

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

**BERKELEY CITY COUNCIL SPECIAL MEETING**

**MONDAY, JULY 8, 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

**AGENDA**

**Roll Call**

**Public Comment**

**Review of Agendas**

1. **Approval of Minutes: July 1, 2019**
2. **Review and Approve Draft Agendas:**
  - a. 7/23/19 – 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.*

### **8. Discussion and Direction Regarding Revisions to the City Council Rules of Procedure and Order**

**From: City Manager**

**Contact: Mark Numainville, City Clerk**

### **9. Review of Scope of Work to Develop a Performance Evaluation of the City Manager**

**From: City Manager**

**Contact: Dee Williams-Ridley, City Manager**

## Items for Future Agendas

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

## Adjournment – Next Meeting Monday, August 26, 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 July 3, 2019.

A handwritten signature in black ink, appearing to read "Mark Numainville".

Mark Numainville, City Clerk

**Communications**

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



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

### BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

MONDAY, JULY 1, 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:** 2:36 p.m. All present.

**Public Comment:** 6 speakers

### Review of Agendas

**1. Approval of Minutes: June 24, 2019**

**Action:** M/S/C (Wengraf/Harrison) to approve the minutes of June 24, 2019.

**Vote:** All Ayes.

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

a. 7/16/19 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Wengraf/Harrison) to approve the agenda of the July 8, 2019 City Council with the revisions noted below.

**Vote:** All Ayes.

- *Ceremonial Item – Recognition of Paul’s Shoe Repair*
- *Ceremonial Item – Recognition of Ari Neulight*
- *Item Added: Presentation by PG&E (Wengraf) – Councilmember Harrison and Mayor Arreguin added as co-sponsors*
- *Item Added: Wireless Telecommunications (Wengraf)*
- *Item 7 Support SB 806 (Bartlett) – revised item submitted; Mayor Arreguin and Councilmembers Robinson and Davila added as co-sponsors*
- *Item 8 Support AB 302 (Robinson) – revised item submitted; Councilmember Davila added as a co-sponsor*
- *Item 9 Support AB 1076 (Robinson) – Councilmember Davila added as a co-sponsor*
- *Item 11 RV Permitting (Health Committee) – revised item submitted; Item held over to July 23, 2019*

#### Policy Committee Track Items

- *Item 12 Opportunity Zones (Bartlett) – revised item submitted; Councilmember Davila added as a co-sponsor; Scheduled for 7/16/19 Action Calendar*
- *Item 13 Voting Centers (Robinson) – revised item submitted; Councilmember Davila added as a co-sponsor; Scheduled for 7/16/19 Consent Calendar*
- *Item 14 Entheogenic Plants (Robinson) – referred to Public Safety Committee*

Action Calendar Order

Item 10 – Housing Pipeline Report

Item 12 – Opportunity Zones

3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
  - Selected Item 12 Opportunity Zones
4. **Adjournments In Memory Of - None**

## **Scheduling**

5. **Council Worksessions Schedule**
  - Grant Writing Presentation scheduled for 9/24/19 Action Calendar
6. **Council Referrals to Agenda Committee for Scheduling**
  - TOPA Ordinance scheduled for 9/24/19 Action Calendar
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.*

### **8. Discussion and Direction Regarding Revisions to the City Council Rules of Procedure and Order**

**From: City Manager**

**Contact: Mark Numainville, City Clerk**

**Action:** Discussion held. Item continued to July 8, 2019.

## **Items for Future Agendas**

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

## **Adjournment**

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

**Vote:** All Ayes.

Adjourned at 3:34 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on July 1, 2019

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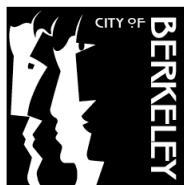
Mark Numainville, City Clerk

## **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****BERKELEY CITY COUNCIL MEETING**

**Tuesday, July 23, 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.*

**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. Referral Response: Short-term referral to City Manager to amend Berkeley Municipal Code 7,441-N.S. to expand the control of flavored tobacco across the City of Berkeley toward preventing youth and young adult tobacco use**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance amending Berkeley Municipal Code sections 9.80.020 and 9.80.035, and adding sections 9.80.031 and 9.80.032 to prohibit the sale of flavored tobacco products, to require a minimum package size for cigars and little cigars, and to require a minimum price for certain tobacco products sold in the City.  
**Financial Implications:** See report  
Contact: Farimah Brown, City Attorney, 981-6950; Kelly Wallace, Housing and Community Services, 981-5400
- 2. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the Council meetings of June 4, 2019 (special closed), June 11, 2019 (special closed, special, and regular), June 18, 2019 (special closed and special), and June 25, 2019 (special closed and regular).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, 981-6900

## Consent Calendar

- 3. Establish 2020 City Council Meeting Schedule**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution establishing the City Council regular meeting schedule for 2020, with starting times of 6:00 p.m.  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, 981-6900
- 4. Affordable Housing Projects; Federal Tax Law Reimbursement Resolution**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution allowing the City to pay certain costs of affordable and moderate income housing projects prior to the date of execution, delivery or issuance of tax-exempt bonds, and to use a portion of the proceeds of the tax-exempt bonds for reimbursement of expenditures for the projects that are paid before the date of execution, delivery or issuance of the obligations. The maximum principal amount of the obligations is expected to be \$175,000,000.  
**Financial Implications:** See report  
Contact: Paul Buddenhagen, City Manager's Office, 981-7000
- 5. Animal Care Services Providing Mutual Aid in Disasters**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving Berkeley Animal Care Services (BACS) Mutual Aid Agreement policy to provide animal services in disaster and emergency situations.  
**Financial Implications:** See report  
Contact: Paul Buddenhagen, City Manager's Office, 981-7000
- 6. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on July 23, 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:** Fund Number 608 - \$500,000  
Contact: Henry Oyekanmi, Finance, 981-7300
- 7. Contract No. 10631A Amendment: Resource Development Associates for HOTT Evaluation Consulting Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 10631A with Resource Development Associates (RDA) to build a database for the Mental Health Division's Homeless Outreach and Treatment Team (HOTT), in an amount not to exceed \$6,500, for a total contract amount not to exceed \$54,500.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, 981-5400

## Consent Calendar

### 8. **Contract Amendments: Mental Health Services Act Community Services and Supports, and Prevention and Early Intervention**

**From: City Manager**

**Recommendation:** Adopt seven Resolutions authorizing the City Manager or her designee to execute amendments for the following contracts that are funded through Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI), and Community Services and Supports (CSS) increasing the contract amounts as outlined below, and extending the contracts through June 30, 2020:

1. Increasing PEI Contract No. 8573I with Albany Unified School District (AUSD) by \$64,192 from ERMA GL Account #:315-51-503-526-2016-000-451-636110, for a total contract amount not to exceed \$566,508 for services to Asian Pacific Islander, Latino, and African American youth;
2. Increasing PEI Contract No. 8801H with Center for Independent Living (CIL) in the amount of \$32,046 from ERMA GL Account #:315-51-503-526-2016-000-451-636110, for a total contract amount not to exceed \$256,584 for supports for senior citizens;
3. Increasing PEI Contract No. 8560I with G.O.A.L.S. For Women, Inc. in the amount of \$32,046 from ERMA GL Account #:315-51-503-526-2016-000-451-636110, for a total amount not to exceed \$283,104 to serve African American women and their families;
4. Increasing PEI Contract No. 8516J with Pacific Center for Human Growth in the amount of \$32,046 from ERMA GL Account #:315-51-503-526-2016-000-451-636110, for a total contract amount not to exceed \$283,104 to serve Lesbian, Gay, Bi-sexual, Transgender, Queer/Questioning, and Intersex (LGBTQI) individuals;
5. Increasing PEI Contract No. 8606I with Covenant House California-YEAH! Program, in the amount of \$32,046 from ERMA GL Account #:315-51-503-526-2016-000-451-636110, for a total contract amount not to exceed \$283,104 for support groups for Transition Age Youth (TAY);
6. Increasing PEI Contract No. 8975G with Berkeley Unified School District (BUSD) in the amount of \$55,000 from ERMA GL Account #:315-51-503-526-2016-000-451-636110, for a total contract amount not to exceed \$435,000 for elementary school youth; and
7. Increasing CSS Contract No. 9553E with Covenant House California-YEAH! Program by \$122,856 from ERMA GL Account #: 315-51-503-526-2017-000-451-636110 for a total contract amount not to exceed \$755,286 for services for transition age youth.

**Financial Implications:** See report

Contact: Kelly Wallace, Housing and Community Services, 981-5400

## Consent Calendar

**9. Mental Health Services Act (MHSA) Fiscal Year 2019-2020 (FY20) Annual Update**

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the Mental Health Services Act (MHSA) Fiscal Year 2019-2020 (FY20) Annual Update, which provides information on current and proposed uses of funds on mental health programming, and forwarding the MHSA FY20 Annual Update to appropriate state officials.

**Financial Implications:** See report

Contact: Kelly Wallace, Housing and Community Services, 981-5400

**10. Contract No. 9888A Amendment: Merritt Hawkins for Recruitment Services: Psychiatrist**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 9888A adding \$100,000 to the expenditure contract with Merritt Hawkins for Recruitment for Psychiatrist III for a total contract limit of \$149,990 for the period beginning March 2, 2015 and ending on June 30, 2021.

**Financial Implications:** Various Funds - \$100,000

Contact: Kelly Wallace, Housing and Community Services, 981-5400

**11. Contract: AMCS for Zero Waste Management Software System**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with AMCS for software hosting, implementation, maintenance and related services for a Zero Waste Management Software System for an amount not to exceed \$1,363,735 for the period commencing on July 24, 2019 through June 30, 2024.

**Financial Implications:** Various Funds - \$1,363,735

Contact: Savita Chaudhary, Information Technology, 981-6500

**12. Contract: Assetworks for Fleet Management Software & Implementation Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with Assetworks for software hosting, implementation, maintenance and related services for a Fleet Management Software, for an amount not to exceed \$487,249 for the projected period commencing on July 24, 2019 through June 30, 2024.

**Financial Implications:** Various Funds - \$487,249

Contact: Savita Chaudhary, Information Technology, 981-6500

## Consent Calendar

- 13. Contract Amendment 11005: Communication Strategies for Consulting Services for Voice Over IP (VoIP) Support and Maintenance**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend a contract with Communication Strategies for Consulting Services for developing requirements and conducting needs assessment for Voice over IP (VoIP) Support and Maintenance, increasing the contract amount by \$42,216 for a total not-to-exceed amount of \$76,811 from July 1, 2017 to June 30, 2020.  
**Financial Implications:** See Report  
Contact: Savita Chaudhary, Information Technology, 981-6500
- 14. Special Use Permit for Berkeley Tuolumne Camp**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a Special Use Permit, and any amendments thereto, with the United States Forest Service to construct, operate, maintain, and improve Berkeley Tuolumne Camp located in the Stanislaus National Forest for a period of thirty years.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
- 15. Contract: Left Coast Land Clearing for Berkeley Tuolumne Camp Sun City Hazard Mitigation**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Left Coast Land Clearing in an amount not to exceed \$365,000 to provide hazard mitigation services for the Berkeley Tuolumne Camp Sun City Project for the period July 24, 2019 through July 24, 2020.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
- 16. Contract: Poston Logging, LLC for Berkeley Tuolumne Camp Tree Hazard Mitigation**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Poston Logging, LLC in an amount not to exceed \$450,000 to provide tree hazard mitigation services for the Berkeley Tuolumne Camp Project for the period July 24, 2019 through July 24, 2020.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700

## Consent Calendar

**17. Contract: McNabb Construction, Inc. for George Florence Park Playground Renovation**

**From: City Manager**

**Recommendation:** Adopt a Resolution:

1. Approving the plans and specifications for the George Florence Park Playground Renovation project, Specification No. 19-11301-C; and
2. Accepting the bid of the lowest responsive and responsible bidder, McNabb Construction, Inc.; and
3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with McNabb Construction, Inc., for the George Florence Park Playground Renovation project at 2121 Tenth Street, Berkeley, CA 94710, in an amount not to exceed \$538,706, which includes a contract amount of \$468,706 and a 15% contingency in the amount of \$70,000.

**Financial Implications:** See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700

**18. Authorizing the modification of the Measure T1 Phase 1 project list: removal of the King School Park Bioswale project and addition of alternate Green Infrastructure projects**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing:

1. Removal of the King School Park Bioswale project from the list of approved Measure T1 projects ; and
2. Addition of the following priority sites as T1 Phase 1 projects, identified by the Green Infrastructure (GI) plan at the Council worksession on June 18, 2019 and the Public Works Commission: Page Street between Fourth Street and the RR Tracks; Jones Street between Fourth Street and RR Tracks; Channing Way at the RR Tracks; Heinz Avenue near RR Tracks; Dwight Way between Fourth Street and the RR Tracks; Grayson Street near the RR Tracks; Tenth Street at Codornices Creek; Ninth Street at Codornices Creek; Piedmont Avenue Median between Durant Avenue and Channing Way; Piedmont Avenue Traffic Circle; San Pablo Park at Ward Street; and the evaluation of the Sacramento Street center median.

**Financial Implications:** See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700; Phillip Harrington, Public Works, 981-6300

**19. Contract No. 9635 Amendment: Restoration Management Company for On-Call Remediation and Restoration Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9635 with Restoration Management Company, to increase the current contract by \$50,000 for a total not to exceed amount of \$100,000 and to extend the contract term to June 30, 2021.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, 981-6300

## Consent Calendar

- 20. Purchase Order: Stockton Tri Industries, Inc. for Front Loading and Rear Loading Container Purchase**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to accept a bid from Stockton Tri Industries, Inc. for front-loading and rear-loading containers and execute a purchase order in an amount not to exceed \$450,000 for fiscal years FY 2020 – FY 2023.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300
- 21. Contract No. 10485 Amendment: Fehr & Peers, Inc. for On-Call Transportation Planning Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10485 with Fehr & Peers, Inc. (“F&P”) for On-Call Transportation Planning Services, increasing the contract by \$150,000, for a total amount not to exceed \$650,000.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300
- 22. Contract No. 121345-1 Amendment: W.A. Rose Construction, Inc. for Exterior Stucco Demolition Work at the Central Library**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 121345-1 with W.A. Rose Construction, Inc. to complete exterior stucco demolition work at the Central Library, increasing the amended contract amount of \$320,156 to a not to exceed amount of \$351,317 plus an allowable contingency amount of \$6,000 and to extend the term of the contract to December 31, 2019.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300; Elliot Warren, Library, 981-6100
- 23. Agreements: Joint Exercise of Powers Agreement Establishing and Governing Operation of the Collection System Technical Advisory Committee and Defendants’ Side Agreement to Facilitate Consent Decree Compliance**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute the Joint Exercise of Powers Agreement with the City of Alameda, City of Albany, City of Berkeley, City of Emeryville, City of Oakland, City of Piedmont, the Stege Sanitary District, and East Bay Municipal Utility District, establishing and governing operation of the Collection System Technical Advisory Committee and the Defendants’ Side Agreement to facilitate Consent Decree Compliance.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300



## Council Consent Items

### 24. Resolution in Support of AB 1279 – Planning and zoning: housing development: high-resource areas

**From: Councilmember Harrison and Mayor Arreguin**

**Recommendation:**

1. Adopt a resolution in support of AB 1279, which requires that housing development projects be issued a by-right use permit in designated high resource areas and mandate that they include a percentage of affordable units. If these affordability requirements are not met, developers would be charged fees that would be deposited in a local affordable housing fund.
2. Send letters of support to Assemblymember Wicks, Senator Skinner, and Governor Newsom.

