growing population of homeless youth. The Tiny House Village project has attracted interest from the media, the faith based community, and volunteers; the addition of *Street Spirit* has brought a new venue for youth art and poetry, and the youth voice; the entire agency is growing rapidly. To strengthen administrative infrastructure, YSA is currently working with a Management Information Systems Specialist and a Technology Consultant to improve data collection, data entry, and management reporting processes to better capture the success that it is having with youth. As a valuable member of the Berkeley community, YSA and YSA youth should have the full support of the Berkeley City Council.

FISCAL IMPACTS OF RECOMMENDATION

YSA has a cost effective model to deliver youth services, to provide a safe place for youth to work under adult supervision, and a process to tackle the root cause of homelessness, to prepare youth for a life of financial and emotional stability in a caring community. A homeless youth will cost taxpayers well over \$585 a year (the Foldes report prepared for Youthlink calculated taxpayer costs at \$18,000 a year). The long term benefit of supporting this vulnerable population is much more.

SUSTAINABILITY

YSA is working toward a sustainable operating budget, and is laying the groundwork to provide Medi-Cal billable case management services. Rents from Tiny House Village tenants will be another stable source of revenue, and as we expand Art Sales (using an online platform), we anticipate an increase in earned income, a portion of which will go to the youth artists. YSA has a 3 year strategic plan, and is meeting its objectives as a healthy and growing agency.

Our request to the City of Berkeley for the fiscal year 2019/2020 is:

- BUSD Homeless Student Program: \$55,000 to serve 60 Berkeley high school aged youth
- Vocational Arts Program: \$65,000 to serve 130 Berkeley youth, and
- Tiny House Village Program: \$78,000 to serve 22 residents with social services

BERKELEY HIGH SCHOOL CAREER AND SUCCESS PROGRAM

YSA provides after school job training for low income, homeless and at risk of homeless high school aged youth who are referred by BUSD. Using art as a vocational medium, youth trainees progress through 5 levels, called: aspirant, apprentice, apprentice leader, leader, job placement/employment. Students are paid stipends if they participate a minimum of 10 hours a week, which increase when additional responsibilities are earned, and can earn sales commissions. In addition to art skills training, there are 7 key services youth receive each week: 1) individual case management with referrals to wrap around services; 2) behavioral coaching and mentoring; 3) 12 hr educational sessions on inter personal skills; 4) a 1 hr Youth Empowerment meeting to facilitate self determination and youth led organizational growth; 5) business skills training and an accredited personal finance curriculum; 6) a written individualized job Progression Ladder; 7) training in the use of (SMART) goal setting.

Funds will be used to allow students who are homeless, at risk of homelessness, and low income youth to receive direct assistance with meeting survival needs (paid internships) and vocational training to create a path out of poverty. Studies have shown that early intervention in adolescence is highly effective, and saves lives and taxpayer dollars. Working alongside the City of Berkeley 2020 Vision Program, YSA programs will help close the achievement gap, help students stay in school, and we help them prepare for college, within a community of support.

Request: **\$55,000**

Proposed Number of City of Berkeley youth to serve in 2019-2020: **60**

VOCATIONAL ARTS TRAINING PROGRAM

YSA provides job training for homeless and at risk youth in the Berkeley area, using art as a vocational medium. Youth receive hands on instruction and are paid stipends, which increase when additional responsibilities are earned and trainees move up the progression ladder. Last year, YSA youth completed 3 major community murals, helping to revitalize Berkeley's poorest neighborhoods and completed and sold over 300 works

of art, with 50% of the sold proceeds going to the artists. The training program currently runs Fall Winter Spring, with three 16-week terms a year and a summer session. Youth become part of a cohort that meets 3 to 5 times a week, with rolling admissions. YSA runs concurrent programs for youth in different progression levels. Our aim is to motivate and engage hard to reach youth, and strengthen peer to peer education and opportunities for employment/entrepreneurship, to move youth into productive lives.

Request: **\$65,000**

Number of City of Berkeley youth to serve in 2019/2020: **130**

TINY HOUSE VILLAGE PROGRAM

YSA is fundraising for a Tiny House Village for homeless youth and seeks funding for a Case Manager/Social Worker to assist Berkeley youth with placement and transition to permanent housing for 22 youth.

Request: **\$78,000.**

CONTACT PERSON

Councilmember Ben Bartlett
Katie Ly

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510-981-7131



Councilmember Ben Bartlett **2a.43**

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CONSENT CALENDAR
June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett
Subject: FY 2020 -23 General Fund Allocation: Funding for Intercity Services

RECOMMENDATION

That the City Council grant \$203,286 annually to the FY 2020 - FY 2023 budgets to support the Intercity Services.

- ICS' Workforce Services Proposal requested was for \$203,286; however, the Commission and the City Manager made a Joint Recommendation for \$101,351.

FINANCIAL IMPLICATIONS

- The financial implication of not receiving the full recommended amount will result in a fewer number of homeless individuals in the City of Berkeley being provided workforce services by Inter-City Services, Inc.
- 45% + of the homeless population in the city of Berkeley are African-American
- Inter-City Services, Inc.'s goal is to reduce the digital divide and focus on diversity in technology for Berkeley homeless populations.
- Please note that the majority of homeless populations lack the cyber and digital skills to participate in job search activities, search for job resources, and maintain employment.
- For these reasons, we are requesting to receive our full recommendation of \$203,286. Receiving this full amount will allow us to serve a larger homeless population in the city of Berkeley.