**Financial Implications:** None

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.*

## Action Calendar – Public Hearings

25. **Amendments to the Berkeley Election Reform Act; Amending BMC Chapter 2.12**  
**From: Fair Campaign Practices Commission**  
**Recommendation:** Conduct a public hearing and upon conclusion, adopt an ordinance amending the Berkeley Elections Reform Act, Berkeley Municipal Code Chapter 2.12, regarding the public financing program.  
**Financial Implications:** None  
Contact: Emma Soichet, Commission Secretary, 981-6950
26. **Substantial Amendments to the PY2018 and PY2019 HUD Annual Action Plans for Use of ESG Funds**  
**From: City Manager**  
**Recommendation:** Conduct a Public Hearing on substantial amendments to the PY2018 and PY2019 Annual Action Plans for use of Emergency Solutions Grant (ESG) funds, allocating the maximum allowable amount towards shelter and street outreach, and away from rapid rehousing, and adopt a Resolution authorizing the City Manager to submit the Substantial Amendments to the PY2018 and PY2019 Annual Action Plans to the U.S. Department of Housing and Urban Development (HUD).  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, 981-5400

## Action Calendar – Old Business

27. **Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention**  
*(Continued from June 25, 2019)*  
**From: Mayor Arreguin and Councilmember Harrison**  
**Recommendation:** Adopt second reading of Ordinance No. 7,668-N.S. 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.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** Staff time  
Contact: Jesse Arreguin, Mayor, 981-7100

## Action Calendar – New Business

28. **Voting Delegates – League of California Cities Annual Conference**  
**From: City Manager**  
**Recommendation:** Designate, by motion, a voting delegate and alternate for the business meeting of the Annual League of California Cities meeting to be held on Friday, October 18, 2019, at the Long Beach Convention Center.  
**Financial Implications:** See report  
Contact: Mark Numainville, City Clerk, 981-6900

## Action Calendar – New Business

29. **Funding for Street Rehabilitation Capital Improvement Program in Berkeley**  
**From: City Manager**  
**Recommendation:** In response to Council comments at the December 11, 2018 Council Meeting, this report provides information on current and future funding sources for street rehabilitation, and staff is requesting feedback on the funding available, including current expenditures, projected expenses, and plans, for the City's current and future Street Rehabilitation Capital Improvement Program (CIP).  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300
30. **Residential Preferential Parking (RPP) Program: Summer 2019 Update**  
**From: City Manager**  
**Recommendation:** Direct staff to conduct analysis of Fiscal Year (FY) 2020 Residential Preferential Parking (RPP) Program costs and revenues and return to Council early 2020 with updated fee increase proposal(s) to be effective April 1, 2020 for the FY 2021 permit year for Program enhancement and expansion.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300

## Council Action Items

31. **Basic Criteria for Two-Week RV Permitting Process** (*Reviewed by the Health, Life Enrichment, Equity & Community Committee*)  
**From: Health, Life Enrichment, Equity & Community Committee:**  
**Councilmembers Hahn, Bartlett, and Kesarwani**  
**Recommendation:** Refer to the City Manager to develop a two-week permit and system for recreational vehicle (RV) parking based on recommendations from the Health, Life Enrichment, Equity & Community Committee.  
**Financial Implications:** Staff time  
Contact: Health, Life Enrichment, Equity & Community Committee members: Sophie Hahn, Committee Chair, District 5, 981-7150; Ben Bartlett, Councilmember, District 3, 981-7130; Rashi Kesarwani, Councilmember, District 1, 981-7110

## Action Calendar – Policy Committee Track Items

32. **Implementing Vision Zero: Prioritizing High Collision Streets**  
**From: Mayor Arreguin, Councilmembers Droste, Hahn, and Wengraf**  
**Recommendation:** As street lights are being replaced and transportation infrastructure improvements are made throughout the City, and as work plans and schedules are developed, priority should be given to high-collision streets, as identified in the Pedestrian Master Plan and Vision Zero program. Examples include but are not limited to improving lighting, updating signage, and painting of crosswalks.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, 981-7100

## Action Calendar – Policy Committee Track Items

- 33. Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance**  
**From: Mayor Arreguin, Councilmembers Davila, Harrison, and Robinson**  
**Recommendation:** Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance.  
**Financial Implications:** Unknown  
Contact: Jesse Arreguin, Mayor, 981-7100
- 34. Authorizing Transfer of Funds to Rent Board for Eviction Defense Contracts**  
**From: Mayor Arreguin**  
**Recommendation:** Adopt a Resolution authorizing the transfer of \$550,000 for Fiscal Years 2020 and 2021 to the Rent Stabilization Board to amend its contracts with the Eviction Defense Center and East Bay Community Law Center to provide eviction defense and various other anti-displacement services to low and moderate-income Berkeley residents.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, 981-7100

## Action Calendar – Policy Committee Track Items

**35. Identifying Locations for Managed Safe Recreational Vehicle (RV) Parking on City-Owned Land, Development of a Three-Month “Grace Period” Permit Program, and Requesting that the State Lands Commission Permit a Temporary Safe Parking Site at the Berkeley Waterfront**

**From: Mayor Arreguin, Councilmembers Kesarwani and Harrison**  
**Recommendation:**

1. Direct the City Manager to identify one or more locations on city-owned land, including at the Berkeley Waterfront, for the establishment of a managed safe RV parking site for individuals currently sheltering in an RV or oversized vehicle on the public right-of-way in the City of Berkeley. The site(s) shall be available specifically for individuals identified through outreach as meeting the priority populations criteria designated by City Council in its March 26, 2019 action and are therefore eligible for the city’s three-month Grace Period Permit Program.

A three-month Grace Period Permit (with possibility for renewal under limited specified circumstances) will be offered on a one-time basis to existing Berkeley RV dwellers who meet the priority populations criteria adopted by Council on March 26, 2019. The three-month Grace Period Permit will allow RV dwellers to park in a designated off-street safe location within City limits. As adopted and specified on March 26th, a safe parking location should be provided to priority populations prior to enforcement of RV parking regulations under Ordinance No. 7,643-N.S. (BMC Section 14.40.120) and shall include services to ensure health and safety, including sanitation services.

2. Once locations are identified, the City Manager should report back to the City Council on proposed locations and a proposed program model for the three-month Grace Period Permit program including a non-profit operator, service model, security measures, and sanitary facilities such as portable restrooms and hand-washing stations. The Council may at that time express its intent to allocate additional funding through Measure P tax receipts or other General Fund revenues to establish a long-term safe parking program for individuals who meet priority populations criteria and who have not previously received a three-month Grace Period Permit.

Program participants should be actively engaged with rehousing and other services, and their stay will be short-term while they are seeking permanent housing and/or a long-term off-street location to which they can relocate, such as an RV park.

3. The City Manager should explore all possible locations on city-owned land, including all vacant or partially-occupied city properties, “dead-end” streets, and the Berkeley Waterfront.

4. Direct the City Manager to submit a formal request to the California State Lands Commission for permission to establish a temporary safe parking location on City land at the Berkeley Waterfront based on the City of Berkeley’s declaration of a Homeless Shelter Crisis.

**Financial Implications:** See report

Contact: Jesse Arreguin, Mayor, 981-7100

## Action Calendar – Policy Committee Track Items

- 36. Designating Berkeley’s portion of Ohlone Greenway and the West Street Bike Path as linear City parks**  
**From: Councilmember Kesarwani**  
**Recommendation:** Adopt a resolution designating the Berkeley-owned portions of the West Street Bike Path and the Ohlone Greenway as linear City parks and formally dedicate these sites for permanent recreational use. The City-owned portion of the West Street Bike Path begins adjacent to the basketball courts at Virginia Gardens and travels southward ending at Delaware Street. The City-owned section of the Ohlone Greenway begins northwest of the North Berkeley BART station at Cedar Street and continues north to the City’s border with Albany.  
**Financial Implications:** See report  
Contact: Rashi Kesarwani, Councilmember, District 1, 981-7110

## Information Reports

- 37. City Council Short Term Referral Process – Monthly Update**  
**From: City Manager**  
Contact: Mark Numainville, City Clerk, 981-6900
- 38. Update on Measure T1**  
**From: City Manager**  
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700; Phillip Harrington, Public Works, 981-6300
- 39. Audit Status Report - PRW On-Call Program**  
**From: City Manager**  
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
- 40. LPO NOD: 1619 Walnut Street -- #LMIN2019-0001**  
**From: City Manager**  
Contact: Timothy Burroughs, Planning and Development, 981-7400
- 41. LPO NOD: 1915 Fourth Street/#LMSAP2019-0003**  
**From: City Manager**  
Contact: Timothy Burroughs, Planning and Development, 981-7400
- 42. LPO NOD: 2580 Bancroft Way/#LMSAP-2019-0006**  
**From: City Manager**  
Contact: Timothy Burroughs, Planning and Development, 981-7400
- 43. FY2020 Public Art Plan and Budget**  
**From: Civic Arts Commission**  
Contact: Jennifer Lovvorn, Commission Secretary, 981-7530

## Information Reports

44. **Report on B.M.C. 13.79.050 (“Buyout Offers and Agreements”)**  
**From: Rent Stabilization Board**  
Contact: Jay Kelekian, Rent Stabilization Board, 981-7368
45. **Zero Waste Commission 2019-20 Work Plan**  
**From: Zero Waste Commission**  
Contact: Heidi Obermeit, Commission Secretary, 981-6300
46. **City Auditor Amended Fiscal Year 2019 Audit Plan and Fiscal Year 2020 Audit Plan**  
**From: Auditor**  
Contact: Jenny Wong, Auditor, 981-6750

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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

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Tel: 510-981-6900

Libraries:  
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TDD: 510-981-6903  
Fax: 510-981-6901  
Email: clerk@cityofberkeley.info

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.

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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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Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
July 23<sup>rd</sup>, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kate Harrison and Mayor Jesse Arreguin  
Subject: Resolution in Support of AB 1279 – Planning and zoning: housing development: high-resource areas.

RECOMMENDATION

1. Adopt a resolution in support of AB 1279, which requires that housing development projects be issued a by-right use permit in designated high resource areas and mandate that they include a percentage of affordable units. If these affordability requirements are not met, developers would be charged fees that would be deposited in a local affordable housing fund.
2. Send letters of support to Assemblymember Wicks, Senator Skinner, and Governor Newsom.

BACKGROUND

The housing crisis is one of the most pressing issues facing California. A 2016 McKinsey Global Institute report found that California is currently short about two million units of housing. Real estate prices are rising three times faster than the median household income, and more than 50% of households cannot afford the cost of housing.<sup>1</sup> By 2025, 3.5 million units must be built to meet the needs of a growing population.

The housing crisis pushes vulnerable residents into intolerably long commutes and homelessness and has negative implications for the economy, with California losing \$140 billion per year, or 6% of GDP, due to the housing shortage. The LA Times cites a 2015 study that found there are 116,000 homeless people in California; this is 21% of the national homeless population despite California only comprising 12% of the U.S. population.<sup>2</sup>

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<sup>1</sup> A Tool Kit to Close California's Housing Gap: 3.5 Million Homes By 2025  
<https://www.mckinsey.com/~media/mckinsey/featured%20insights/Urbanization/Closing%20Californias%20housing%20gap/Closing-Californias-housing-gap-Full-report.ashx>

<sup>2</sup> California's housing crisis reaches from the homeless to the middle class — but it's still almost impossible to fix  
<https://www.latimes.com/business/hiltzik/la-fi-hiltzik-housing-crisis-20180330-story.html>

This bill is intended to accelerate housing development, subsequently driving down the cost of housing, while also rectifying disparities of housing development between different cities and counties, and taking steps to avoid gentrification and displacement in areas of new construction.

Past legislation has not differentiated high resource areas from those at risk of displacement that would drive residents out of neighborhoods, and has focused on transit-ready areas, allowing areas without transit to avoid housing requirements and disincentivizing adding transit.

AB 1279 addresses these problems in several ways. The bill requires the Department of Housing and Community Development to designate areas in the state as “high resource areas” (areas of low residential density that are not currently experiencing, or at a future risk of, gentrification and displacement), with updates every five years. In these areas, the bill would require that proposed housing development projects be by right. Developments that require the demolition of rental housing that has been occupied by tenants within the past 10 years, or that are located in certain areas (such as land designated for conservation) are not eligible as by right.

The development must meet a set of requirements, including affordability requirements. For example, for certain developments, if the price or rent exceeds the affordable housing cost or affordable rent to households with incomes equal to or less than 100% of the area median income, the developer must pay a fee equal to 10% of the difference between the actual amount and the affordable amount, with the fee deposited into a local fund reserved for affordable housing. Additionally, the bill requires certain larger developments to provide inclusionary units at prices affordable to low or very low income households. The developer must ensure the continued affordability of these units for 45 years (for rented units), or 55 years (for owner-occupied units).

#### FISCAL IMPACTS OF RECOMMENDATION

No impact. Clerk time necessary to send letter.

#### ENVIRONMENTAL SUSTAINABILITY

No impact.

#### CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

#### ATTACHMENTS

- 1: Resolution
- 2: Letters

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

RESOLUTION IN SUPPORT OF AB 1279 – PLANNING AND ZONING: HOUSING  
DEVELOPMENT: HIGH-RESOURCE AREAS

WHEREAS, the cost of housing is rapidly increasing across California

WHEREAS, an increasing percentage of families are unable to afford their housing costs, and homelessness is becoming more prevalent

WHEREAS, the underlying cause of increasing housing costs is a lack of housing development

WHEREAS, past legislation has incentivized development in areas at risk of displacement, worsening conditions for existing residents, and has focused on transit-ready areas, allowing areas without transit to avoid housing requirements and disincentivizing the development of transit

WHEREAS, AB 1279 mandates that housing development projects be by right in designated high resource areas, and institutes affordability requirements for these newly built developments

NOW THEREFORE, BE IT RESOLVED that the Berkeley City Council urges Senator Nancy Skinner and Assemblymember Buffy Wicks to support, the California Legislature to pass, and Governor Gavin Newsom to sign into law the California Assembly Bill 1279

BE IT FURTHER RESOLVED that copies of this Resolution will be sent to Governor Gavin Newsom, Senator Nancy Skinner, and Assemblymember Buffy Wicks.

The Honorable Richard Bloom  
California State Assembly  
P.O. Box 942849  
Sacramento, CA 94249-0050

**Re: Support from Berkeley City Council for AB 1279 – Housing Development:  
High Resource Areas**

Dear Assemblymember Bloom,

We, the Berkeley City Council, wish to express our support for AB 1279, a plan to increase housing development and improve affordability of housing while minimizing gentrification and displacement.

California is currently in the midst of a housing crisis. The McKinsey Global Institute finds in 2016 that more than 50% of California households cannot afford the cost of housing. Homelessness is increasing, with the LA Times writing in 2015 that 21% of the national homeless population lives in California, despite California only making up 12% of the U.S. population.

However, the crisis must be addressed in a way that minimizes the possibility of gentrification and displacement where construction occurs. Past legislation encouraging housing development has not differentiated high resource areas from those at risk of gentrification and displacement, ultimately pushing existing residents out. Additionally, past legislation has centered on transit-ready areas, allowing areas without transit to avoid housing requirements and discouraging the development of transit.

The Council supports AB 1279 and its efforts to address the housing shortage, as well as its specificity to high resource areas with low residential density and its robust affordability requirements. We believe this bill is crucial towards making housing more affordable, while avoiding the dangers of gentrification and displacement.

Thank you for your leadership on affordable housing in California.

Sincerely,

Berkeley City Council  
Mayor Arreguin,  
Councilmembers

CC: Assemblymember Wicks  
Senator Skinner  
Governor Newsom



Fair Campaign Practices Commission

PUBLIC HEARING

July 23, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dean Metzger, Chair, Fair Campaign Practices Commission  
 Submitted by: Emma Soichet, Secretary, Fair Campaign Practices Commission  
 Subject: Amendments to the Berkeley Election Reform Act; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt an ordinance amending the Berkeley Elections Reform Act, Berkeley Municipal Code Chapter 2.12, regarding the public financing program.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of May 16, 2019.

***Motion to adopt amendments, regulations, and text of the report to Council (M/S/C: Smith/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).***

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

In the November 2018 election cycle, the public financing program was used for the first time. The lessons learned from the initial implementation of the public financing program and other campaign finance issues have surfaced the need for amendments to BERA. City staff consulted with representatives from MapLight, the original sponsors of the Fair Elections Act of 2016, regarding the types of changes staff identified. In these discussions, many of the amendments identified by staff were similar to the issues

raised by MapLight and campaign committees that participated in public financing in 2018. The proposed amendments are listed and explained below.

## 1. Violations prior to statement of participation

In the 2018 election, multiple candidates experienced difficulty with starting up their committee and opening their checking account. The \$50 limit resulted in several inadvertent minor violations of the public financing regulations and actually resulted in one candidate being barred from participation in the program. Many candidates start by opening a checking account first, and some banks require a minimum initial deposit of \$100.

The proposed amendment allows a candidate to contribute up to \$250 to their own committee, but makes these contributions ineligible for matching funds. This amendment strikes a balance between allowing higher contributions from candidates, but maintains the purposes of the Fair Elections Act. The FCPC noted that candidate contributions to their own committee do not demonstrate community support of their candidacy in the same manner as a contribution from a Berkeley resident.

Proposed Remedy: Amend BERA 2.12.500.A.6.

*A. To be eligible to be certified as a participating candidate, a candidate must:*

6) Not make expenditures from or use his or her personal funds or funds jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a qualified monetary or non-monetary contribution to his or her controlled committee of \$250 or less. Contributions from a participating candidate to his or her own controlled committee are not eligible for matching funds. ~~A Participating Candidate may make non-monetary contributions to his or her controlled committee. However, the aggregate amount of a Participating Candidate's monetary and non-monetary contributions to his or her controlled committee must not be greater than fifty dollars (\$50);~~

## 2. Remove requirement for FCPC to approve matching funds – administrative process and approval only.

This change furthers the purposes of the public financing program by reducing the timeline from submission to payment from 17 days to 7 days.

No payments were denied by the commission in the 2018 election cycle. The review and verification of the hundreds of individual contributions that are eligible for matching funds is a time-consuming administrative process that is infeasible for the commission to perform. Faster distribution of matching funds

will benefit participating candidates and this change will also eliminate the occurrence of delayed payments due cancelled meetings, as was the case in November 2018 during the wildfires.

City staff will process matching requests and distribute the funds according to the distribution schedule adopted by the FCPC and continue to provide the commission with detailed summaries of all public financing requests and itemized reports of the matching funds submissions and their status. The Commission would maintain its authority to approve candidates' initial applications to participate in the public financing program.

Proposed Remedy: Amend Section 2.12.505, Paragraphs D, E, and G.

D. The ~~Commission-City~~ shall verify that a candidate's qualified contributions meet all of the requirements and restrictions of this Act prior to the disbursement of Fair Elections funds to the candidate. A participating candidate who receives a qualified contribution that is not from the person listed on the qualified contribution receipt shall be liable to pay the Fair Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.

E. The ~~Commission-City~~ shall make an initial payment of Fair Elections funds within seven business days of the Commission's certification of a participating candidate's eligibility, or as soon thereafter as is practicable.

G. The ~~Commission-City~~ shall provide each participating candidate with a written determination specifying the basis for any non-payment of Fair Elections funds. The Commission shall provide participating candidates with a process by which they may immediately upon receipt of such determination petition the Commission for reconsideration of any such non-payment and such reconsideration shall occur within seven business days of the filing of such petition. In the event that the Commission denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the Commission's denial pursuant to Section 2.12.235.

### **3. Change 2.12.530.B.2 to clarify the prohibited uses of public matching funds.**

The changes to this section arise, in part, from a difficult question from a candidate regarding a mailer that they planned to send that included voting recommendations on other candidates and measures. The proposed "direct personal benefit" language is from Fair Political Practices Commission State Manual 2, and the reference to BERA's definition of an independent expenditure is for additional clarification.

Proposed Remedy: Amend section 2.12.530 (Use of Fair Elections funds).

- A. A participating candidate shall use Fair Elections funds and contributions only for direct campaign purposes.
- B. A participating candidate shall not use Fair Elections funds or contributions for:
  - 1) Costs of legal defense in any campaign law enforcement proceeding under this Act, or penalties arising from violations of any local, state, or federal campaign laws;
  - 2) The candidate's personal support or compensation to the candidate or the candidate's family;
  - 3) Indirect campaign purposes, including but not limited to:
    - ~~a) The candidate's personal support or compensation to the candidate or the candidate's family;~~
    - ba) Any expense that provides a direct personal benefit to the candidate, including clothing and other items related to the candidate's personal appearance;
    - cb) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
    - cc) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
    - cd) An independent expenditure as defined in Berkeley Municipal Code Section 2.12.142 as may be amended;
    - ce) Any payment or transfer for which compensating value is not received;
- C. The term "Contribution" is defined in 2.12.100 and includes "Qualified Contributions" as defined in 2.12.167 and contributions from non-residents of Berkeley as described in 2.12.500.A.7.

#### 4. Timing of requests submitted, especially at qualifying period deadline.

When a candidate participates in the public financing program, a sentence is added to his or her candidate statement (published in ballot materials) indicating this participation. In 2018, a candidate submitted an application for participation by the qualification deadline and thus had the sentence stating her participation included with their candidate statement. However, she subsequently decided not to participate in program and did not submit an initial qualifying request. By the time the City was aware that the candidate would not participate, it was too late to remove the participation sentence from their candidate statement. This amendment will require the candidate to submit their qualifying request before the end of qualifying period.



Proposed Remedy: Amend BERA 2.12.500.A.3

3) Before the close of the qualifying period, collect [and submit](#) at least 30 qualified contributions, from at least 30 unique contributors, of at least ten dollars (\$10), for a total dollar amount of at least five-hundred dollars (\$500).

## 5. Amendment to prohibit all loans.

This change is needed for consistency and clarity. The definition of a Qualified Contribution excludes loans, however, no similar restriction is made on a contribution from a non-resident. Loans are inconsistent with public financing programs since the matching funds and contributions are not accounted for separately by participating committees.

Proposed Remedy: Add BERA 2.12.500.A.9

[9\) Not accept loans from any source.](#)

## 6. Discretion for FCPC on Disqualifying Violations

Related to the issues that were raised regarding startup problems and inadvertent, minor disqualifying actions by campaign committees, it is warranted to grant the FCPC some discretion in enforcement of certain Public Financing requirements.

Proposed Remedy: Add Paragraph (10) to Section 2.12.500 (Eligibility for Fair Elections campaign funding)

[\(10\) The Commission has the authority to approve a candidate's application for public financing, despite a violation by the candidate related to participation and qualification in the public financing program, if the violation is minor in scope and the candidate demonstrates a timely, good-faith effort to remedy the violation. The Commission may adopt regulations setting forth guidelines for what constitutes a minor violation under this provision.](#)

## ENVIRONMENTAL SUSTAINABILITY

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

## RATIONALE FOR RECOMMENDATION

The proposed amendments to BERA will provide expanded access to the program, provide clarifying language for several passages, and allow for some additional discretion regarding minor violations to assist non-professional treasurers.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the recommendation in this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission, 981-6998

Emma Soichet, Commission Secretary, Fair Campaign Practices Commission, 981-6998

Attachments:

1: Ordinance

2: Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT RELATED TO PUBLIC FINANCING FOR CAMPAIGNS; AMENDING BERKELEY MUNICIPAL CODE CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code Section 2.12.500 is amended to read as follows:

**2.12.500 Eligibility for Fair Elections campaign funding.**

A. To be eligible to be certified as a participating candidate, a candidate must:

1) During the qualifying period for the election involved, choose to participate in the Fair Elections program by filing with the Commission a written application for certification as a participating candidate in such form as may be prescribed by the Commission, containing the identity of the candidate, the office that the candidate seeks, and the candidate's signature, under penalty of perjury, certifying that:

a) The candidate has complied with the restrictions of this chapter during the election cycle to date;

b) The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate; and

c) The candidate will comply with the requirements of this Act during the remainder of the election cycle and, specifically, if certified an eligible participating candidate, will comply with the requirements applicable to participating candidates.

2) Meet all requirements to be eligible to hold the office of Mayor or Councilmember as set forth in Sections 9 and 10 of Article V of the Charter of the City of Berkeley;

3) Before the close of the qualifying period, collect and submit at least 30 qualified contributions, from at least 30 unique contributors, of at least ten dollars (\$10), for a total dollar amount of at least five-hundred dollars (\$500).

a) Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.

b) A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.

- 4) Maintain such records of receipts and expenditures as required by the Commission;
- 5) Obtain and furnish to the Commission any information it may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such Commission;
- 6) Not make expenditures from or use his or her personal funds or funds jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a qualified monetary or non-monetary contribution to his or her controlled committee of \$250 or less. Contributions from a participating candidate to his or her own controlled committee are not eligible for matching funds.~~A Participating Candidate may make non-monetary contributions to his or her controlled committee. However, the aggregate amount of a Participating Candidate's monetary and non-monetary contributions to his or her controlled committee must not be greater than fifty dollars (\$50);~~
- 7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with a fair market value not greater than fifty dollars (\$50). The aggregate value of all contributions from any individual must not be greater than fifty dollars (\$50);
- 8) Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with fair market value not greater than fifty dollars (\$50) to such candidate's controlled committee.
- 9) Not accept loans from any source.
- (10) The Commission has the authority to approve a candidate's application for public financing, despite a violation by the candidate related to participation and qualification in the public financing program, if the violation is minor in scope and the candidate demonstrates a timely, good-faith effort to remedy the violation. The Commission may adopt regulations setting forth guidelines for what constitutes a minor violation under this provision.

Section 2. That Berkeley Municipal Code Section 2.12.505 is amended to read as follows:

**2.12.505 Fair Elections fund payments.**

A. A candidate who is certified as an eligible participating candidate shall receive payment of Fair Elections funds equal to six-hundred percent (600 percent) of the amount of qualified contributions received by the candidate during the election cycle with respect to a single election subject to the aggregate limit on the total amount of Fair Elections funds payments to a candidate specified in Section 2.12.505.B.

B. The aggregate amount of Fair Elections funds payments that may be made to a participating candidate during an election cycle may not exceed:

- 1) \$120,000 for a candidate running for the office of Mayor;
- 2) \$40,000 for a candidate running for the office of City Council.

C. A participating candidate's application for Fair Elections funds, including an initial request submitted with an application for certification as a participating candidate, shall be made using a form prescribed by the Commission and shall be accompanied by qualified contribution receipts and any other information the Commission deems necessary. This application shall be accompanied by a signed statement from the candidate indicating that all information on the qualified contribution receipts is complete and accurate to the best of the candidate's knowledge.

1) All Qualified Contributions, of any dollar amount, eligible for matching Fair Elections funds must be publically disclosed with the contributor information required under Sections 2.12.280 and 2.12.283.

2) All campaign filings must be current in order for a Participating Candidate to receive a disbursement of Fair Elections funds and the Participating Candidate and a Participating Candidate's controlled committee must not have any outstanding fines related to campaign filings or violations of municipal, state or federal election law. All applications for Fair Elections funds shall include a certification by the Participating Candidate that the Participating Candidate or his or her controlled committee does not have any outstanding fines or penalties related to campaign filings. Upon submission of outstanding campaign filings and payment of any outstanding fines, withheld Fair Elections funds will be disbursed at the next regularly scheduled distribution for that election cycle.

D. The ~~Commission-City~~ shall verify that a candidate's qualified contributions meet all of the requirements and restrictions of this Act prior to the disbursement of Fair Elections funds to the candidate. A participating candidate who receives a qualified contribution that is not from the person listed on the qualified contribution receipt shall be liable to pay the Fair Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.

E. The ~~Commission-City~~ shall make an initial payment of Fair Elections funds within seven business days of the Commission's certification of a participating candidate's eligibility, or as soon thereafter as is practicable.

F. The Commission shall establish a schedule for the submission of Fair Elections funds payment requests, permitting a candidate to submit a Fair Elections funds payment request at least once per month. However, the Commission shall schedule

a minimum of three payment request submission dates within the thirty days prior to an election.

G. The ~~Commission-City~~ shall provide each participating candidate with a written determination specifying the basis for any non-payment of Fair Elections funds. The Commission shall provide participating candidates with a process by which they may immediately upon receipt of such determination petition the Commission for reconsideration of any such non-payment and such reconsideration shall occur within seven business days of the filing of such petition. In the event that the Commission denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the Commission's denial pursuant to Section 2.12.235.

H. Unspent funds of any Participating Candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election.

Section 3. That Berkeley Municipal Code Section 2.12.530 is amended to read as follows:

**2.12.530 Use of Fair Elections funds.**

- A. A participating candidate shall use Fair Elections funds and contributions only for direct campaign purposes.
- B. A participating candidate shall not use Fair Elections funds or contributions for:
- 1) Costs of legal defense in any campaign law enforcement proceeding under this Act, or penalties arising from violations of any local, state, or federal campaign laws;
  - 2) The candidate's personal support or compensation to the candidate or the candidate's family;
  - 3) Indirect campaign purposes, including but not limited to:
    - a) ~~The candidate's personal support or compensation to the candidate or the candidate's family;~~
    - ba) Any expense that provides a direct personal benefit to the candidate, including ~~C~~clothing and other items related to the candidate's personal appearance;
    - eb) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
    - ec) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
    - ed) An independent expenditure as defined in Berkeley Municipal Code Section 2.12.142 as may be amended;
    - fe) Any payment or transfer for which compensating value is not received;~~;~~
- C. The term "Contribution" is defined in 2.12.100 and includes "Qualified Contributions" as defined in 2.12.167 and contributions from non-residents of Berkeley as described in 2.12.500.A.7.

Section 4. 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.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the public financing program for campaigns.

The hearing will be held on July 23, 2019 at 6:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **July 11, 2019**.

For further information, please contact Emma Soichet, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** July 12, 2019 – The Berkeley Voice  
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on July 11, 2019.

\_\_\_\_\_  
Mark Numainville, City Clerk



## ORDINANCE NO. 7,668-N.S.

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.

At a regular meeting of the Council of the City of Berkeley held on June 11, 2019, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.





**Health, Life Enrichment,  
Equity & Community Committee**

ACTION CALENDAR  
July 23, 2019

To: Honorable Mayor and Members of the City Council  
From: Health, Life Enrichment, Equity & Community Committee:  
Councilmembers Hahn, Bartlett, and Kesarwani  
Subject: Basic Criteria for Two-Week RV Permitting Process

RECOMMENDATION

Refer to the City Manager to develop a two-week permit and system for recreational vehicle (RV) parking based on recommendations from the Health, Life Enrichment, Equity & Community Committee.

POLICY COMMITTEE RECOMMENDATION

On June 24, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action: M/S/C (Kesarwani/Bartlett) to send basic criteria for a two-week RV permitting process to the full Council with a Positive Recommendation. Vote: All Ayes.

BACKGROUND

On March 26, 2019, the City Council referred an item to the Health, Life Enrichment, Equity & Community Committee:

*To establish basic criteria for a "permanent" standard two-week permitting process.*

*The standard two-week permit should consider the following:*

- *A limited number of permits to be issued by the City per month (or other increment).*
- *Locations to be geographically dispersed among all Council districts.*
- *A reasonable fee to cover City costs associated with the permit.*

FINANCIAL IMPLICATIONS

Staff Time

ENVIRONMENTAL SUSTAINABILITY

This recommendation supports the City of Berkeley's environmental sustainability goals.

CONTACT PERSON

Health, Life Enrichment, Equity & Community Committee members:

|                                                |              |
|------------------------------------------------|--------------|
| Sophie Hahn, Chair (Councilmember, District 5) | 510-981-7150 |
| Ben Bartlett (Councilmember, District 3)       | 510-981-7130 |
| Rashi Kesarwani (Councilmember, District 1)    | 510-981-7110 |

**Attachments:**

1: Proposed Basic Criteria for Two-Week RV Permitting Process, as referred on June 24, 2019, by the Health, Life Enrichment, Equity & Community Committee to the City Council



## PROPOSED BASIC CRITERIA FOR 2-WEEK PERMITTING PROCESS

On March 26, the City Council referred to the Health, Life Enrichment, Equity & Community Committee to establish “basic criteria” for a “permanent” standard two-week permitting process for RV parking in the City. Following are possible recommendations for “basic criteria.”

**The permit would be put forward as an exception to Section 14.49.120**, which prohibits parking of “recreational vehicles” and campers between the hours of two and five am. It would not address “habitation” as the permit would be for parking the vehicle:

### 14.40.120 No parking between two a.m. and five a.m.

1. A. It is unlawful for any person to park any oversize or heavy duty commercial vehicle on any street between the hours of two a.m. and five a.m. for a greater length of time than one hour, except that recreational vehicles (RVs) and campers no wider than \_\_\_\_\_ feet or longer than \_\_\_\_\_ feet may park between the hours of two a.m. and five a.m., for a period of up to two weeks, subject to a permit and fee as determined by the City of Berkeley.
2. B. For the purpose of this section, oversize or heavy duty commercial vehicle shall mean a single vehicle or combination of vehicles having more than two axles, a single vehicle or combination of vehicles 20 feet or more in length, or a 1000 single vehicle or combination of vehicles six feet six inches or more in width, and shall include, but shall not be limited to dump trucks, moving vans, tractors, pole or pipe dollies, recreational vehicles (RVs), campers. (Ord. 7643-NS § 1, 2019; Ord. 3262-NS § 10.9, 1952)

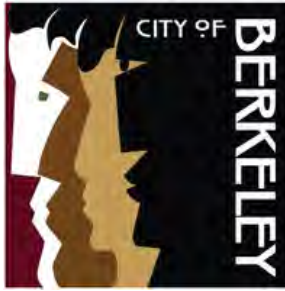
Staff would then create a permit and system for people to apply, to include the following criteria:

1. A RV or camper could park on a City of Berkeley street between two a.m. and five a.m. for one (1) period of up to two (2) weeks in every calendar year with a permit issued by the City of Berkeley to the vehicle owner.
2. The fee for such a permit would be the same as the 14-day Residential Preferential Parking (RPP) Visitor Permit (currently \$34.00).
3. The maximum number of permits issued by the City of Berkeley in any month would be 20 (total of 240 per year).
4. The RV or camper could park only in a specific RV Parking Zone, as designated by the City, geographically dispersed among areas roughly approximate to Council Districts or police “areas,” but with easy to identify borders.

5. Narrow streets (under \_\_?\_\_ feet) and any other streets not appropriate for wide or large vehicles shall be excluded (per Fire Chief and Public Works); off-limits streets and locations should be clearly marked on a map provided to the permit holder, and on an online map.
6. The 2-week permit will be operable in RPP zones, but does not supersede other parking limitations (20 minute, 2 hour, etc.) or the need to pay for parking, when and where required. Can park in all zones – C, M and R – but only in legal spaces/areas during allowed times.
7. All RVs must not be inoperable as defined at BMC Section 12.98.010.
8. Vehicle owners must pump-out only at designated pump-out stations.
9. Vehicle owners must refrain from placing objects on sidewalks or streets (except in transit) and must dispose of any refuse at the City transfer station or \_\_?\_\_ (per Public Works).
10. Noise will be limited to levels allowed in each Zone; no loud generators or equipment.
11. The vehicle for which the visitor permit is being obtained must not have any outstanding Berkeley parking violations older than 21 days.
12. Staff shall add enforcement provisions, as needed.
13. Upon issuance of permit, vehicle owner should receive a suite of informational materials, including city maps, events, amenities, and homeless services.

**CONSENT CALENDAR**

July 23, 2019



Office of the Mayor

TO: Members of the City Council

FROM: Mayor Arreguín, Council Members Droste, Hahn, and Wengraf

SUBJECT: Implementing Vision Zero: Prioritizing High Collision Streets

**RECOMMENDATION**

As street lights are being replaced and transportation infrastructure improvements are made throughout the City, and as work plans and schedules are developed, priority should be given to high-collision streets, as identified in the Pedestrian Master Plan<sup>1</sup> and Vision Zero program. Examples include but are not limited to improving lighting, updating signage, and painting of crosswalks.

**BACKGROUND**

Approximately three people are killed and 31 people are severely injured each year in traffic collisions on Berkeley streets (City Council work session report, 2017). Pedestrians and bicyclists are involved in only 7% of overall crashes but represent roughly one-third of all traffic fatalities. High vehicle speeds, violation of “Pedestrian Right of Way”, and alcohol/drug intoxication are the primary causes of severe and fatal collisions. Under a Vision Zero approach, traffic safety efforts would focus on reducing these primary causes of severe and fatal collisions (City Council Worksession Report, December 2017<sup>2</sup>).

In recent years, major cities across the United States have begun adopting this policy, including San Francisco in 2014<sup>3</sup>. In March 2018, the Berkeley City Council resolved to make Berkeley a Vision Zero City<sup>4</sup>. We have stepped up implementation efforts in recent months, with the creation of a Vision Zero Task Force<sup>5</sup>.