BACKGROUND

Inter-City Services (ICS) provide quality vocational skill training and educational programs that are high in quality and implemented by hardworking, dedicated staff. Providing an educational standard of excellence in post-secondary education, ICS offers a variety of financial aid programs in which qualifying students may be eligible for tuition-free training, counseling, career enhancement workshops, and lifetime job placement assistance. In addition, childcare and transportation stipends are provided in some cases.

RATIONALE FOR RECOMMENDATION

Inter-City Services, Inc. (ICS) is a resource for the most marginalized and underserved people residing in the city of Berkeley. ICS's Workforce Training mission is based in part

on the city's need to significantly increase the level of workforce services to Berkeley's Homeless. Over the next 4 years, ICS's goal is to become Berkeley's Hub for Homeless Job Seekers. We will put the full strength of our 35 years of experience providing rapid response workforce services to Berkeley's most vulnerable residents. We will provide effective state-of-the-art services which include: digital literacy, vocational skills training, job placement assistance, and support services for all at-risk residents. ICS' mission, through a collaborative effort with local businesses, government, education, community-based and faith-based entities, to provide workforce readiness for low/moderate income Berkeley residents in-demand occupations. Impoverished individuals are located citywide; hence, we will provide inclusive seamless services to help reduce the skills gap that causes the quality of life inequities. This makes ICS invaluable to the Berkeley Homeless population.

(1) ICS' Workforce Services Proposal requested was for \$203,286; however, the CM Recommended, by CM for \$101,351.

(2) The SSBPPE Commission's recommendations and adopt thirteen (13) organizations; however, not one of the agencies recommended for funding are serving the Homeless. ICS' proposal, "Hydrating the Homeless" was for \$200,000; however, we were not funded. Again, there was no agency that plans to serve the homeless. The SSBPPE must fund some kind of homeless services.

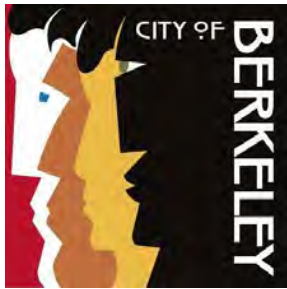
ENVIRONMENTAL SUSTAINABILITY

No environmental impact.

CONTACT PERSON

Councilmember Ben Bartlett
James Chang

510-981-7130
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Councilmember Ben Bartlett

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2a.44

ACTION CALENDAR

June 11, 2019

To: Policy Committee: Land Use, Housing & Economic Development Committee, and
Honorable Mayor & Members of the City Council
From: Councilmember Ben Bartlett
Subject: Berkeley Opportunity Zone Displacement Mitigation Zoning Overlay

SUBJECT

Berkeley Opportunity Zone Displacement Mitigation Zoning Overlay

RECOMMENDATION

Direct the City Manager and refer to the Planning Commission to create one or several zoning overlays, and/or recommend any mechanism, which protects Berkeley residents living in one or all of Berkeley's Federal Opportunity Zones from gentrification and displacement. Overlays and/or recommendations may also confer community benefits, including but not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities.

CURRENT SITUATION

The IRS, working with individual states, designated certain low-income Census tracts as Opportunity Zones as part of the Tax Cuts and Jobs Act of 2017. Investors can defer taxes on capital gains by investing those gains in property in these zones. Investments in Opportunity Zones excuse a percentage of those capital gains from taxes, and property appreciation is untaxed if the property is held longer than 10 years. Opportunity Zones offer a powerful investment vehicle for the wealthy. There are no stipulations protecting neighborhoods from gentrification and displacement caused by rapid, top-down investment from members outside their community. Berkeley's residents living in Opportunity Zones, specifically around the Adeline Corridor and West Berkeley, are currently vulnerable to gentrification and displacement caused by unmitigated, top-down speculation.

BACKGROUND

The Tax Cuts and Jobs Act of 2017 created a vehicle for investors to defer taxes on capital gains while investing in economically-distressed communities. When an individual sells their investment and generates capital gains, that person can invest any portion of those gains into a qualified Opportunity Fund within 180 days. The deferred capital gains will be taxed on the date the investment in the Opportunity Fund is sold, or on December 31, 2026, whichever comes first. Opportunity Funds must invest in property in distressed communities designated as qualified Opportunity Zones by the IRS¹. Investors can defer taxes on capital gains by investing in an Opportunity Fund until the investment in the Opportunity Fund is sold, or on December 31, 2026, whichever occurs first. Investments in qualified Opportunity Funds held

¹ <https://www.congress.gov/bill/115th-congress/house-bill/1>

longer than 5 years allow taxpayers to exclude 10% of the deferred gain, those held longer than 7 years allow taxpayers to exclude a total of 15% of the deferred gain, and those held longer than 10 years allow the taxpayer to exclude the post-acquisition gain on the investment in the Funds². The above structure incentivizes investors to buy properties in Opportunity Zones and either refurbish or replace them with structures to maximize post-acquisition gain.