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<sup>1</sup> <https://www.cityofberkeley.info/pedestrian>; <https://www.cityofberkeley.info/pedestrian>

<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/12\\_Dec/Documents/2017-12-07\\_WS\\_Item\\_02\\_Vision\\_Zero\\_Traffic\\_Safety\\_Policy\\_-\\_Pres.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/12_Dec/Documents/2017-12-07_WS_Item_02_Vision_Zero_Traffic_Safety_Policy_-_Pres.aspx) [PDF]

<sup>3</sup> <https://www.visionzerosf.org/about/what-is-vision-zero>

<sup>4</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/03\\_Mar/Documents/2018-03-27\\_Item\\_18\\_Vision\\_Zero\\_-\\_Rev.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/03_Mar/Documents/2018-03-27_Item_18_Vision_Zero_-_Rev.aspx) [PDF]

On June 25, 2019, the Berkeley City Council approved the City Budget for Fiscal Years 2020 and 2021. Thanks to the efforts of community members and advocacy groups, the budget prioritized funding to implement Vision Zero and for multiple traffic safety improvements, making the streets safer and more accessible for pedestrians and bicyclists.

#### FINANCIAL IMPLICATIONS

No additional financial implications. City staff will provide a high-level, preliminary analysis of potential costs, timelines, and staffing demands as part of the referral to the Facilities, Infrastructure, Transportation, Environment, & Sustainability Policy Committee.

#### ENVIRONMENTAL SUSTAINABILITY

Vision Zero policies are consistent with several provisions of the City of Berkeley's Climate Action Plan. Significant positive environmental impacts (e.g. increased pedestrian and bicycle trips resulting in lower greenhouse gas output) arise when cities prioritize walking and bicycling infrastructure and safety.

#### CONTACT

Mayor Jesse Arreguín | [mayor@cityofberkeley.info](mailto:mayor@cityofberkeley.info) | 510.981.7100

Councilmember Lori Droste | [ldroste@cityofberkeley.info](mailto:ldroste@cityofberkeley.info) | 510.981.7180

Councilmember Sophie Hahn | [shahn@cityofberkeley.info](mailto:shahn@cityofberkeley.info) | 510.981.7150

Councilmember Susan Wengraf | [swengraf@cityofberkeley.info](mailto:swengraf@cityofberkeley.info) | 510.981.7160

#### ATTACHMENTS

1. [Resolution 68-371 — In Support of Vision Zero](#)

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<sup>5</sup> <http://www.jessearreguin.com/vizion-zero>

RESOLUTION NO. 68,371-N.S.

IN SUPPORT OF VISION ZERO

WHEREAS, the City of Berkeley wants a safe and healthy city where we do everything possible to avoid traffic-related injuries and fatalities; and

WHEREAS, Berkeley City Council adopted the Berkeley Strategic Transportation (BeST) Plan in 2016 which included a recommendation that the City develop a Vision Zero policy with the goal of eliminating the number of fatal and severe traffic injuries; and

WHEREAS, cars and trucks produce greenhouse gas emissions when they burn gasoline or other fossil fuels, which contributes to human-made climate change; and

WHEREAS, transportation-related greenhouse gas emissions are increasing in Berkeley and now account for 56% of Berkeley's greenhouse gas emissions; and

WHEREAS, the City of Berkeley's vulnerabilities to climate change include sea level rise and flooding, heat waves, damage to local ecosystems, and risks to the city's transportation and water infrastructure; and

WHEREAS, the City of Berkeley's Climate Action Plan supports measures that increase walking, transit ridership, ridesharing and bicycling to achieve greenhouse gas reduction goals; and

WHEREAS, according to the December 2017 Council work session report "Development of a Vision Zero Traffic Safety Policy," pedestrians and bicyclists are the most vulnerable road users and account for 29-36% of all traffic deaths in Berkeley; and

WHEREAS, the California Office of Traffic Safety consistently ranks Berkeley as having more pedestrian and bicycle injuries than other California cities its size; and

WHEREAS, many more people choose to walk, bike, and take transit in Berkeley than in most other cities in California and the United States; and

WHEREAS, measures to make Berkeley's streets safer for all road users, particularly those who are most physically vulnerable, will further encourage people to walk, bike and take transit; and

WHEREAS, the City of Berkeley's Complete Streets Policy (2012), Pedestrian Plan (2010), and Bicycle Plan (2017) all seek to reduce serious or fatal pedestrian and bicycle injuries; and

WHEREAS, Vision Zero is a data-driven strategy to eliminate all traffic fatalities and severe injuries, while increasing safe, healthy, equitable mobility for all; and

WHEREAS, Vision Zero is founded on a Safe Systems approach that recognizes humans will make mistakes and roadway systems and policies should be designed to protect them; and

WHEREAS, Vision Zero road safety goals are accomplished through a combination of engineering, education, and enforcement measures; and

WHEREAS, Vision Zero was first implemented in Sweden, which now has one of the lowest annual rates of road deaths in the world, even as trips have increased; and

WHEREAS, San Francisco, Santa Barbara, and Eugene (Oregon) are among 34 Vision Zero cities in the United States; and

WHEREAS, the Vision Zero Network's minimum criteria for recognizing Vision Zero cities include setting a clear goal of eliminating traffic fatalities and severe injuries within a set timeframe, publicly committing to Vision Zero, establishing a Vision Zero implementation plan or strategy, and engaging key city departments (including transportation, police, and public health); and

WHEREAS, the City of Berkeley Transportation Division collaborates with other departments to support policies, programs, and initiatives that promote safer streets such as the Traffic Calming Program, Safe Routes to School program, and Pedestrian and Bicycle Plans.

WHEREAS, a commitment to Vision Zero should create opportunities to invite meaningful input from the community, including communities that are disproportionately burdened by traffic collisions, and historically have been underserved.

NOW THEREFORE, BE IT RESOLVED that the Berkeley City Council adopts the Vision Zero goal of eliminating traffic deaths and severe injuries by 2028.

BE IT FURTHER RESOLVED that a multi-disciplinary Vision Zero Task Force will be formed to advise City Council on the development and implementation of a Vision Zero Action Plan, and shall be comprised of organizations and agencies with expertise in transportation, enforcement, education, public health, emergency response, equity, transit, biking, walking, and vehicles.

BE IT FURTHER RESOLVED that Berkeley City Council directs the Vision Zero Task Force to research a minimum of five years of data to identify dangerous behaviors causing death and injury, and geographic locations and populations which bear a disproportionate burden of fatal and severe crashes, and engage community in developing the Action Plan.

BE IT FURTHER RESOLVED that the Berkeley City Council directs the Vision Zero Task Force to develop assurances against racial profiling and targeting as it pertains to Vision Zero enforcement and to ensure that communities of color, police bureau, and community

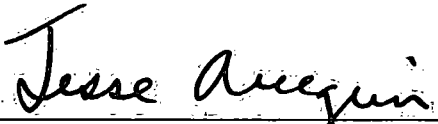
leadership are included in the decision-making and development of enforcement plans or policies.

The foregoing Resolution was adopted by the Berkeley City Council on March 27, 2018 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk







Office of the Mayor

ACTION CALENDAR

July 23, 2019

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín, Councilmembers Cheryl Davila, Kate Harrison, Rigel Robinson

Subject: Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance

RECOMMENDATION

Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance.

BACKGROUND

Structural barriers faced by formerly incarcerated people continue to exist, with the stigma of incarceration blocking housing opportunities for many. A lack of access to stable housing increases the risk of recidivism, furthering the cycle caused by an inequitable criminal justice system. A 2019 survey by UC Berkeley's Goldman School for Public Policy found that a third of formerly incarcerated Alameda County residents had experienced homelessness or housing insecurity, and 54% had been denied either housing or the opportunity to live with a family member because of their criminal record.

Multiple jurisdictions across the country, including regional neighbors such as San Francisco and Richmond, have passed a Fair Chance Ordinance, which prohibits landlords from prohibiting tenancy based on an individual's criminal history. The Berkeley Housing Element calls for the creation and enforcement of fair housing laws.

In October 2018, the City Council unanimously approved a referral to the City Manager and the 4x4 Committee to establish a Fair Chance Ordinance. The 4x4 Committee discussed this during their meetings in May and June 2019, in consultation with the Alameda County Fair Chance Housing Coalition, the Just Cities/the Dellums Institute for Social Justice, and various stakeholders. The Committee took the following action at its June 3rd meeting:

*M/S/C (Arreguín/Davila) Recommendation to Council to support the proposed Fair Chance Ordinance with the following changes: (1) eliminate the ADU exemption; (2) add an education and training component; (3) rather than having separate standards for "private" vs. "publically subsidized" housing, differentiate between "publically subsidized/inclusionary" housing (including privately owned below market rate units) and "private non-inclusionary" housing; (4) specify the level of detail (in addition to existing state law requirements) that must be provided in written explanations for*

*housing denials; (5) any provision (to the extent allowed by law) requiring certain housing providers that violate the ordinance to offer the next available unit to the applicant should state that the unit must be comparable (in rent, size, condition, amenities/accommodations, etc.) to the unit that was denied, and must be available within a reasonable timeframe. Carried 7-0-0-1. Absent: Tregub.*

The proposed Ordinance would prohibit landlords from advertising or using a policy that automatically excludes people with criminal histories from rental housing; asking about or requiring disclosure of someone’s criminal history; or taking adverse action against an applicant or tenant based on his or her criminal history. Exceptions would be made to single-family dwellings where the owner occupies the dwelling, and for federally assisted housing complying with federal regulations that require them to automatically exclude tenants based on certain types of criminal history.

FINANCIAL IMPLICATIONS

Unknown

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguin      510-981-7100

Attachments:

- 1: Ordinance
- 2: Alameda County Fair Chance Housing Coalition Memo



**DRAFT**  
**The Ronald V. Dellums Fair Chance Housing Public Health & Safety Ordinance**  
**June 21, 2019**

**To be inserted in the Berkeley Municipal Code**

**I. Title**

**This Ordinance shall be known as the “Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance.”**

**II. Authority**

**This Ordinance is adopted pursuant to the powers vested in the City of Berkeley under the laws and Constitution of the State of California and the City Charter.**

**III. Findings**

- (a) The City of Berkeley is committed to equity, dignity, and public health and safety.
- (b) The unmet housing needs of formerly incarcerated people in Berkeley are an acute challenge to the dignity, public health and safety, and equal opportunity for this population and the broader community.
- (c) Research has found that access to housing reduces recidivism, and the lack of housing can be a significant barrier to successful reintegration after incarceration.
- (d) Homelessness is a critical issue in Berkeley and formerly incarcerated people are disproportionately affected by homelessness. Recent surveys reflect the direct correlation between housing barriers for formerly incarcerated people and homelessness. In a 2019 survey conducted by the Goldman School for Public Policy at UC Berkeley of formerly incarcerated Alameda County residents, one third of formerly incarcerated residents surveyed had experienced homelessness or housing insecurity and 54% had been denied either housing or the opportunity to live with a family member because of their criminal record. Another 2019 Goldman Survey of unhoused people residing in East Bay homeless encampments found that 72% of encampment residents surveyed had been formerly incarcerated. In the 2017 Point in Time count for Berkeley homeless residents, one of the top six reasons listed for the primary cause of homelessness was incarceration (6% of respondents).
- (e) Research and community engagement by the Alameda County Fair Chance Housing Coalition and Just Cities/the Dellums Institute for Social Justice have identified a policy gap in the city’s treatment of housing providers and their consideration of past convictions that has generated unfair and harmful barriers to housing for people with past convictions.

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- (f) Several jurisdictions, including Cook County, Illinois; Urbana, Illinois; Madison, Wisconsin; New York, New York; Richmond, California; San Francisco, California; Newark, New Jersey; and Seattle, Washington have passed policies that restore rights and remove barriers to housing for people with past criminal convictions.
- (g) On or about April 4, 2016, the United States Department of Housing and Urban Development issued the “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” in which it states that “Policies that exclude persons based on criminal history must be tailored to serve the housing provider’s substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction.”
- (h) It has been documented by service providers providing assistance to formerly incarcerated residents in Alameda County and national researchers that significant first source housing for people coming out of incarceration is publicly subsidized affordable housing. {See Corinne Carey, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, 36 University of Toledo Law Review 545; Caterina Gouvis Roman and Jeremy Travis, Urban Institute, *Taking Stock: Housing, Homelessness and Prisoner Re-Entry* (2004); and *Every Door Closed: Barriers Facing Parents With Criminal Records*, CLASP and CLS Report (Chapter 3, “Criminal Records and Subsidized Housing: Families Losing the Opportunity for Decent Shelter”).}
- (i) Alameda County service providers and national researchers have documented barriers to access to both private rental and publicly subsidized affordable housing faced by formerly incarcerated residents. {See Corinne Carey, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, 36 University of Toledo Law Review 545; Caterina Gouvis Roman and Jeremy Travis, Urban Institute, *Taking Stock: Housing, Homelessness and Prisoner Re-Entry* (2004); and *Every Door Closed: Barriers Facing Parents With Criminal Records*, CLASP and CLS Report (Chapter 3, “Criminal Records and Subsidized Housing: Families Losing the Opportunity for Decent Shelter”).}
- (j) The City of Berkeley’s Housing Element advances fair housing goals. The City Council in 2018 adopted a resolution supporting the development of a Fair Chance Housing policy.
- (k) Not having a home can prevent a formerly incarcerated person from getting a job, from visiting with his or her children, and from fulfilling other needs that are fundamental to reintegrating with community after incarceration.
- (l) Mass incarceration is a national crisis and restoring the rights of people affected by mass incarceration is a national priority.

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- (m) The United States incarcerates more than twenty-five percent (25%) of the world's prisoners while the country comprises only five percent (5%) of the world's population.
- (n) The City of Berkeley has shown a consistent interest in removing barriers faced by people coming home from incarceration, by adopting policies like the city's "Ban the Box" resolution, which removed barriers to employment.
- (o) According to the City of Berkeley's 2015-2023 Housing Element, there are a total of 25,696 rental housing units.
- (p) The Fair Chance Housing ordinance is rightly named after former Berkeley City Councilmember, Congressperson, Oakland Mayor, and global humanitarian Ronald V. Dellums who passed away in July 2018. For over fifty years, Ron Dellums practiced courageous and principled leadership to advance the human rights and needs of all peoples, especially those who have been discriminated against and marginalized. He was born in 1935 and grew up in a segregated West Oakland. He had a troubled youth and almost did not graduate from high school. After serving in the Marines, Ron Dellums became a UC Berkeley trained psychiatric social worker and a community organizer. At the age of 31, Dellums was on his way to a PhD program at Brandeis when he was recruited by activists to serve on the Berkeley City Council.

As Berkeley City Councilmember from 1967 to 1970, Ron Dellums championed progressive values of anti-war, peace, and justice including opposition to the death penalty, development of the People's Park and opposition to the declaration of martial law by then Governor Ronald Reagan, and successfully forcing BART to put train tracks in Berkeley underground.

As Congressperson representing Berkeley and Oakland from 1970 to 1997, Ron Dellums was the first African American to represent the district and one of the first Democratic Socialists in Congress. He was elected to Congress as an anti-Vietnam War activist and a prominent member of President Nixon's infamous "enemies list." Yet, he rose to become Chair of the powerful House Armed Services Committee, while maintaining his integrity, activism, and principles. Decades ahead of the "mainstream," his initially lonely efforts against Apartheid in South Africa, and against the major nuclear war-fighting systems, all eventually became the official positions of the nation. He was a staunch critic of discrimination in the military, a key supporter of gay rights in the military, and consistently challenged the militarization of U.S. foreign policy, while advocating for improving the living conditions of military personnel. Ron Dellums also chaired the House DC Committee where he pushed for meaningful Home Rule and Statehood for the District of Columbia, and also focused on the problems in America's cities. He was equally well known for presenting comprehensive policy proposals including the Dellums Alternative Military Budget and the Congressional Black Caucus Alternative Budget. He authored comprehensive bills to provide free healthcare to all Americans, a national comprehensive housing program, and climate change legislation.

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After leaving Congress, Dellums led the development of his envisioned Marshall Plan for HIV/AIDS resulting in the federal PEPFAR programs which has saved 17 million lives in Sub-Saharan Africa, and the Dellums Commission on Boys and Men of Color, the precursor to President Obama's My Brother's Keeper initiative.

Already in his 70s, Ron Dellums was drafted to serve as Mayor of Oakland from 2007 to 2010, where he opened up City Hall for Oakland's people to develop Oakland as a model city for the world. To institutionalize civic engagement, Ron Dellums created 41 Citizen Task Forces that involved over 800 residents and resulted in policy changes such as the adoption of an industrial lands policy to facilitate economic development and jobs for Oakland residents and strategies to improve air quality from Port operations. He created a Re-Entry Services program out of the Mayor's office that welcomed formerly incarcerated residents home and helped them find jobs, housing, and support. Ron Dellums developed a comprehensive public safety plan which resulted in a 38% decline in homicides and a 25% decline in all Part I (major) crimes. He reformed the Oakland Police Department and advanced community and constitutional policing. He led unprecedented City efforts involving business, labor, education, and community leaders to develop a comprehensive vision for a sustainable and equitable local economy, which resulted in \$550 million of new funding for projects and the generation of over 14,000 jobs during the Great Recession.

By naming the Fair Chance Housing Ordinance after Ronald V. Dellums, we seek to inspire community youth to believe in their potential for greatness and government officials to lead with courage, integrity, compassion for the most marginalized, and big vision for justice.

**IV. Definitions**

For the purposes of this Article, the following words and phrases shall mean and include:

- (a) "Adverse Action" shall mean to fail or refuse to rent or lease Housing to an individual; fail or refuse to continue to rent or lease Housing to an individual; fail or refuse to add a household member to an existing lease for Housing; to reduce the amount or term of any tenant subsidy for Housing; to treat an individual differently from other applicants or tenants such as requiring higher security deposit or rent; or to treat an individual as ineligible for a tenant-based rental assistance program, including, but not limited to, the Section 8 tenant-based voucher program (42 U.S.C. Section 1437f).
- (b) "Affordable Housing" shall mean any Housing that (i) has received or is receiving City, County, State, or Federal funding, tax credits, or other subsidies connected in whole or in part to developing, rehabilitating, restricting rents, subsidizing ownership, or otherwise providing rental housing for extremely low income, very low income, low income, and moderate income households (collectively, "Public Funding"), with the exception of Housing where the only Public Funding received is in the form of a Local, State or Federal tenant-based voucher, such as through the Section 8 tenant-based voucher program (42 U.S.C.

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Section 1437f); or (ii) is subject to affordability and related requirements pursuant to the City's Below Market-Rate Rental Housing Program, including, but not limited to, the Inclusionary Housing Ordinance (BMC Chapter 23C.12), the Affordable Housing Mitigation Fee Ordinance (BMC Chapter 22.20), the State Density Bonus law (California Government Code Sections 65915-65918 and BMC Chapter 23C.14), and the Low Income Inclusionary Live/Work Units Ordinance (BMC 23E.20.080).

Commented [LS1]: Exception for Section 8 landlords with no other public subsidies.

- (c) "Affordable Housing Provider" shall mean any Housing Provider that owns, master leases, manages, or develops Affordable Housing in the City. Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Housing Providers, and any government agency, including, but not limited to, the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including, but not limited to, the Section 8 program (42 U.S.C. Section 1437f), shall also be considered an "Affordable Housing Provider".
- (d) "Applicant" shall mean a person who seeks information about, visits or applies to rent or lease Housing, who applies for a tenant-based rental assistance program, including, but not limited to, the Section 8 program (42 U.S.C. Section 1437f), who seeks to be added as a household member to an existing lease for Housing or, with respect to any Criminal History that occurred prior to the beginning of the person's tenancy, who currently rents or has a lease for Housing.
- (e) "Arrest" shall mean a record from any jurisdiction that does not result in a Conviction and includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for investigation by a law enforcement, police, or prosecutorial agency and/or charged with, indicted, or tried and acquitted for any felony, misdemeanor or other criminal offense.
- (f) "Background Check Report" shall mean any report regarding an Applicant's Criminal History, including, but not limited to, those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement agencies, courts, or by any consumer reporting or tenant screening agency.
- (g) "Conviction" shall mean a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor or other criminal offense and for which the person placed on probation, fined, imprisoned and/or paroled.
- (h) "Criminal History" shall mean information transmitted orally or in writing or by any other means, and obtained from any source, including, but not limited to, the individual to whom the information pertains, a government agency or a Background Check Report, regarding: one or more Convictions or Arrests; a Conviction that has been sealed, dismissed, vacated, expunged, sealed, voided, invalidated, or otherwise rendered inoperative by judicial action or by statute (for example, under California Penal Code sections 1203.1 or 1203.4); a determination or adjudication in the juvenile justice system; a matter considered in or



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processed through the juvenile justice system; or participation in or completion of a diversion or a deferral of judgment program.

- (i) "Housing" shall mean any residential rental housing, building, or unit in the City of Berkeley, with the exception of single family dwellings where the owner occupies the dwelling as his/her principal residence.
- (j) "Housing Provider" shall mean any Person that owns, master leases, manages, or develops Housing in the City. Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Persons, and any government agency, including, but not limited to, the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including, but not limited to, the Section 8 program (42 U.S.C. Section 1437f), shall also be considered a "Housing Provider".
- (k) "Inquire" shall mean engage in any direct or indirect action, written or oral, intended to gather information from or about an Applicant for Housing using any mode of communication, including, but not limited to, application forms, interviews, and Background Check Reports.
- (l) "Person" shall mean one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, or any political or civil subdivision or agency or instrumentality of the City.

**V. Use of Criminal History in Housing Decisions**

- (a) A Housing Provider shall not, at any time or by any means, inquire about, require disclosure of, or, if such information is received, base an Adverse Action in whole or in part on an Applicant's Criminal History.
- (b) It shall not be a violation of this Ordinance for a Housing Provider to comply with specific Federal or State laws that apply to the particular transaction at issue and that require the Housing Provider to treat an Applicant as ineligible based on Criminal History, *e.g.* Ineligibility of Dangerous Sex Offenders for Admission to Public Housing (42 U.S.C. Sec. 13663(a) and Ineligibility of Individuals Convicted for Manufacturing Methamphetamine on Premises of Federally Assisted Housing for Admission to Public Housing and Housing Choice Voucher Programs (24 C.F.R. Sec. 982.553)), provided that if such a requirement applies, the Housing Provider shall not inquire about, require disclosure of, or, if such information is received, review an Applicant's Criminal History until the Housing Provider has first:
  - (1) Determined that the Applicant is qualified to rent the Housing under all of the Housing Provider's criteria for assessing Applicants except for any criteria related to Criminal History; and
  - (2) Provided to the Applicant a conditional lease agreement that commits the Housing to the Applicant as long as the Applicant meets the Housing Provider's Criminal History criteria.

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- (c) If and when the Housing Provider requests written consent from the Applicant to obtain a Background Check Report regarding Criminal History as permitted under subsection (V)(b) above, the Housing Provider must also request consent to share the Criminal History record with the Applicant and with the City of Berkeley (only for the purposes of addressing a complaint by an Applicant), and must provide the Applicant offer the Applicant an opportunity to provide evidence of inaccuracy of information in the Criminal History record.

**VI. Requirements for Housing Providers**

- (a) Housing Providers shall state in all solicitations or advertisements for the rental or lease of Housing that the Housing Provider will consider for tenancy any qualified Applicant regardless of the Applicant's Criminal History except in the very limited circumstances required by State or Federal law.
- (b) It shall be unlawful for any Housing Provider to produce or disseminate any advertisement related to Housing that expresses, directly or indirectly, that any person with Criminal History will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, except as required by State or Federal law.
- (c) The City shall publish and make available to Housing Providers, in English, Spanish, and Chinese and all languages spoken by more than five percent (5%) of the City's population, a notice suitable for posting that informs Applicants for Housing of their rights under this Ordinance. The notice shall contain the following information:
- (1) A description of the restrictions and requirements of this Act;
  - (2) Instructions for submitting a complaint to the City regarding a violation of this Ordinance; and
  - (3) Information about community resources available to assist an Applicant in connection with a violation of the Ordinance.
- (d) Housing Providers shall post the notice described in subsection (VI)(c) prominently on their application materials, websites and at any locations under their control that are frequently visited by Applicants.
- (e) Housing Providers shall comply with all applicable Federal, State, and Local fair credit reporting and tenant screening laws and regulations regarding the provision of written notices to Applicants, including, but not limited to, the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), the California Consumer Credit Reporting Agencies Act (California Civil Code Section 1785 et seq.), and the California Investigative Consumer Reporting Agencies Act (California Civil Code Section 1786 et seq.).
- (f) In addition to the requirements in subsections (VI)(a)-(e) above, Affordable Housing Providers shall also:

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(1) Provide any Applicant subject to an Adverse Action a written notice regarding the Adverse Action that includes, at a minimum, the reason(s) for the Adverse Action; instructions regarding how to file a complaint about the Adverse Action with the City, including applicable deadlines as set forth in subsection (VII)(d) below; a list of local legal services providers including contact information; and, if the Adverse Action is based in whole or in part on information in an Applicant's Criminal History, a copy of any Criminal History or Background Check Report obtained by the Affordable Housing Provider.

(2) Submit to the City an annual certificate of compliance with the requirements of this Ordinance in the form provided by the City.

**VII. Implementation and Enforcement by the City**

- (a) The Ordinance will take effect six months from the date of the passage of the Ordinance. In the six-month time period prior to implementation, Housing Providers are required to prepare and provide to all Applicants written policies compliant with this Ordinance that include, at a minimum, a description of the application process and of the City's complaint process.
- (b) The requirements of this Ordinance will apply to all new and existing Housing in the City. The terms of the Ordinance will be incorporated into all new and existing contracts between an Affordable Housing Provider and any entity providing Public Funding or that relate to the City's Below Market-Rate Rental Housing Program.
- (c) Within six months of the Ordinance's passage, the City Manager or designee is required to:
- (1) Promulgate appropriate regulations consistent with this Ordinance.
  - (2) Designate hearing officers and other necessary staffing for administrative review of complaints regarding violations of this Ordinance;
  - (3) Develop the timelines and procedures for complaints regarding violations of this Ordinance that include, at a minimum, the items described in subsection (d) below;
  - (4) Develop notices, the annual compliance certification form, and other implementation documents, including written materials for Housing Providers and potential Applicants;
  - (5) conduct outreach and prepare a plan to provide ongoing training about this Ordinance to Housing Providers;
  - (6) Prepare an annual implementation budget and identify funding sources; and
  - (7) Undertake other elements of effective implementation.
- (d) The City's administrative review process shall include, at a minimum, the following:
- (1) Any Applicant subject to an Adverse Action who believes the Adverse Action was based on a violation of this Ordinance shall have the right to submit a complaint to the City within one year of the date the Applicant submitted an application to the Housing Provider or the date of the violation, whichever is earlier. The City will

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complete its administrative review of any complaint, including the hearing and issuance of a final decision, within 90 days of submission of the complaint.

(2) During the City's administrative review of a complaint regarding an Adverse Action, the parties shall have the following rights: to have an advocate of their choosing to represent them at the hearing; to present any relevant witnesses and evidence and the evidence will be considered without regard to the admissibility under the Rules of Evidence applicable to a judicial proceeding; to examine the other party's evidence and to rebut and cross examine any witnesses; to request a translator; to request any reasonable accommodation needed to participate in the hearing process; and to record the hearing.

(3) Where the City determines that a violation of the Ordinance has occurred, the City shall issue a determination and order any appropriate relief under this Ordinance.

- (e) In addition to providing an administrative review process for complaints, the City is required to take appropriate steps to enforce this Ordinance and coordinate enforcement, including by investigating any possible violations of this Ordinance.
- (f) The City Manager or designee shall provide annual public reports to the City Council on the implementation and enforcement of this Ordinance. The annual reports shall include, at a minimum: information from the annual compliance certifications submitted by Affordable Housing Providers; the number of complaints filed with the City regarding violations of this Ordinance and the outcomes of such complaints, the number of notices filed with the City regarding private court action brought under the Ordinance and the outcomes of such court proceedings.

**VIII. Private Right of Action**

- (a) Applicants subject to Adverse Actions in violation of this Ordinance shall have a private right of action to enforce the Ordinance and shall, if they prevail, be entitled to: statutory damages equal to the greater of actual damages or three (3) times the amount of the monthly rent that the Housing Provider charged for the unit in question at the time of the violation; attorney's fees and costs of action; and punitive damages. This private right of action does not require an Applicant to have filed a prior complaint with the City of Berkeley.
- (b) An award of actual damages under this Ordinance may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court if a defendant is found to have acted in knowing violation of, or in reckless disregard of, the provisions of this Ordinance.
- (c) In addition to any other award of damages or grant of injunctive relief, a court of competent jurisdiction may order that a civil penalty be assessed against the Housing Provider to vindicate the public interest, which penalty shall be payable to The City of

Commented [LS2]: This is from Berkeley's Source of Income ordinance.

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Berkeley. The civil penalty assessed against a Housing Provider shall be at least one thousand dollars (\$1,000) and shall not exceed ten thousand dollars (\$10,000) for each violation of the Ordinance. A defendant shall be liable for an additional civil penalty of up to five thousand dollars (\$5,000) for each violation of this Ordinance committed against a person who is disabled within the meaning of California Government Code section 12926, *et seq.*, or aged sixty-five (65) or over.

Commented [LS3]: From Berkeley's TPO

- (d) An attorney who represents an Applicant in litigation against a Housing Provider brought under this Ordinance shall provide notice to the City within ten (10) days of filing court action against the Housing Provider, and inform the City of the outcome of the court action within ten (10) days of any final judgment.

**IX. Remedies**

- (a) Any person who commits an act in violation of this Ordinance may be enjoined therefrom by any court of competent jurisdiction.
- (b) Where the City determines through administrative review of a complaint or otherwise that a violation of the Ordinance has occurred, the City shall, in order to vindicate the public interest, assess against the Person found to have violated the Ordinance a fine payable to The City of Berkeley in the amount of the lesser of \$1,000 or the maximum amount permitted under State and Local law.

Commented [LS4]: The amount of the fine was raised as a concern at the meeting with Rent Board staff. This issue needs input from the City Attorney.

**X. Retaliation Prohibited**

- (a) No person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Ordinance.
- (b) No person shall take any Adverse Action against any person because the person has exercised in good faith the rights protected under this Ordinance. Such rights include but are not limited to the right to fair chance housing and regulation of the use of criminal history in housing by this Ordinance; the right to make inquiries about the rights protected under this Ordinance; the right to inform others about their rights under this Ordinance; the right to inform the person's legal counsel or any other person about an alleged violation of this Ordinance; the right to file an oral or written complaint with the City for an alleged violation of this Ordinance; the right to cooperate with the City in its investigations of this Ordinance; the right to testify in a proceeding under or related to this Ordinance; the right to refuse to participate in an activity that would result in a violation of City, State, or Federal law; and the right to oppose any policy, practice, or act that is unlawful under this Ordinance.
- (c) No person shall communicate to a person exercising rights protected in this Ordinance, directly or indirectly, the willingness to inform a government employee that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an Applicant or a member of

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their household to a Federal, State, or Local agency because the Applicant has exercised a right under this Ordinance.

(d) There shall be a rebuttable presumption of retaliation if a Housing Provider or any other person takes an Adverse Action against a person within 90 days of the person's exercise of rights protected in this Section. The Housing Provider may rebut the presumption with clear and convincing evidence that the Adverse Action was taken for a permissible purpose.

(f) The protections afforded under this Ordinance shall apply to any person who mistakenly but in good faith alleges violations of this Ordinance.

(g) A complaint or other communication by any person triggers the protections of this Ordinance regardless of whether or not the complaint or communication is in writing or makes explicit reference to this Ordinance.

**XI. Records to Be Maintained**

(a) Housing Providers must maintain a record for each Applicant that includes any Criminal History obtained regarding the Applicant, and the determination of eligibility following any review by the Housing Provider of such Criminal History.

(b) Housing Providers shall maintain full and complete documentation of their compliance with this Ordinance.

(c) Housing Providers shall

- (1) Permit the City to have access to Housing Provider records for the purpose of making an audit, examination or review of performance data pertaining to this Ordinance; and
- (2) Maintain such records for a period of at least three years.

**XII. Confidentiality**

To the fullest extent permitted by law, any information pertaining to an Applicant's Criminal History obtained in conjunction with the rental, lease, ownership, or sublease process shall remain confidential and shall only be shared with individuals who have a need to know for the purpose of evaluating an Applicant's application for Housing.

**XIII. Severability**

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

**DRAFT**  
**The Ronald V. Dellums Fair Chance Housing Public Health & Safety Ordinance**  
**June 21, 2019**

**XIV. Effective Date**

This Ordinance becomes effective six (6) months after its final passage and adoption.

DRAFT



**Alameda County  
Fair Chance Housing Coalition**

June 20, 2019

**To: City of Berkeley 4x4 Joint Task Force Committee on Housing**

**Fr: The Alameda County Fair Chance Housing Coalition: Policy and Outreach Leaders: Ms. Anita Wills** with Essie Justice Group; **Ms. Sherry** with OCO, Our Beloved Community Action Network; **Taqwaa Bonner** and **Katie Dixon** with All of Us or None; **Coalition Advisors: Tamisha Walker** with the Safe Return Project, and **Deborah Thrope** and **Lisa Sitkin** with the National Housing Law Project. **Coalition Staff: John Jones III & Margaretta Lin** with Just Cities and the Our Beloved Community Action Network

**Re: Updates on Proposed Policy Terms on Fair Chance Housing proposal**

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We remain grateful for your partnership to remove housing barriers faced by formerly incarcerated residents. The discussions we have had with you in Committee and individual meetings have helped us refine what we believe will be the nation's best Fair Chance Housing policy. In addition, we have had invaluable feedback from the Rent Board Executive Director and lawyers, and a former Deputy City Attorney for Oakland. In light of their feedback regarding implementation and enforcement considerations, we have made further refinements to the proposed Fair Chance Housing ordinance.

We look forward to working with Mayor Arreguin and the Berkeley City Attorney's office on any further modification needs to the proposed ordinance.

**COALITION POLICY GOALS:**

1. Remove current structural barriers faced by formerly incarcerated people when they apply for private or publicly subsidized housing to enable them to be considered on the merits of their present situation, rather than the albatross of their past.
2. Create a due process system that 1) enables formerly incarcerated people the ability to complain to the City and also sue to enforce their rights under the Ordinance; and 2) builds on the City's current administrative systems and capacity.
3. Design policy terms based upon an understanding of the different application and review processes by private and multiple kinds of Affordable Housing providers.
4. Create reporting requirements that are streamlined and also helps Affordable Housing providers transform their current application and review systems.
5. Avoid unintended consequences by not having burdensome or complex requirements for landlords.