Such zones in Berkeley that have been designated by the California Department of Finance as qualified Opportunity Zones include the Alameda County tract numbers 4232, 4235, 4239.01, and 4525. These areas include several blocks surrounding Shattuck Avenue from University Avenue to Ashby Avenue, several streets surrounding Adeline Street until 52nd Street (often referred to as the “Adeline Corridor”), and a rectangular shape of land bordering University Avenue north and San Pablo Avenue to the east and terminating at Dwight Way³.

Berkeley’s Opportunity Zones, specifically in the Adeline Corridor and West Berkeley, are in areas vulnerable to, or currently undergoing, gentrification. The National Community Reinvestment Coalition (NCRC) compared Census data from 2010 with 2000 to determine Census tracts vulnerable to gentrification, including those currently gentrifying. Census tract 4240.01, the neighborhood between Sacramento Street, Ashby Avenue, Adeline Street, and Alcatraz Street in South Berkeley was deemed gentrifying. Between 2000 and 2010 the African American population decreased by roughly one third, from 1,821 to 1,264. In Census tract 4232 in West Berkeley, the African American population nearly halved, from 1,025 in 2000 to 687 in 2010. Both Census tracts contain Opportunity Zones. Furthermore, the neighborhoods surrounding these Opportunity Zones share similar demographic shifts. Census tract 4234, north of the Adeline Opportunity Zone, saw its African American population decline almost a third from 2000 to 2010. Census tract 4005, to the East, experienced the same phenomenon over the same period. This pattern applies to almost every neighborhood surrounding West Berkeley’s Opportunity Zone, as well⁴. UC Berkeley Urban Displacement Project has similarly captured these startling trends. It currently lists tracts 4240.01 and 4234, the Adeline Corridor Opportunity Zone and neighborhood to its north, as experiencing “ongoing gentrification/displacement”. It does not have sufficient data for West Berkeley’s Opportunity Zone tract⁵.

Many of the neighborhoods in and around Berkeley’s Opportunity Zones are either vulnerable to gentrification and displacement, or currently experiencing them. With new, powerful investment incentives from Tax Cuts and Jobs Act of 2017, these neighborhoods are perhaps more vulnerable than they have ever been to top-down negligence and gentrification from profit-driven outside investors.

ACTIONS/ALTERNATIVES CONSIDERED

Councilmember Bartlett is proposing a municipal Opportunity Fund as well. The municipal Opportunity Fund will be a powerful tool to direct investment in a way that protects Berkeley’s residents, instead of expediting the ongoing gentrification. A zoning overlay, multiple overlays, or any other recommendation which protects Berkeley residents, is necessary as an immediate protection to Berkeley residents and is meant to work with the Municipal Opportunity Fund to

² <https://fundrise.com/education/blog-posts/what-are-opportunity-zones-and-how-do-they-work>

³ <https://opzones.ca.gov/oz-map/>

⁴ <http://maps.ncrc.org/gentrificationreport/index.html>

⁵ <https://www.urbandisplacement.org/map/sf>

ensure a robust investment mechanism that develops Berkeley while benefiting both existing and new residents.

RATIONALE FOR RECOMMENDATION

Berkeley residents living in census tracts designated as Opportunity Zones are vulnerable to possible adverse effects from investment in zoned projects. As the Tax Cuts and Jobs Act of 2017 created powerful incentives for investment into Opportunity Zone census tracts, an influx of wealthy investor funds will flow into projects in Berkeley. Those investments will build structures and property that yield the greatest return for investors, not necessarily Berkeley residents. By creating a zoning overlay or similar mechanism to protect those census tracts, Berkeley residents will be protected from displacement.

ENVIRONMENTAL SUSTAINABILITY

No adverse effects. A zoning overlay, or similar recommendations, can specify projects in Opportunity Zones to be more environmentally friendly than current policies require.

FISCAL IMPACTS

To be determined. Pending recommendations by the Planning Commission. Depending on the Planning Commission's recommendations, staff time and cost to the City will vary.

CONTACT PERSON

Councilmember Ben Bartlett:
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Matthew Napoli

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jchang@cityofberkeley.info
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Kate Harrison
Councilmember District 4

2a.45

ACTION CALENDAR
June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmember Harrison
Subject: Adopt an Ordinance Amending Berkeley Municipal Code Chapter 2.99 to Prohibit City Use of Face Recognition Technology

RECOMMENDATION

Adopt an ordinance amending Berkeley Municipal Code Chapter 2.99 to prohibit the City from acquiring, retaining, requesting, accessing, or using: (1) any face recognition technology, or (2) any information obtained from face recognition technology.

BACKGROUND

The City of Berkeley was the first City in California to adopt a comprehensive Ordinance regulating City Departments' acquisition of surveillance technology (Ord. 7592-NS, 2018). The legislation, adopted unanimously, recognizes that surveillance technology is inherently dangerous to civil liberties, and establishes a requirement that the City proactively establish why proposed surveillance technology is in the public interest and request Council permission to acquire it.

In adopting its own Acquisition of Surveillance Technology Ordinance modeled upon Berkeley's, the San Francisco Board of Supervisors recently became the first city in the United States to also prohibit city departments' from acquiring, retaining, requesting, accessing, or using of face recognition technology, except at the federally regulated San Francisco Airport and Port. Face recognition technology means "an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face."¹

It is in the public interest for the City of Berkeley to amend its existing Surveillance Technology Ordinance to include a ban of City use of face recognition technology. There are a number of essential constitutional reasons why government use of this specific technology is incompatible with the people's civil liberties:

¹ City and County of San Francisco, Board of Supervisors, "Administrative Code - Acquisition of Surveillance Technology," May 21, 2019, <https://sfgov.legistar.com/LegislationDetail.aspx?ID=3850006&GUID=12FC5DF6-AAC9-4F4E-8553-8F0CD0EBD3F6>.

1. Government use of face recognition technology for identifying or tracking individuals or groups *en masse* for criminal and civil purposes flies in the face of the fundamental principle underlying the Fourth Amendment to the United States Constitution. The amendment clearly prohibits federal, state and local governments from engaging in mass surveillance of their citizens.²

Facial recognition technology differs from stationary surveillance cameras in that it eliminates the human and judicial element behind the existing warrant system by which governments must prove that planned surveillance is both constitutional and sufficiently narrow to protect targets' and bystanders' fundamental rights to privacy while also simultaneously providing the government with the ability to exercise its duties.

Facial recognition technology automates the search, seizure and analysis process that was heretofore pursued on a narrow basis through stringent constitutionally-established and human-centered oversight in the judiciary branch. Due to the inherent dragnet nature of facial recognition technology, governments cannot reasonably support by oath or affirmation the *particular* persons or things to be seized. The programmatic automation of surveillance fundamentally undermines the community's liberty.

With respect to the Fourth Amendment, in practice, facial recognition technology's sweeping nature has already proven extremely ineffective at applying narrowly tailored surveillance. For example, according to the American Civil Liberties Union, in 2018 Amazon's technology "incorrectly matched 28 members of Congress, identifying them as other people who have been arrested for a crime...[t]he false matches were disproportionately of people of color, including six members of the Congressional Black Caucus, among them civil rights legend Rep. John Lewis (D-Ga.)."³

² The Fourth Amendment reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

See Fourth Amendment to the United States Constitution, Cornell Law School Legal Information Institute, https://www.law.cornell.edu/constitution/fourth_amendment.

³ Jacob Snow, "Amazon's Face Recognition Falsely Matched 28 Members of Congress With Mugshots," American Civil Liberties Union, July 26, 2018, <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28>.

While it is easy to write off the Amazon example, along with other examples of the grave issues of facial recognition technology by looking at the technology's shortcomings as merely an engineering or temporary problem, in fact, the technology poses a fundamental Fourth Amendment constitutional problem.

2. Government acquisition and use of mass surveillance presents a fundamental threat to the community's First Amendment right to exercise their freedom of speech, including through assembly, and petitions to the government for a redress of grievances.⁴

Brian Hofer, the Executive Director of Secure Justice, and Matt Cagle, a Technology and Civil Liberties Attorney at the ACLU of Northern California, point out in a recent editorial that there is evidence from the 1970s of local Bay Area governmental entities, such as the San Francisco Police Department, amassing "intelligence files on over 100,000 people, including civil rights demonstrators, union members, and anti-war activists." They note that while these intelligence files took decades to collect, authorities using face recognition technology today, "can stockpile information on 100,000 residents in a few hours."⁵

Government face recognition surveillance will likely have a chilling effect on public engagement. The City of Berkeley can ill-afford to acquire and use technology that has the potential to circumscribe citizens' essential First Amendment rights.

These fundamental constitutional deficiencies with regard to government acquisition and use of face recognition technology necessitates that the Council move proactively to prohibit use of such technology by the City of Berkeley.

FINANCIAL IMPLICATIONS

The Ordinance will prevent investment in expensive face recognition technology.

ENVIRONMENTAL SUSTAINABILITY

The Ordinance is in line with the City's Climate goals by preventing the use of carbon-intensive computing resources for processing bulk facial data.

⁴ See Fourth Amendment to the United States Constitution, Cornell Law School Legal Information Institute, https://www.law.cornell.edu/constitution/first_amendment.

⁵ Matt Cagle and Brian Hofer, "New surveillance oversight law keeps communities safe and redefines tech leadership," San Francisco Examiner, May 8, 2019, <https://www.sfexaminer.com/opinion/new-surveillance-oversight-law-keeps-communities-safe-and-redefines-tech-leadership/>.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

ATTACHMENTS

1. Proposed Ordinance Amending Berkeley Municipal Code Chapter 2.99 to Prohibit
City Use of Face Recognition Technology

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 2.99 TO PROHIBIT CITY USE
OF FACE RECOGNITION TECHNOLOGY

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

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

2.99.020 Definitions

The following definitions apply to this Chapter:

1. "Surveillance Technology" means an electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers; body worn cameras; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems, except as allowed under Section 1(d); social media analytics software; gait analysis software; and video cameras that record audio or video and can remotely transmit or can be remotely accessed.