**MAIN PROPOSED POLICY TERMS:** the following is a summary of the proposed fair chance housing policy for your consideration.

| Housing Provider                                     | Criminal Background Check                                    | Due Process                    | Reporting to City                  | Potential Remedies for Violations                                                                         |
|------------------------------------------------------|--------------------------------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------------------------------------------------------------|
| <b>Private (Non-Affordable Housing Provider)</b>     | No                                                           | City Complaint<br>Sue in Court | None                               | City complaint w/ fine OR City negotiation of next unit.<br>Court action w/ damages or injunctive relief. |
| <b>Publicly Subsidized, BMR &amp; Not HUD Funded</b> | No                                                           | City Complaint<br>Sue in Court | Annual certification of compliance | City complaint w/ fine OR City negotiation of next unit.<br>Court action w/ damages or injunctive relief. |
| <b>HUD Funded</b>                                    | After conditional offer, can check on 2 crimes per HUD rules | City Complaint<br>Sue in Court | Annual certification of compliance | City complaint w/ fine OR City negotiation of next unit.<br>Court action w/ damages or injunctive relief. |

- ❖ **NAMED AFTER RON DELLUMS:** The Coalition is proposing to name the Fair Chance Housing policy after former Berkeley City Councilmember, Congressman, Oakland Mayor, world humanitarian Ronald V. Dellums in honor of his legacy and to inspire policymakers across the nation to champion human rights.
- ❖ **PUBLIC POLICY RATIONALE:** California State law may pre-empt local jurisdictions from enacting local housing anti-discrimination laws. However, local jurisdictions are able to enact public health and safety laws. There is substantive and compelling research, data, and lived experience demonstrating the direct public health and safety impacts from restricting the access of formerly incarcerated residents to private and publicly subsidized rental housing. In addition, research and data also shows the direct connection between housing barriers for formerly incarcerated residents and homelessness.

**CRIMINAL BACKGROUND CHECKS:**

- The proposed ordinance for Berkeley prohibits ALL landlords from:
  - (a) Advertising or using a policy that automatically excludes people with criminal histories from rental housing,
  - (b) Asking about or requiring disclosure of someone’s criminal history, or
  - (c) Taking adverse action against an applicant or tenant based on his or her criminal history.
- Landlords also have to include in all advertising and application materials the information that they are not allowed to ask about criminal history or take adverse action on the basis of criminal history except in very limited circumstances.



- **Exceptions:**
  - (a) **Single-family dwellings where the owner occupies the dwelling** are exempt.
  - (b) **Landlords of federally assisted housing** have a partial exemption from the ordinance if they are complying with federal regulations that require them to automatically exclude tenants based on certain types of criminal history (lifetime sex offender registration requirement or making meth on a federally assisted housing property).

## **IMPLEMENTATION & ENFORCEMENT:**

### **1. Private Rental Housing Application & Complaint Process**

- **Denial:** If an applicant has been denied housing, they are entitled to any notices required by state and federal law and can also request that the landlord provide a reason for the denial.
- **Due Process, Remedies & Enforcement—See below**

### **2. Affordable Housing Rental Housing Application and Appeal/Complaint Process**

- **Definition:** any housing provider receiving direct local, county, state, or federal subsidy, including **private developers with units in Berkeley’s BMR program**. We have removed Section 8 landlords from the definition of Affordable Housing provider since the Housing Authority conducts the background checks for Section 8 voucher holders and because Berkeley’s source of income anti-discrimination law potentially makes every landlord a Section 8 landlord.
- **Conditional Offer, Background Check, and Denial:** For federally funded housing providers, after a conditional offer of housing has been provided, the housing provider may conduct a background check if required by federal requirements. The housing provider must provide in writing the grounds for denial of housing and state whether a criminal records background check was conducted and, if so, what the results were of the check.
- **The Viability of Holding Units Open:** Our original proposal required that Affordable Housing providers hold their units open up to 30 days if an applicant files a complaint within 14 days of receiving a denial. However, after important information from Rent Board staff, we realize that it is not possible for someone to file a complaint with the City and to both hold a hearing and have a determination issued within 30 days. Given this reality and the potential impact to other applicants if we required that housing units be held open for 60 or 90 days, the Coalition has decided to remove the



requirement of holding units open. Instead, for complaints filed with the City and a City determination of a violation, we strongly encourage the City to waive the fine and instead negotiate for the next available comparable unit as the fair remedy.

- **Annual Reports:** the housing provider must submit an annual certification of compliance to the City utilizing a City template. The Coalition would like to work with the City on designing the compliance template.

### **3. Due Process, Remedies and Enforcement for Both Private & Publicly Subsidized Rental Housing**

- **Complaint Process:**
  - The applicant would have the right to file a complaint with the City's Rent Board within **one year** from the date of application for housing.
  - The public and complainant would be informed of available City or community resources to assist in the filing of the complaint or preparing for the hearing, including the gathering of evidence.
- Similar to current Berkeley tenant law, **private right of action and attorney's fees** for the prevailing applicant are provided.
- Berkeley's current **civil penalty system** is also integrated into the proposal.
- **Landlord retaliation** is explicitly prohibited.
- Landlords are required to maintain **documentation** of any conviction history that they obtain on applicants for at least three years.
- **Effective date** of the ordinance is 6 months after its adoption.
- The City Manager or their designee would provide an **annual status report** to the City Council and public including: a) which Affordable Housing providers submitted an annual certification of compliance; b) number of complaints filed with the City and the resolution; c) information from local service providers and community organizations on the number of court cases filed and the resolution or other compliance information.

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**CONTACT:** John Jones III, Community + Political Engagement Director, Just Cities, [john@justcities.work](mailto:john@justcities.work); Margaretta Lin, Managing Director, Just Cities, [margaretta@justcities.work](mailto:margaretta@justcities.work)





Office of the Mayor

CONSENT CALENDAR  
July 23, 2019

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Authorizing Transfer of Funds to Rent Board for Eviction Defense Contracts

RECOMMENDATION

Adopt a Resolution authorizing the transfer of \$550,000 for Fiscal Years 2020 and 2021 to the Rent Stabilization Board to amend its contracts with the Eviction Defense Center and East Bay Community Law Center to provide eviction defense and various other anti-displacement services to low and moderate-income Berkeley residents.

BACKGROUND

The unprecedented rental housing crisis has resulted in increased displacement and eviction of low-income residents in Berkeley. One of the priorities of the Rent Stabilization Board is to provide services to low-income households to prevent displacement.

At the June 25, 2019 Council Meeting, the FY 2020-21 Biennial Budget was approved, allocating \$900,000 each year for anti-displacement programs. Of this, \$550,000 will be used for eviction defense and housing counseling each year. Council initially authorized an annual funding of \$300,000 for this purpose for both the 2018 and 2019 Fiscal Years at its July 25, 2017 meeting. These funds were transferred to the Rent Board whose staff administered, monitored, and reported to Council regarding the program funding during those years.

When this item was initially considered in 2017, Council expressed interest in expanding the scope of services provided by Eviction Defense Center (EDC) and East Bay Community Law Center (EBCLC) under their existing Rent Board Contracts to provide counseling and advocacy to tenants seeking to avoid displacement by exercise of rights afforded by local law other than the Rent Ordinance. The funding provided by the Rent Board is not adequate to achieve the Council's objective of fully preventing displacement during the current housing emergency, when low and middle-income tenants are particularly vulnerable to displacement if not provided with sufficient and competent legal defense. There is also a need for additional funding to provide counseling and representation to tenants relating to city ordinances such as the Tenant Protection Ordinance and Tenant Buyout Ordinance. Council now sees fit to increase the funding to attempt to further curb the tide of displacement.

Both EDC and EBCLC have requested \$275,000 to cover this expanded scope of work to serve the broadest number of Berkeley tenants.

On June 20, 2017, by Resolution Nos. 19-14 and 19-15 the Rent Board authorized the Board's Executive Director to amend existing contracts with the EDC and the EBCLC through June 30, 2020. These contracts provide eviction defense services for very-low income Berkeley tenants in furtherance of the Board's mission of preserving diversity and prevent displacement of vulnerable tenants. The Rent Board agreed to amend its existing contracts with the EDC and EBCLC to incorporate Council's additional scope of work and additional funding during the 2018 and 2019 fiscal years and has indicated that it would be amenable to continuing this relationship. The Board will formally approve authorizing modification of its existing contracts with the EDC and the EBCLC to allow for the transfer of these Council funds for the 2020 and 2021 fiscal years at its July 18, 2019 meeting and will report to Council regarding this matter.

FINANCIAL IMPLICATIONS

\$550,000 annually from the General Fund appropriation for eviction defense approved on June 25, 2019. Funding will come from Measure U1 tax receipts.

ENVIRONMENTAL SUSTAINABILITY

No adverse effects to the environment.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1: Resolution



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

CONTRACT NOS. 112505-1 AND 114171-1 AMENDMENTS: EVICTION DEFENSE CENTER AND EAST BAY COMMUNITY LAW CENTER; SUPPLEMENTAL FUNDING TO RENT BOARD

WHEREAS, the Costa-Hawkins Rental Housing Act passed by the state legislature in 1995 (and implemented in 1996) gave Berkeley landlords the ability to impose market rate rent increases for the overwhelming majority of new tenancies and an incentive to pursue pretextual evictions of tenants with below market rents; and

WHEREAS, due to market conditions Berkeley tenants have experienced unprecedented rent increases in recent years; and

WHEREAS, due to these substantial rent increases, many Berkeley tenants are unable to relocate in Berkeley or the central Bay Area if they are displaced by eviction; and

WHEREAS, effective administration of Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance and advocacy surrounding the eviction protections listed therein have proven the most effective way to preserve affordable housing and prevent displacement that often leads to homelessness; and

WHEREAS, since the passage of Costa-Hawkins the Rent Board has funded eviction defense services for extremely low-income tenants; and

WHEREAS, Measure U1 provides annual funding to create and preserve Berkeley's affordable housing; and

WHEREAS, Council has determined it a priority to preserve affordable housing, so that more residents are not displaced from the city; and

WHEREAS, Council has heard testimony regarding the increasing vulnerability of low and moderate-income tenants (such as teachers, restaurant workers, and tradespeople) in today's unbalanced housing market; and

WHEREAS, Council has passed several Ordinances in recent years (including the Tenant Buy-Out Ordinance and Tenant Protection Ordinance [B.M.C. Chapter 13.79], Discrimination Based on Source of Income Prohibited [B.M.C. Chapter 13.31], and the Short-Term Rental Ordinance [B.M.C Chapter 23C.22]) to help preserve affordable housing and attempt to secure more universal tenant protections in addition to those already provided in the Rent Ordinance; and



WHEREAS, on June 25, 2019, Council set aside \$550,000 for eviction defense funding for fiscal years 2020 and 2021; and

WHEREAS, on June 20, 2019, by Resolution Nos. 19-14 and 19-15 the Rent Board authorized the Board's Executive Director to amend existing contracts with Collective Legal Services, dba the Eviction Defense Center (EDC) and the East Bay Community Law Center (EBCLC) through June 30, 2018, in an amount not to exceed \$150,000 for EDC and \$142,500 for EBCLC for services provided in the 2019/2020 Fiscal Year; and

WHEREAS, these contracts provide eviction defense services for very-low income Berkeley tenants in furtherance of the Board's mission of preserving diversity and prevent displacement of vulnerable tenants; and

WHEREAS, the Rent Board is unable to fund the EDC and EBCLC for work not directly related to eviction defense as defined by the eviction protections enumerated in the Rent Ordinance; and

WHEREAS, the funding provided by the Rent Board is not adequate to achieve the Council's objective of fully preventing displacement during the current housing emergency, when low and middle-income tenants are particularly vulnerable to displacement if not provided with sufficient and competent legal defense; and

WHEREAS, Council is informed that the Board and citizens of Berkeley have been extremely pleased with the excellent services provided by the EDC and EBCLC; and

WHEREAS, the emergent nature of the affordability crisis demands an immediate response and supplementing the Rent Board's contracts with these agencies is the fastest way to prevent further displacement; and

WHEREAS, Council wishes to expand the scope of services provided by EDC and EBCLC under their existing Rent Board Contracts to provide counseling and advocacy to tenants seeking to avoid displacement by exercise of rights afforded by local law other than the Rent Ordinance; and

WHEREAS, Council seeks to fund these additional services in an amount not to exceed \$275,000 per agency per fiscal year and not to exceed the amount necessary to provide these services to Berkeley tenants; and

WHEREAS, the Rent Board has agreed to amend its existing contracts with the EDC and EBCLC to incorporate Council's additional scope of work and additional funding as detailed above; and

WHEREAS, it will be more efficient to have the EDC and EBCLC report to the Rent Board under the existing format of the current contracts;

NOW, THEREFORE BE IT RESOLVED, that the Berkeley City Council authorizes transfer of \$550,000 for Fiscal Years 2020 and 2021, as appropriated in the Fiscal Year 2020 and 2021 Biennial Budget, to the Berkeley Rent Board to amend its existing contracts with EDC and EBCLC to provide the services detailed above; and

BE IT FURTHER RESOLVED, that Council specifically authorizes the use of these funds to provide eviction defense services for extremely low, very-low, low or moderate-income Berkeley tenants and to help provide counseling and advocacy to tenants seeking to avoid displacement; and

BE IT FURTHER RESOLVED, that the City Manager is authorized to work with the Rent Board to articulate a scope of services being provided from each source of funding; and

BE IT FURTHER RESOLVED, that the Rent Board shall submit reports to the City Council on a semi-annual basis articulating the number of Berkeley residents served and the outcomes; and

BE IT FURTHER AND FINALLY RESOLVED, that EDC and EBCLC shall continue to report to the Rent Board regarding outcome objectives under the existing contracts and shall provide Council with periodic updates regarding the expanded scope of services upon request.

ACTION CALENDAR

July 23, 2019

To: Honorable Members of the City Council

From: Mayor Arreguin and Councilmembers Kesarwani and Harrison

Subject: Identifying Locations for Managed Safe Recreational Vehicle (RV) Parking on City-Owned Land, Development of a Three-Month “Grace Period” Permit Program, and Requesting that the State Lands Commission Permit a Temporary Safe Parking Site at the Berkeley Waterfront

RECOMMENDATION

1. Direct the City Manager to identify one or more locations on city-owned land, including at the Berkeley Waterfront, for the establishment of a managed safe RV parking site for individuals currently sheltering in an RV or oversized vehicle on the public right-of-way in the City of Berkeley. The site(s) shall be available specifically for individuals identified through outreach as meeting the priority populations criteria designated by City Council in its March 26, 2019 action and are therefore eligible for the city’s three-month Grace Period Permit Program.

A three-month Grace Period Permit (with possibility for renewal under limited specified circumstances) will be offered on a one-time basis to existing Berkeley RV dwellers who meet the priority populations criteria adopted by Council on March 26, 2019. The three-month Grace Period Permit will allow RV dwellers to park in a designated off-street safe location within City limits. As adopted and specified on March 26<sup>th</sup>, a safe parking location should be provided to priority populations prior to enforcement of RV parking regulations under Ordinance No. 7,643-N.S. (BMC Section 14.40.120) and shall include services to ensure health and safety, including sanitation services.

2. Once locations are identified, the City Manager should report back to the City Council on proposed locations and a proposed program model for the three-month Grace Period Permit program including a non-profit operator, service model, security measures, and sanitary facilities such as portable restrooms and hand-washing stations. The Council may at that time express its intent to allocate additional funding through Measure P tax receipts or other General Fund revenues to establish a long-term safe parking program for individuals who meet priority populations criteria and who have not previously received a three-month Grace Period Permit.

Program participants should be actively engaged with rehousing and other services, and their stay will be short-term while they are seeking permanent housing and/or a long-term off-street location to which they can relocate, such as an RV park.

3. The City Manager should explore all possible locations on city-owned land, including all vacant or partially-occupied city properties, “dead-end” streets, and the Berkeley Waterfront.

4. Direct the City Manager to submit a formal request to the California State Lands Commission for permission to establish a temporary safe parking location on City land at the Berkeley Waterfront based on the City of Berkeley's declaration of a Homeless Shelter Crisis.

#### BACKGROUND/ CURRENT SITUATION AND ITS EFFECTS

Homelessness in the Bay Area continues to rise with an increase in Alameda County of 43% over the past two years. As a result of this increase in homelessness, there has been an increase in the number of RVs parking for long periods of time within the City of Berkeley, impacting public safety, health and the parking needs for Berkeley residents and businesses. At the same time, increasing housing costs has resulted in more people losing permanent housing, including living in RVs and vehicles. The City must balance the preservation of health and safety, with helping our most vulnerable.

On February 28, 2019 City Council approved the first reading of Ordinance No. 7,643-N.S. amending BMC Chapter 14.40 regarding stopping, standing or parking restricted or of vehicles on streets between the hours of 2 am to 5 am. The Council's motion specified that the enforcement of the ordinance would be preceded by notice, outreach and identifying specific needs of RV dwellers and providing flexible funding and access to services. Additionally, Council stated that it would work with staff to identify and develop a temporary RV parking site to serve the priority/highly vulnerable populations identified through outreach.

On March 26, 2019, the City Council adopted a second reading of Ordinance No. 7,643-N.S. with additional recommendations and guidelines to ensure that enforcement would not commence until outreach is conducted and a permit system is developed. Council also allocated \$50,000 in state Homeless Emergency Aid Program (HEAP) funds for outreach to RV dwellers, and the city has amended its contract with Bay Area Community Services (BACS) to conduct targeted outreach to RVs to identify needs and determine if they meet the criteria for priority populations eligible for the one-time 3-month "Grace Period" permit program. The Council also directed the City Manager to develop a 3-month permit program for priority populations at off-street locations.

In addition, the Council reiterated its referral to identify locations for an off-street safe parking location in the City of Berkeley for priority/highly vulnerable populations and to continue to work with adjoining cities and counties to develop a regional program for RVs. Since March 26th, Mayor Arreguin has been working with the Mayors of Oakland and Emeryville and County officials on a program for North County cities.