"Surveillance Technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a Surveillance Technology as defined in Section 1 (above):

- a. Routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance functions;
- b. Handheld Parking Citation Devices, that do not automatically read license plates;
- c. Manually-operated, portable digital cameras, audio recorders, and video recorders that are not to be used remotely and whose functionality is limited to manually capturing, viewing, editing and downloading video and/or audio recordings, but not including body worn cameras;
- d. Devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles or thermal imaging cameras used for fire operations, search and rescue operations and missing person searches, and equipment used in active searches for wanted suspects;
- e. Manually-operated technological devices that are not designed and will not be used to surreptitiously collect surveillance data, such as two-way radios, email systems and city-issued cell phones;

f. Municipal agency databases;

g. Medical equipment used to diagnose, treat, or prevent disease or injury, including electrocardiogram machines;

h. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity;

i. Stationary security cameras affixed to City property or facilities.

2. "Surveillance Technology Report" means an annual written report by the City Manager covering all of the City of Berkeley's Surveillance Technologies that includes all of the following information with regard to each type of Surveillance Technology:

a. Description: A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing;

b. Geographic Deployment: Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically;

c. Complaints: A summary of each complaint, if any, received by the City about the Surveillance Technology;

d. Audits and Violations: The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response;

e. Data Breaches: Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response;

f. Effectiveness: Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes;

g. Costs: Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.

3. "Surveillance Acquisition Report" means a publicly-released written report produced prior to acquisition or to proposed permanent use after use in Exigent

Circumstances pursuant to Section 2.99.040 (2), of a type of Surveillance Technology that includes the following:

- a. Description: Information describing the Surveillance Technology and how it works, including product descriptions from manufacturers;
- b. Purpose: Information on the proposed purpose(s) for the Surveillance Technology;
- c. Location: The general location(s) it may be deployed and reasons for deployment;
- d. Impact: An assessment identifying potential impacts on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups;
- e. Mitigation: Information regarding technical and procedural measures that can be implemented to appropriately safeguard the public from any impacts identified in subsection (d);
- f. Data Types and Sources: A list of the sources of data proposed to be collected, analyzed, or processed by the Surveillance Technology, including "open source" data;
- g. Data Security: Information about the steps that can be taken to ensure adequate security measures to safeguard the data collected or generated from unauthorized access or disclosure;
- h. Fiscal Cost: The fiscal costs for the Surveillance Technology, including initial purchase, personnel and other ongoing costs, including to the extent practicable costs associated with compliance with this and other reporting and oversight requirements, as well as any current or potential sources of funding;
- i. Third Party Dependence and Access: Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis, and whether a third party may have access to such data or may have the right to sell or otherwise share the data in aggregated, disaggregated, raw or any other formats;
- j. Alternatives: A summary and general assessment of potentially viable alternative methods (whether involving the use of a new technology or not), if any, considered before deciding to propose acquiring the Surveillance Technology; and
- k. Experience of Other Entities: To the extent such information is available, a summary of the experience of comparable government entities with the proposed technology, including any unanticipated financial or community costs and benefits, experienced by such other entities.

4. "Surveillance Use Policy" means a publicly-released and legally-enforceable policy for use of each type of the Surveillance Technology that shall reflect the Surveillance Acquisition Report produced for that Surveillance Technology and that at a minimum specifies the following:

a. Purpose: The specific purpose(s) that the Surveillance Technology is intended to advance;

b. Authorized Use: The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited;

c. Data Collection: Information collection that is allowed and prohibited. Where applicable, list any data sources the technology will rely upon, including "open source" data;

d. Data Access: A general description of the title and position of the employees and entities authorized to access or use the collected information, and the rules and processes required prior to access or use of the information, and a description of any and all of the vendor's rights to access and use, sell or otherwise share information for any purpose;

e. Data Protection: A general description of the safeguards that protect information from unauthorized access, including encryption and access control mechanisms, and safeguards that exist to protect data at the vendor level;

f. Civil Liberties and Rights Protection: A general description of the safeguards that protect against the use of the Surveillance Technology and any data resulting from its use in a way that violates or infringes on civil rights and liberties, including but not limited to potential disparate or adverse impacts on any communities or groups;

g. Data Retention: The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond such period;

h. Public Access: How collected information may be accessed or used by members of the public;

i. Third Party Data Sharing: If and how other City or non-City Entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information;

j. Training: Training required for any employee authorized to use the Surveillance Technology or to access information collected;

k. Auditing and Oversight: Mechanisms to ensure that the Surveillance Use Policy is followed, technical measures to monitor for misuse, and the legally enforceable sanctions for intentional violations of the policy; and

l. Maintenance: The mechanisms and procedures to ensure maintenance of the security and integrity of the Surveillance Technology and collected information.

5. "Exigent Circumstances" means the City Manager's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the Surveillance Technology or the information it provides.

6. "Face Recognition Technology" means an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face.

Section 2. That the Berkeley Municipal Code is amended to read as follows:

2.99.030 City Council Approval Requirement

1. The City Manager must obtain City Council approval, except in Exigent Circumstances, by placing an item on the Action Calendar at a duly noticed meeting of the City Council prior to any of the following:

a. Seeking, soliciting, or accepting grant funds for the purchase of, or in-kind or other donations of, Surveillance Technology;

b. Acquiring new Surveillance Technology, including but not limited to procuring such technology without the exchange of monies or consideration;

c. Using new Surveillance Technology, or using Surveillance Technology previously approved by the City Council for a purpose, or in a manner not previously approved by the City Council; or

d. Entering into an agreement with a non-City entity to acquire, share or otherwise use Surveillance Technology or the information it provides, or expanding a vendor's permission to share or otherwise use Surveillance Technology or the information it provides.

2. The City Manager must present a Surveillance Use Policy for each Surveillance Technology to the Police Review Commission, prior to adoption by the City Council. The Police Review Commission shall also be provided with the corresponding Surveillance Acquisition Report that had been presented to council for that Surveillance Technology. No later than 30 days after receiving a Surveillance Use Policy for review, the Police Review Commission must vote to recommend approval of the policy, object to the proposal, recommend modifications, or take no action. Neither opposition to approval of

such a policy, nor failure by the Police Review Commission to act, shall prohibit the City Manager from proceeding with its own review and potential adoption.

3. The City Manager must submit for review a Surveillance Acquisition Report and obtain City Council approval of a Surveillance Use Policy prior to engaging in any of the activities described in subsections (1) (a)-(d).

4. Notwithstanding any other provision of this Chapter, it shall be unlawful for any City staff to obtain, retain, request, access, or use: i) any Face Recognition Technology; or ii) any information obtained from Face Recognition Technology. City staff's inadvertent or unintentional receipt, access to, or use of any information obtained from Face Recognition Technology shall not be a violation of this subsection 4., provided that:

a. City staff does not request or solicit its receipt, access to, or use of such information; and

b. City staff logs such receipt, access to, or use in its Annual Surveillance Report.

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



Office of the City Manager

2a.47

INFORMATION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Amelia Funghi, Manager, Animal Services

Subject: Animal Care Commission 2019 Work Plan

INTRODUCTION

In a general meeting held on March 20, 2019 the Animal Care Commission adopted a work plan for 2019 which is presented below.

CURRENT SITUATION AND ITS EFFECTS

The top priorities of the Animal Care Commission for 2019 are as follows:

1. Infrastructure:

A. Obtain permission to enclose an area close to the animal shelter suitable for training and exercising shelter dogs. The area under the pedestrian bridge leading to the Berkeley City Marina would be a possible location.

2. Advocacy

A. Homeless people and their pets - Continue to support efforts to ensure that pets are not separate from their companions. Make available food and other supplies that will enable all people in need to keep their pets with them, particularly in times of stress.

B. Pet Friendly Housing - Bring to the attention of Berkeley's City Council Members, the city's administrators and landlords the need for pet-friendly housing. Examples of other cities efforts to ensure adequate pet-friendly housing should be obtained and forwarded to the relevant groups.

C. In Berkeley we share our living space with a number of other animal species: Turkeys, Coyotes, Skunks, Opossums, Raccoons, and perhaps a mountain lion, or two. It is important that we keep the human population aware of the presents of these animals and how best to deal with their presence among us through education.

The ACC will work with other commissions, including Parks & Waterfront Commission, the Public Works Commission, and non-profit organizations involved in these issues in Berkeley.

BACKGROUND

The Animal Care Commission (ACC) meets six (6) times per year with the mission of overseeing the treatment of animals in all shelters established within Berkeley. The ACC advises the council on the care, treatment and control of animals.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

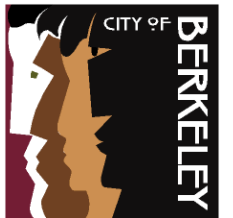
The ACC and the Animal Services Manager will research options and associated costs to establish an area suitable for training and exercising shelter dogs. The ACC will research ways to assist homeless pet owners to secure housing. The ACC will also research and implement practical means to increase pet-friendly housing in Berkeley.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The ACC will research information regarding the cost of establishing an area suitable for training and exercising shelter dogs as well as possible sources of funding.

CONTACT PERSON

Amelia Funghi, Manager, Animal Services, 981-6603



Commission on the
Status of Women

2a.48

INFORMATION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Commission on the Status of Women

Submitted by: Juliet Leftwich, Chairperson, Commission on the Status of Women

Subject: FY 2019-20 Commission on the Status of Women Work Plan

INTRODUCTION

The Commission on the Status of Women seeks to improve the conditions of all women and advocates to the City Council on policies affecting women. At its March 20, 2019 meeting, the Commission on the Status of Women adopted its FY 2019-20 Work Plan (Attachment 1).

CURRENT SITUATION AND ITS EFFECTS

The Commission will be working on developing policies to send to the City Council on a variety of women's issues, including paid family leave, equal pay, conditions for female inmates at Santa Rita Jail, and homelessness.

M/S/C: Shanoski/Campbell

Ayes: Campbell, Shanoski, Leftwich, Lu, Verma

Absent: Howard

Excused: Freedman

BACKGROUND

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

ENVIRONMENTAL SUSTAINABILITY

There are no environmental sustainability impacts directly associated with the adoption of the work plan.

POSSIBLE FUTURE ACTION

The Commission has appointed subcommittees to work on areas of the work plan and will return to Council with recommendations as appropriate.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Fiscal impacts will depend on the actions recommended and the Council's decisions.