Councilmember Kesarwani and Mayor Arreguin have identified and visited several potential locations for safe parking. With the exception of property located at the Berkeley Waterfront, there is no one parcel that is large enough to accommodate the anticipated number of identified priority/highly vulnerable RVs that are parking within City of Berkeley boundaries. In the meantime, conversations have ensued with the cities of Oakland and Emeryville on ways that North Alameda County cities could

partner on the development of a comprehensive program and policies to address the needs of people residing in RVs.

#### RATIONALE FOR RECOMMENDATION

Beginning on July 1, 2019, BACS will begin outreach to RVs to access and identify the priority/highly vulnerable population that will qualify for parking under the 3-month Grace Period and those that can qualify for flexible funds allocated at the March 12<sup>th</sup> Council meeting from State Housing Emergency Aid Program (HEAP) funds.

In the meantime, staff is completing their work on the implementation, administration and enforcement criteria for the 3-month Grace Period. However, in order to fully implement City Council direction, safe parking location(s) must be operational and should include site management, security and amenities, including but not limited to portable toilets, handwashing stations, garbage collection facilities, mobile waste pump-out and shower service.

Until a safe parking location(s) have been identified, the full implementation of the Grace Period cannot commence which results in continued impacts on public safety, health and parking needs for Berkeley residents and businesses. Time is of the essence to identify and establish a safe parking location(s).

#### FISCAL IMPACTS OF RECOMMENDATION

Outreach and flexible funds have been allocated in the FY2020/21 budget. Costs associated with a safe parking location(s) must be identified by staff and referred to the Measure P Panel of Experts or new HEAP allocation funding.

#### ENVIRONMENTAL SUSTAINABILITY

Providing safe parking locations, that include garbage collection and waste pump out services, is consistent with the goals and requirements set forth in the city's NPDES Municipal Regional Permit and has a clear benefit of reducing the possibility of human waste and garbage entering the storm drain system and consequently the Bay.

#### CONTACT PERSON

Mayor Jesse Arreguín, 510-987-7100  
Councilmember Rashi Kesarwani 510-981-7110  
Councilmember Kate Harrison, 510-981-7140

#### Attachments:

- 1: Ordinance No. 7,643-N.S. (BMC Section 14.40.120)
- 2: Annotated Agenda, Item #1 Referral Responses: Managing Recreational Vehicles (RV Parking), February 28, 2019
- 3: Annotated Agenda, Item #21 Referral Responses: Managing Recreational Vehicles (RV Parking), March 26, 2019



Attachments  
Not Received

These attachments have not been received from the submitting office.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**The City of Berkeley, City Council's Web site:**  
<http://www.cityofberkeley.info/citycouncil/>



Rashi Kesarwani  
Councilmember District 1

CONSENT CALENDAR  
07/23/2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Rashi Kesarwani  
Subject: Designating Berkeley’s portion of Ohlone Greenway and the West Street Bike Path as linear City parks.

RECOMMENDATION

Adopt a resolution designating the Berkeley-owned portions of the West Street Bike Path and the Ohlone Greenway as linear City parks and formally dedicate these sites for permanent recreational use.

The City-owned portion of the West Street Bike Path begins adjacent to the basketball courts at Virginia Gardens and travels southward ending at Delaware Street.

The City-owned section of the Ohlone Greenway begins northwest of the North Berkeley BART station at Cedar Street and continues north to the City’s border with Albany.<sup>1</sup>

FINANCIAL IMPLICATIONS

The City already owns and maintains these properties, so the financial implications would be minimal. One-time minimal use of staff time would be needed to dedicate these areas as parks and add park signage.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley-owned portions of the West Street Bike Path and the Ohlone Greenway are used as recreational areas. Residents use these spaces to gather, rest and relax, play, and exercise, particularly biking and walking. Importantly, these dedicated bike/pedestrian paths already include many park features, such as park benches,

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<sup>1</sup> It should be noted that the San Francisco Bay Area Rapid Transit District (BART) is planning North Berkeley Bicycle and Pedestrian Access Improvements that will, among other upgrades, widen the BART-owned portion of the Ohlone Greenway adjacent to the BART side parking lots up to Virginia Gardens. See <https://www.bart.gov/about/planning/north-berkeley-bike> for plan details.

proximity to recreational facilities (including bike-share stations as well as basketball and tennis courts), and art installations.

Because these two paths primarily function as recreational areas, they should be officially dedicated as City parks for the common good of Berkeley residents and visitors. This resolution aligns with our Strategic Plan, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

It should also be noted that the Ohlone Greenway portions in both the cities of Albany<sup>2</sup> and El Cerrito<sup>3</sup> have already been dedicated as linear City parks; establishing a similar designation in Berkeley would create regional consistency for recreational pursuits.

### BACKGROUND

In Berkeley's Open Space and Recreational Element of our General Plan, adopted April 3<sup>rd</sup>, 2002<sup>4</sup>, the objectives are stated as:

The policies and actions of the Open Space and Recreation Element are intended to achieve the following three objectives:

- Preserve, maintain, and repair the city's existing open space and recreational resources and facilities.
- Expand open space and recreational resources to meet the evolving open space and recreational needs of all segments of this community through land acquisitions and improvements.
- Increase funding for parkland, recreational facilities, and open space maintenance, improvement, and expansion.

This is congruent with Berkeley's adopted Measure "L" – The Berkeley Public Parks and Open Space Preservation Ordinance, passed in 1986. The measure requires "the Berkeley City Council to preserve and maintain the public parks and open space in Berkeley as well as to acquire and maintain public parks and open space in the census tracts and neighborhoods of Berkeley having less than the minimum amount of open space relative to population (2 acres per 1,000) identified in the Berkeley Master Plan of 1977."<sup>5</sup> These directives regarding parks and open space prioritize recreation as an essential element of civic life, and requires the City to obtain and maintain these amenities for the public good. This council consent item seeks to ensure this directive by officially dedicating these public spaces as City park property for permanent recreational use.

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<sup>2</sup> Ohlone Greenway Park Facility Directory, City of Albany (2019) available at:

<https://www.albanyca.org/Home/Components/FacilityDirectory/FacilityDirectory/104/1607?npage=3>.

<sup>3</sup> Ohlone Greenway Facilities, City of El Cerrito (2019) available at: <http://el-cerrito.org/Facilities/Facility/Details/Ohlone-Greenway-16>.

<sup>4</sup> See: [https://www.cityofberkeley.info/uploadedFiles/Planning\\_\(new\\_site\\_map\\_walk-through\)/Level\\_3\\_-\\_General/GPliteOpen\\_Space\\_policies.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_(new_site_map_walk-through)/Level_3_-_General/GPliteOpen_Space_policies.pdf).

<sup>5</sup> Voter Information Pamphlet text of Measure L



ENVIRONMENTAL SUSTAINABILITY

Designating the Berkeley-owned portions of the West Street Bike Path and Ohlone Greenway as linear City parks will enable the City to better maintain these dedicated bike paths as safe and enjoyable alternatives to driving, thereby potentially reducing vehicle miles traveled.

CONTACT PERSONS

Councilmember Rashi Kesarwani                      Council District 1      510-981-7110

Attachments:

1: Resolution

2: Voter Information Pamphlet Text of Measure L

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

DESIGNATING THE BERKELEY-OWNED PORTIONS OF THE OHLONE GREENWAY  
AND WEST STREET BIKE PATH AS PART OF CITY PARK INFRASTRUCTURE

WHEREAS, in Berkeley's Open Space and Recreational Element of the General Plan, adopted April 3<sup>rd</sup>, 2002, the objectives are stated as:

- Preserving, maintaining, and repairing the city's existing open space and recreational resources and facilities
- Expanding open space and recreational resources to meet the evolving open space and recreational needs of all segments of this community through land acquisitions and improvements
- Increasing funding for parkland, recreational facilities, and open space maintenance, improvement, and expansion; and

WHEREAS, Berkeley adopted Measure "L" – The Berkeley Public Parks and Open Space Preservation Ordinance – in 1986, which requires "the Berkeley City Council to preserve and maintain the public parks and open space in Berkeley as well as to acquire and maintain public parks and open space in the census tracts and neighborhoods of Berkeley having less than the minimum amount of open space relative to population (2 acres per 1,000) identified in the Berkeley Master Plan of 1977"; and

WHEREAS, these directives regarding parks and open space prioritize recreation as an essential element of civic life, and requires the City to obtain and maintain these amenities for the public good; and

WHEREAS, Berkeley's portions of the West Street Bike Path and the Ohlone Greenway are used as recreational areas; and

WHEREAS, the Ohlone Greenway portions in both the cities of Albany and El Cerrito have already been dedicated as linear City parks.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Berkeley-owned portions of the Ohlone Greenway and West Street Bike Path are designated as linear City parks.



Civic Arts Commission

## INFORMATION CALENDAR

July 23, 2019

To: Honorable Mayor and Members of the City Council  
 From: Civic Arts Commission  
 Submitted by: Lisa Bullwinkel, Chairperson, Civic Arts Commission  
 Subject: FY2020 Public Art Plan and Budget

### INTRODUCTION

Attached is the City of Berkeley's Public Art Plan and Budget for Fiscal Year (FY) 2020. The budget was adopted by the Civic Arts Commission (M/S Ozol/Slattery; Ayes: Bullwinkel, Covarrubias, Ozol, Ross, Slattery; Nays: None; Abstain: None; Absent: Anno, Blecher, Passmore, Tamano) at its regularly scheduled meeting on April 24, 2019. This budget and plan will guide the City's public art investments and project management for the upcoming fiscal year, implemented through partnerships of the Commission, Civic Arts Program staff in the Office of Economic Development, other City departments, and consultant teams.

### CURRENT SITUATION AND ITS EFFECTS

The attached budget contains projected revenues totaling \$59,221 that may be used for public art. Revenues are generated through the City's Percent for Art policy (Resolution No. 60,048-N.S.), whereby a sum equal to 1.5% of eligible public capital projects is transferred to the Public Art Fund. FY 2020 revenues include committed and uncommitted rollover of FY 2019 funds and the annual contribution reflecting baseline capital projects. The revenue figures presented here are the best estimates as of April 2019 and are subject to change. All revenues are deposited in the Public Art Fund (Fund 150).

The budget contains projected expenditures totaling \$53,500. The planned expenditures include: 2020 Civic Center Exhibition and purchase of artwork from the exhibition for the Civic Art Collection; Commissioning of three original sound compositions and associated signage for the Downtown Berkeley BART Plaza; and lighting for the Rumford Sculpture on Sacramento Street.

The expected revenues exceed the currently planned expenditures; therefore, the budget and plan projects an end-of-year carryover of approximately \$5,721, which may serve as a contingency during the implementation of the FY 2020 projects. The budget and plan also includes a brief list of possible future projects to be implemented as staffing allows and as funding opportunities arise.

BACKGROUND

The City's Percent for Art policy, adopted in 1999, requires the Civic Arts Commission to develop an annual plan and budget for public art projects, to be presented informationally to the City Council. Each year, after the capital projects budget is finalized and 1.5% for art allocation is identified, Civic Arts staff works with the Civic Arts Commission's Public Art Committee and other City departments to develop the budget. At the April 24, 2019 Civic Arts Commission meeting, the Commission voted to accept the Public Art Budget for Fiscal Year 2020.

In FY 2019, the Civic Arts Program implemented a portfolio of public art projects valued at \$524,387 with funds allocated in the FY 2018 and FY 2019 Public Art Program budgets. Those projects include:

- Downtown Berkeley BART Plaza Public Art and Cultural Programming including:
  - Completion of the sound and light poles.
  - Commissioning and presentation of the first three original sound compositions for the sound poles.
  - Installation of a temporary sculpture which is on display for one year.
  - Presentation of cultural performances on the plaza stage co-produced with the Downtown Berkeley Association.
- Planning for the conservation and reinstallation of two prominent sculptures in the downtown which are being relocated due to the Shattuck Realignment Project.
- Installation of the 2019 Civic Center Exhibition and purchase of five artworks from the exhibition for the Civic Art Collection.
- Contract for the Civic Art Collection Inventory and Condition Assessment, which is currently underway.
- Completion of outfitting the Cube Space multimedia art installation venue on the ground floor of the Center Street Garage and installing the first art exhibition.

Note that the 1.5% for Public Art Program and policy is separate and distinct from the *Public Art in Private Development* policy and program (Berkeley Municipal Code Chapter 23C.23, established in 2016). Civic Arts staff maintains a separate budget for the expenditure of in lieu fees generated by that program; for FY 2020, the Civic Arts Commission has approved an expenditure budget for revenues totaling \$309,613 (Attachment 2). Also note that the attached budget does not include public art projects related to the Measure T1 bond, which is budgeted separately and totals \$350,000 through FY 2020.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

The draft budget includes likely future expenditures on potential public art projects around the City. The Civic Arts Commission may make modifications to this budget over the course of the year as additional needs and funding opportunities arise.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

All future public art revenues and expenditures will be tracked and accounted for. If necessary, an additional Information Report will be submitted to the City Council.

CONTACT PERSON

Jennifer Lovvorn, Secretary, Civic Arts Commission, 981-7533

Attachments:

- 1: Project Public Art Budget for FY 2020
- 2: Public Art in Private Development In-Lieu Fees, FY 2020 Budget

| PUBLIC ART FUND BUDGET - FY20                            |                                                        |             |                  |
|----------------------------------------------------------|--------------------------------------------------------|-------------|------------------|
| Approved by Civic Arts Commission: 4/24/19               |                                                        |             |                  |
| FY20 FUNDING                                             | Description                                            | Amount      | Total            |
| Committed Carryover from FY19                            | Estimated Cost for Rumford Sculpture Lighting          | \$ 8,000    |                  |
| Uncommitted Carryover from FY19                          |                                                        | \$ 7,778    |                  |
| FY20 Total 1.5% Allocation                               |                                                        | \$ 65,164   |                  |
| Minus Administration Portion (.5% per ordinance)         |                                                        | \$ (21,721) |                  |
| <b>TOTAL FUNDS AVAILABLE FOR FY20 PROJECTS</b>           |                                                        |             | <b>\$ 59,221</b> |
| FY20 POSSIBLE PROJECTS                                   |                                                        | Amount      | Total            |
| Project for Committed Carryover Budget Amount FY19       | Estimated Cost for Rumford Sculpture Lighting          | \$ 8,000    |                  |
| Civic Center Art Exhibition (2020-2021)                  | Curation of Civic Center Exhibition (18 month display) | \$ 15,000   |                  |
| Artwork Purchase Civic Center Art Exhibition Cal Yr 2020 | Artwork purchase from Exhibition                       | \$ 5,000    |                  |
| BART Plaza Ambient Sound Installation Commissions        | Commissioning 3 Artists @ \$4K ea. (Already Selected)  | \$ 12,000   |                  |
| BART Plaza Artwork Plaques                               | 3 signs at \$500 ea.                                   | \$ 1,500    |                  |
| Lighting for Rumford Sculpture                           | Estimated costs higher than anticipated in last FY     | \$ 12,000   |                  |
|                                                          |                                                        |             | <b>\$ 53,500</b> |
| Remaining Balance                                        |                                                        |             | <b>\$ 5,721</b>  |

| Possible Future Projects                                |                                                                  | Budget Estimate  |  |
|---------------------------------------------------------|------------------------------------------------------------------|------------------|--|
| Install Diana Rossi Mosaic in new location              | Mosaic was removed from Center Street Garage                     | \$10,000         |  |
| Install found & removed Poetry Plaques - Addison Street | 4 Plaques removed from Center St Garage project area and 7 found | \$10,000         |  |
| Homeless Social Practice Project                        |                                                                  | \$10,000         |  |
| Restoration of Artworks in Collection                   | Implement top recommendations from Collection Assessment         | \$25,000         |  |
| Conservation and Installation of Turtles & Medallions   | ROM                                                              | \$25,000         |  |
| BART Plaza Cultural Programming FY20                    |                                                                  | \$10,000         |  |
| Big People Relocation - Installation costs              |                                                                  | \$50,000         |  |
| Worthington Referral for "Family Friendly Art"          |                                                                  | \$50,000         |  |
| Sargent Johnson Plaque at San Pablo Park                | Not artwork, but commemorative plaque for artist                 | \$2,000          |  |
| <b>Total</b>                                            |                                                                  | <b>\$192,000</b> |  |