CONTACT PERSON

Shallon Allen, Secretary, Commission on the Status of Women, 510-981-7071

Attachment 1: FY 2019-20 Commission on the Status of Women Work Plan

2019 Commission Work Plan

1. Mission Statement

The Commission on the Status of Women seeks to improve the conditions of all women and advocates to the City Council on policies affecting women.

2. Commission's goals

In 2019, the Commission will continue to work on developing innovative policies to recommend to the City Council on a variety of women's issues, including paid family leave, equal pay, conditions for female inmates at Santa Rita jail, and homelessness.

The Commission's Paid Family Leave Subcommittee worked closely with the City Council's ad-hoc subcommittee in 2018 to develop a paid family leave ordinance for Berkeley. That work has continued into 2019 and we expect the full City Council to vote on the ordinance by year's end.

The Commission's Equal Pay subcommittee will continue to work to ensure the implementation of the Commission's Gender Pay Equity Recommendation, which passed the City Council on April 4, 2017. Since April 4, 2017, despite the Commission's repeated inquiries, no work has been done by the City on any of the three recommendations, which were passed unanimously by Council and highly prioritized during the annual prioritization process. On January 22, 2019, the Commission recommended that Council hire Dr. Martha Burk, an independent auditor and nationally recognized gender pay equity expert, to help facilitate completion of the work. The Labor Commission co-sponsored the recommendation. Our Equal Pay Subcommittee will continue to monitor implementation efforts and we're hopeful that progress will be made this year.

In 2018, the Commission established a Santa Rita Jail Subcommittee in response to a prior City Council referral asking that the Commission look into alleged abuses of female prisoners at the facility. Our Subcommittee has researched jail conditions, hosted an expert guest speaker and tracked relevant state legislation. The Subcommittee is continuing its investigation and the Commission expects to provide a report to Council by the end of 2019.

In March 2019, the Commission formed a Homelessness Subcommittee to examine existing services for homeless women and identify the ways in which those services could be improved. We began our investigation into this topic in late 2018, and have already heard compelling and informative presentations from homeless women, nonprofit leaders and city staff.

Resources:

The Commission has no budget and uses no City materials or equipment. The Commission does rely on staff time in several ways: through our Commission secretary, and through the advice of expert staff who we consult about specific policy questions. We expect to meet with a number of city staffers this year to ask for their input on existing city programs and how to best implement any new recommendations that we develop for the City Council.

Program Activities:

Our ultimate goal in 2019 is to submit at least one policy recommendation to the City Council. To accomplish this goal, our subcommittees will follow an established process. First, the subcommittee chair will prepare a research packet for members of the subcommittee so they may familiarize themselves with the research on the issue. The subcommittee will next meet with relevant city staff to learn about related existing Berkeley policies. The subcommittee will then speak with experts about initiatives that have been developed in other jurisdictions. At this point, the subcommittee will meet to formulate a draft of a recommendation.

The subcommittee will present the draft recommendation to key stakeholders for feedback. This may include other Commissions, community or business organizations, or others with a particular interest or expertise in the topic.

Finally, the subcommittee will draft a recommendation to present to the full Commission for a vote. If approved, the recommendation will be sent to the City Council.

Outputs:

We hope to present at least one major substantive policy recommendation to City Council this year. We will hold 8-10 full Commission meetings, and as many subcommittee meetings as needed. We may also present to key stakeholders.

Outcomes:

The Commission's policy recommendations will be developed over the course of 2019. We hope to suggest useful changes to city policies and ordinances that will positively impact the women in our community, as well as our community as a whole, for many years to come.

Upcoming Workshops – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
June 18	<ol style="list-style-type: none"> 1. Green Stormwater Infrastructure Presentation (Public Works) 2. Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Projects (Policy Committee) 3. Council Budget and Strategic Plan Priorities
Sept. 17	<ol style="list-style-type: none"> 1. Arts and Culture Plan 2. Zero Waste Rate Review 3. Adeline Corridor Plan
Oct. 22	<ol style="list-style-type: none"> 1. Berkeley's 2020 Vision Update 2. Census 2020 Update 3. Short Term Rentals
Nov. 5	<ol style="list-style-type: none"> 1. Transfer Station Feasibility Study 2. Vision Zero Action Plan
Dec. 5	<ol style="list-style-type: none"> 1. Measure T1 Update

Unscheduled Workshops
<ol style="list-style-type: none"> 1. Cannabis Health Considerations

Unscheduled Presentations
<ol style="list-style-type: none"> 1. East Bay Municipal Utility District (presentation by the District, June 11 - tentative) 2. Referral Response: Issue a Request for Information to Explore Grant Writing Services from Specialized Municipal Grant-Writing Firms, and Report Back to Council

	City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling
1.	<p>61a. Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley (<i>Referred from the July 24, 2018 agenda</i>) From: Housing Advisory Commission Recommendation: That the City Council not use U1 funds to backfill the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue, and 1925 Ninth Street, City of Berkeley. Financial Implications: See report Contact: Amy Davidson, Commission Secretary, 981-5400</p> <p>61b. Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley (<i>Referred from the July 24, 2018 agenda</i>) From: City Manager Recommendation: Accept staff's recommendation to use \$4,730,815 of Measure U1 revenue over a 5 year period (\$946,163 annually) to repay the Workers' Compensation Fund for the acquisition of the properties located at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley. Financial Implications: See report Contact: Dee Williams-Ridley, City Manager, 981-7000</p>
2.	<p>68. Revisions to Ordinance No. 7,521--N.S. in the Berkeley Municipal Code to increase compliance with the city's short-term rental ordinance (<i>Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.</i>) March 18, 2019 Action: <i>Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.</i> From: Councilmember Worthington Recommendation: Refer the City Manager to look into adopting revisions to Ordinance No. 7,521--N.S by modeling after the Home-Sharing Ordinance of the City of Santa Monica and the Residential Unit Conversion Ordinance of the City of San Francisco in order to increase compliance with city regulations on short-term rentals of unlicensed properties. Financial Implications: Minimal Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p>
3.	<p>4. Disposition of City-Owned, Former Redevelopment Agency Properties at 1631 Fifth Street and 1654 Fifth Street (<i>Referred from the September 25, 2018 agenda</i>) From: City Manager Recommendation: 1. Adopt first reading of an Ordinance authorizing the sale of two City-owned, former Redevelopment Agency properties at 1631 Fifth Street and 1654 Fifth Street at market rate and deposit the proceeds in the City's Housing Trust Fund (HTF). 2. Direct the City Manager to issue a Request for Proposals to select a real estate broker to manage the sale. Financial Implications: See report Contact: Kelly Wallace, Housing and Community Services, 981-5400</p>

4.	<p>17. Short-term referral to City Manager and budget referral for creation of a “vehicle dweller program” in Berkeley <i>(Referred from the April 2, 2019 agenda.)</i></p> <p>From: Councilmember Davila</p> <p>Recommendation: Create a comprehensive program to support those living in their vehicles, including but not limited to RVs, to stay in Berkeley without fear of being criminalized, harassed, displaced, fined or having their vehicles confiscated, and with the support needed to have minimal impact on the neighborhoods in which they reside. The program could include: -Issuing 3-6 month permits for vehicles in running order with an option to renew if no validated complaints have been filed. -Creating a registration process that identifies any additional support needed. -Specifying a consistent, clear and transparent process for investigating complaints to determine validity and issuing warnings. -Distributing permits equally across all parking permit districts and identifying any restrictions on parking (i.e. near schools given bus access, etc.). -Creating an affordable sliding scale permit structure based on size of vehicle, weight, number of wheels, etc. -Providing pump-out services, waste disposal and social services as needed. -Creating a pump-out station for use by RVs within the City of Berkeley. -Creating a program for up to \$3,000 per a vehicle for mechanical and sanitation repairs as well as registration and offering a grace period to get vehicles into compliance for a permit. -Piloting a Safe Parking program modeled after Oakland’s pilot: 4-8 sites with 6-10 vehicles parked at business, school, community or faith-based site parking lots, including support and sanitation services.</p> <p>Vehicles with permits are exempt from Berkeley Municipal Code (BMC) Chapter 12.76 and BMC Section 14.40.120.</p> <p>Financial Implications: See report Contact: Cheryl Davila, Councilmember, District 2, 981-7120</p>
5.	<p>Land Use Planning Permit Fee Amendments <i>(Referred from the May 14, 2019 agenda.)</i></p> <p>From: City Manager</p> <p>Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution amending Resolution No. 67,985-N.S. to amend the fee schedule for Land Use Planning Fees to establish a new fee for land use applications that request streamlined approval, pursuant to Senate Bill 35 (approved by Governor in 2017).</p> <p>Financial Implications: See report Contact: Timothy Burroughs, Planning and Development, 981-7400</p>
6.	<p>Residential Preferential Parking (RPP) Program Reform & Expansion Phase II: Recommendations for Increased Staffing, Enhanced Football Game Day Enforcement, and Expansion <i>(Referred from the May 14, 2019 agenda.)</i></p> <p>From: City Manager</p> <p>Recommendation: Conduct a public hearing and upon conclusion: 2. Adopt a Resolution to expand and enhance the RPP Program, raising permit fees for cost neutrality while increasing parking enforcement staff and equipment to augment RPP enforcement, improving UC Berkeley home football game parking enforcement, allowing more residents to opt-in, and rescinding Resolution 68,344-N.S.;</p> <p>Financial Implications: See report Contact: Phillip Harrington, Public Works, 981-6300</p>

CITY CLERK DEPARTMENT				
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL				
Address	Board/ Commission	Appeal Period Ends	Determination on Appeal Submitted	Public Hearing
NOD – Notices of Decision				
2325 Sixth St (single-family residence)	ZAB	6/5/2019		
2072 Addison St (eliminate off-street parking)	ZAB	6/5/2019		
Public Hearings Scheduled				
1444 Fifth St (construct four single-family dwellings)	ZAB			5/28/2019
Remanded to ZAB or LPC				
1155-73 Hearst Ave (develop two parcels)	ZAB			
90-Day Deadline: May 19, 2019				
2701 Shattuck Ave (construct 5-story mixed-use building)	ZAB			
90-Day Deadline: June 30, 2019				
Notes				

Last Updated: 5/23/19