| PRIVATE PERCENT FOR ART FUND BUDGET - FY20                                                                    |                                                                |                  |                   |
|---------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|------------------|-------------------|
| <b>BUDGET CODE: 148-21-208-252-0000-000-446</b>                                                               |                                                                |                  |                   |
| <b>Date: 6/13/19</b>                                                                                          |                                                                |                  |                   |
|                                                                                                               |                                                                | AMOUNT           | TOTAL             |
| FY20 FUNDING                                                                                                  |                                                                |                  |                   |
| FY19 CARRYOVER                                                                                                |                                                                | \$140,771        |                   |
| In-Lieu Payment in FY19                                                                                       | 2510 Channing Way                                              | \$106,664        |                   |
| In-Lieu Payment in FY19                                                                                       | 739 Channing                                                   | \$20,388         |                   |
| In-Lieu Payment in FY19                                                                                       | 2621 Tenth Street                                              | \$84,000         |                   |
| In-Lieu Fee Administration Set Aside FY20 (20% per guidelines)                                                |                                                                | -\$42,210        |                   |
| <b>TOTAL FUNDS AVAILABLE FOR FY20 PROJECTS</b>                                                                |                                                                |                  | <b>\$ 309,613</b> |
| FY19 BUDGET CARRYOVER PROJECTS                                                                                |                                                                |                  |                   |
| Conservation Set Aside from FY19                                                                              |                                                                | \$18,659         |                   |
| John Toki Sculpture Restoration                                                                               |                                                                | \$7,000          |                   |
| EarthSong Restoration                                                                                         |                                                                | \$12,000         |                   |
| Installation of Queen Sculpture                                                                               |                                                                | \$20,000         |                   |
| Removal of Big People                                                                                         |                                                                | \$60,366         |                   |
| Cube Space Contingency                                                                                        |                                                                | \$8,003          |                   |
| BART Plaza Cultural Programming                                                                               |                                                                | \$5,000          |                   |
| Legal Consulting on Public Art Guidelines                                                                     |                                                                | \$6,000          |                   |
| <b>TOTAL FY19 PROJECTS NOT YET STARTED</b>                                                                    |                                                                |                  | <b>\$ 137,028</b> |
| <b>FY20 PRIVATE PERCENT FOR ART PROJECTS</b>                                                                  |                                                                | Amount           | Total             |
| FY20 Conservation Set Aside (10% per guidelines)                                                              |                                                                | \$21,105         |                   |
| Cube Space Curator                                                                                            | 4 Exhibitions (3 months each)                                  | \$10,000         |                   |
| Cube Space Artist Fees                                                                                        | 4 Exhibitions @ \$1,000 each                                   | \$4,000          |                   |
| Ohlone Mural Project Additions                                                                                | Carved Seating, Grinding Rock                                  | \$34,000         |                   |
| John Toki restoration and reinstallation                                                                      | Project costs - higher than anticipated in last FY             | \$12,000         |                   |
| Contract with Wang Po Shu - Earthsong modifications                                                           | ROM Cost Estimate                                              | \$20,000         |                   |
| Photography of Cube Space Exhibitions and other public art                                                    |                                                                | \$10,000         |                   |
| Vinyl Signage for Cube Space Exhibitions                                                                      | 4 Exhibition @ \$300 each                                      | \$1,200          |                   |
| Purchase of Artwork for 1947 Permit Center                                                                    |                                                                | \$5,000          |                   |
| Artwork Preparator                                                                                            | Install Purchased Works and security mount works in Collection | \$2,000          |                   |
| Graphic Design (Exhibition Announcements + Signage)                                                           |                                                                | \$5,000          |                   |
| Projects Contingency (10% of projects)                                                                        |                                                                | \$12,430         |                   |
| <b>Total FY20 Projects</b>                                                                                    |                                                                |                  | <b>\$ 136,735</b> |
| <b>Remaining Balance After FY20 Projects</b>                                                                  |                                                                |                  | <b>\$ 35,850</b>  |
| <b>Possible Future Projects (Can be funded out of either Public Art Fund or Private Percent for Art Fund)</b> |                                                                | Budget Estimate  |                   |
| Install Diana Rossi Mosaic - Live Oak Community Center Playground                                             |                                                                | \$10,000         |                   |
| Install found Poetry Plaques - Addison Street                                                                 |                                                                | \$10,000         |                   |
| Homeless Social Practice Project                                                                              |                                                                | \$10,000         |                   |
| Restoration of Artworks in Collection                                                                         | Implement top recommendations from Collection Assessment       | \$25,000         |                   |
| Conservation and Installation of Turtles & Medallions                                                         | ROM                                                            | \$25,000         |                   |
| BART Plaza Cultural Programming FY20                                                                          |                                                                | \$10,000         |                   |
| Big People Relocation - Installation costs                                                                    |                                                                | \$50,000         |                   |
| Worthington Referral for "Family Friendly Art"                                                                |                                                                | \$50,000         |                   |
| Temporary Art Installation South Berkeley (MLK and Adeline)                                                   |                                                                | \$15,000         |                   |
| Sargent Johnson Plaque at San Pablo Park                                                                      |                                                                | \$2,000          |                   |
| <b>Total</b>                                                                                                  |                                                                | <b>\$207,000</b> |                   |

| PRIVATE PERCENT FOR ART FUND BUDGET - FY20                                                             |                                                          |                 |            |
|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------|-----------------|------------|
| BUDGET CODE: 148-21-208-252-0000-000-446                                                               |                                                          |                 |            |
| Approved by Civic Arts Commission: 6/26/19                                                             |                                                          |                 |            |
| FY20 FUNDING                                                                                           |                                                          | AMOUNT          | TOTAL      |
| FY19 CARRYOVER                                                                                         |                                                          | \$140,771       |            |
| On-Site Art Admin Fee FY19                                                                             | 2503 Haste                                               | \$16,423        |            |
| In-Lieu Payment in FY19                                                                                | 2510 Channing Way                                        | \$106,664       |            |
| In-Lieu Payment in FY19                                                                                | 739 Channing                                             | \$20,388        |            |
| In-Lieu Payment in FY19                                                                                | 2621 Tenth Street                                        | \$84,000        |            |
| TOTAL FUNDS AVAILABLE FOR FY20 PROJECTS                                                                |                                                          |                 | \$ 368,246 |
| FY20 PRIVATE PERCENT FOR ART ADMINISTRATION                                                            |                                                          | AMOUNT          | TOTAL      |
| On-Site Art Administration Set Aside FY20 (5% of Art Cost)                                             |                                                          | \$16,423        |            |
| In-Lieu Fee Administration Set Aside FY20 (10% per guidelines)                                         |                                                          | \$42,210        |            |
| Total FY20 Administration Funds                                                                        |                                                          |                 | \$ 58,633  |
| FY19 BUDGET CARRYOVER PROJECTS                                                                         |                                                          | AMOUNT          | TOTAL      |
| Conservation Set Aside from FY19                                                                       |                                                          | \$18,659        |            |
| John Toki Sculpture Restoration                                                                        |                                                          | \$7,000         |            |
| EarthSong Restoration                                                                                  |                                                          | \$12,000        |            |
| Installation of Queen Sculpture                                                                        |                                                          | \$20,000        |            |
| Removal of Big People                                                                                  |                                                          | \$60,366        |            |
| Cube Space Contingency                                                                                 |                                                          | \$8,003         |            |
| BART Plaza Cultural Programming                                                                        |                                                          | \$5,000         |            |
| Legal Consulting on Public Art Guidelines                                                              |                                                          | \$6,000         |            |
| TOTAL FY19 PROJECTS NOT YET STARTED                                                                    |                                                          |                 | \$ 137,028 |
| FY20 PRIVATE PERCENT FOR ART PROJECTS                                                                  |                                                          | AMOUNT          | TOTAL      |
| Conservation Set Aside FY20 (10% per guidelines)                                                       |                                                          | \$21,105        |            |
| Cube Space Curator                                                                                     | 4 Exhibitions (3 months each)                            | \$10,000        |            |
| Cube Space Artist Fees                                                                                 | 4 Exhibitions @ \$1,000 each                             | \$4,000         |            |
| Ohlone Mural Project Additions                                                                         | Carved Seating, Grinding Rock                            | \$34,000        |            |
| John Toki restoration and reinstallation                                                               | Project costs - higher than anticipated in last FY       | \$12,000        |            |
| Contract with Wang Po Shu - Earthsong modifications                                                    | ROM Cost Estimate                                        | \$20,000        |            |
| Photography of Cube Space Exhibitions and other public art                                             |                                                          | \$10,000        |            |
| Vinyl Signage for Cube Space Exhibitions                                                               | 4 Exhibition @ \$300 each                                | \$1,200         |            |
| Purchase of Artwork for 1947 Permit Center                                                             |                                                          | \$5,000         |            |
| Artwork Preparator to Install Purchased Works                                                          |                                                          | \$2,000         |            |
| Graphic Design (Exhibition Announcements + Signage)                                                    |                                                          | \$5,000         |            |
| Install Diana Rossi Mosaic - Live Oak Community Center Playground                                      |                                                          | \$5,000         |            |
| Install found Poetry Plaques - Addison Street                                                          |                                                          | \$10,000        |            |
| Homeless Social Practice Project                                                                       |                                                          | \$15,000        |            |
| Projects Contingency (10% of projects)                                                                 |                                                          | \$13,320        |            |
| Total FY20 Projects                                                                                    |                                                          |                 | \$ 167,625 |
| Remaining Balance After FY20 Projects                                                                  |                                                          |                 | \$ 4,960   |
| Possible Future Projects (Can be funded out of either Public Art Fund or Private Percent for Art Fund) |                                                          | Budget Estimate |            |
| Restoration of Artworks in Collection                                                                  | Implement top recommendations from Collection Assessment | \$25,000        |            |
| Conservation and Installation of Turtles & Medallions                                                  | ROM                                                      | \$25,000        |            |
| BART Plaza Cultural Programming FY20                                                                   |                                                          | \$10,000        |            |
| Big People Relocation - Installation costs                                                             |                                                          | \$50,000        |            |
| Worthington Referral for "Family Friendly Art"                                                         |                                                          | \$50,000        |            |
| Temporary Art Installation South Berkeley (MLK and Adeline)                                            |                                                          | \$15,000        |            |
| Sargent Johnson Plaque at San Pablo Park                                                               |                                                          | \$2,000         |            |
| Total                                                                                                  |                                                          | \$177,000       |            |





Rent Stabilization Board

INFORMATION CALENDAR  
July 23, 2019

To: Honorable Mayor and Members of City Council

From: Jay Kelekian, Executive Director, Rent Stabilization Program

Submitted by: Matthew Siegel, Staff Attorney, Rent Stabilization Program

Subject: Report on B.M.C. 13.79.050 (“Buyout Offers and Agreements”)

BACKGROUND

In March 2016 the City Council amended B.M.C. 13.79 (“Tenant Protections: Automatically Renewing Leases and Buyout Agreements”) by adding Section 13.79.050 (“Buyout offers and agreements”).

Promulgated in response to concerns about tenants not being fully informed about their substantive and procedural rights when entering into negotiations and settlement discussions with property owners and/or their attorneys or agents regarding the surrender of their tenancy, council amended B.M.C. 13.79 to mandate a disclosure requirement from the owner to the tenant; a requirement that all buyout agreements be in writing and be filed with the Berkeley Rent Board and a provision that tenants may rescind a buyout agreement within thirty days of its execution (B.M.C. 13.79.050 et seq.).

In addition, landlords are obligated to retain copies of their buyout agreements for five years and provide a copy of each agreement to the Rent Board. The Ordinance further states the Rent Board is to maintain buyout agreements in a separate file and collect data that includes the amount of compensation paid and the neighborhood of each affected unit (B.M.C. 13.79.050H).

This report synthesizes the data collected since the inception of the passage of B.M.C. 13.79.050 and covers the period from the March 2016 amendment to the ordinance through June 30, 2018. We will provide annual updates moving forward.

## SUMMARY AND OVERVIEW

For calendar year 2017, 45 buyouts were reported. For the first half of 2018, 43 buyouts have been recorded, almost the amount for the entire 2017 calendar year.

A review of the data collected shows that most buyouts occur in properties that range from four to nine units and most involve long-term tenants. A vast majority of the buyouts that occurred in duplexes resulted in owner-occupancy of the tenants' unit. Many of the units are now listed as vacant but many others still show the tenant as residing in the unit which is more a result of the owner's failure to update their records with our agency than a rescission of the agreement.

## FINDINGS

Since the passage of B.M.C. 13.79.050 in March 2016 through June 30, 2018, the Rent Board has collected one hundred three (103) buyout agreements. It is impossible to ascertain whether additional buyout agreements have been made between landlords and tenants since there may be other agreements entered into that have not been reported to the agency.

Of the 103 agreements collected by the Rent Board, ninety-five (95) have been filed within the statutorily mandated time-frame of no later than sixty days of their execution. Eight agreements were filed late.

The ordinance prescribes that the Rent Board collect the following data from each agreement:

- 1) Amount of compensation.
- 2) Neighborhood of subject property.

In addition to collecting the above data for those units that fall under the jurisdiction of the rent ordinance, the Board also collects data on the length of tenancy and the number of bedrooms in each unit. The following is a breakdown of the above categories.

A. Amount of Compensation

Of the 103 reported agreements, one has been filed without disclosing the amount of compensation. The average amount of compensation is \$24,518 and the median buy-out agreement is for \$20,960.

| Amount              | # of Cases |
|---------------------|------------|
| \$3,000 - \$10,000  | 35         |
| \$10,001 - \$20,000 | 14         |
| \$20,001 - \$30,000 | 24         |
| \$30,001 - \$40,000 | 12         |
| \$40,001 - \$50,000 | 9          |
| \$50,000 - \$60,000 | 3          |
| \$60,001 - \$70,000 | 2          |
| \$70,001 - \$80,000 | 2          |
| \$100,000>          | 1          |

B. Length of Tenancy

Of the 103 reported cases, the Rent Board has data regarding length of tenancy for 73. Of the 73 reported cases, tenancies range between nine months and thirty-three years.

| Length of Tenancy | # of Cases |
|-------------------|------------|
| Up to 5 years     | 22         |
| 5-10 years        | 20         |
| 11-15 years       | 3          |
| 16-20years        | 3          |
| >20 years         | 23         |

C. Number of Bedrooms in Unit

Of the 103 reported cases, the Board was able to verify the number of bedrooms for 86 units.

| Bedrooms | # of Units |
|----------|------------|
| 0        | 10         |
| 1        | 31         |
| 2        | 34         |
| 3        | 10         |
| 4        | 1          |

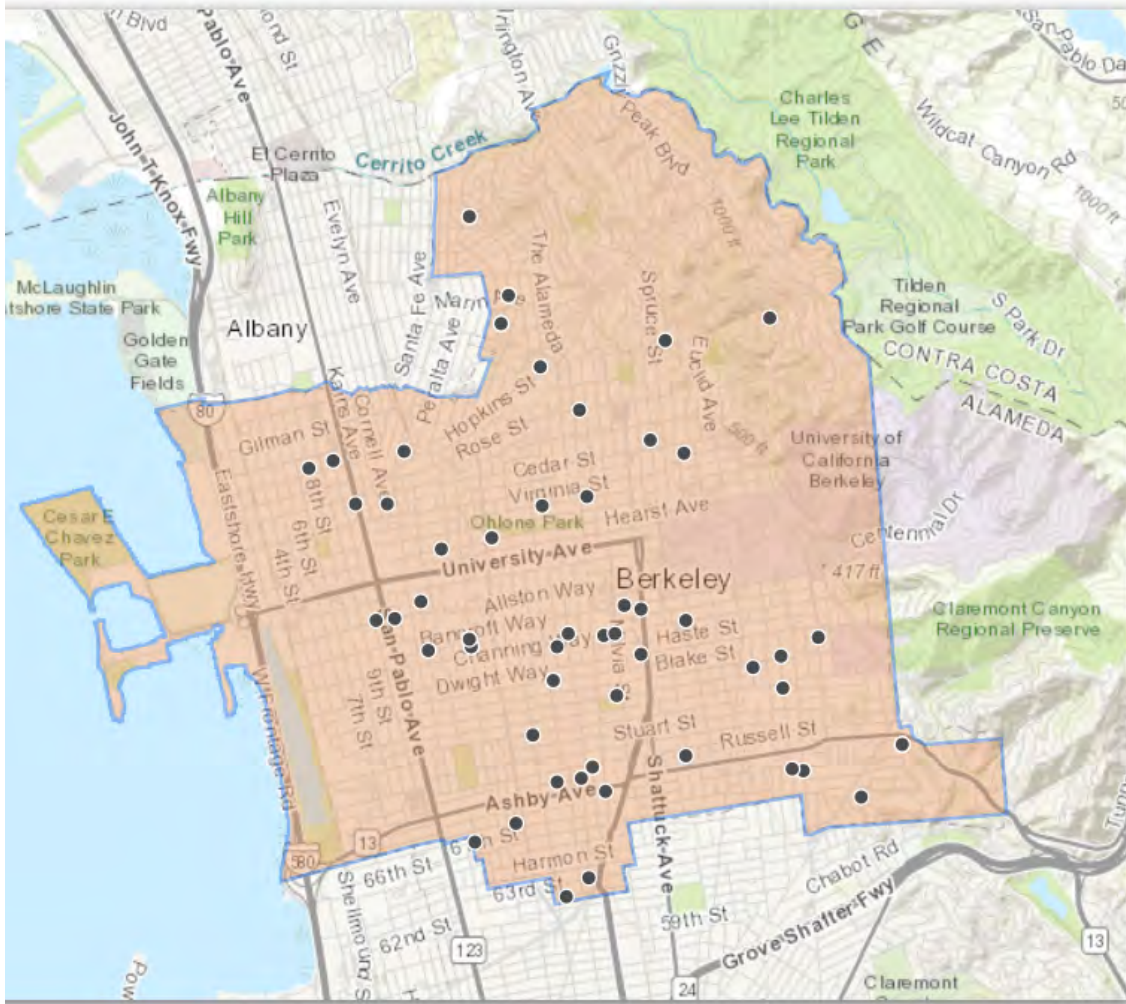
D. Number of Units on Property

The Board has data for seventy-six (76) properties. These properties range from single-family homes to one apartment complex with 105 units. The most common property is a triplex.

| # Units on Prop   | # of Prop's |
|-------------------|-------------|
| Single Fam. Homes | 10          |
| Duplexes          | 21          |
| Triplices         | 8           |
| 4-9 units         | 24          |
| 10-20 units       | 10          |
| >21 units         | 3           |

E. Neighborhood Data

The mapping below shows where, in the City, these buyouts have occurred.



The 103 recorded buyout agreements represents 81 properties. Thirty-four of the fifty-two are South of University Ave. with twenty properties bordered by University Ave, Ashby Ave., Shattuck Ave. and San Pablo Ave.

As the buyout provisions of the ordinance enter its third year, tenants will continued to receive counseling services from both the Rent Board and contract providers to further understand their rights as they enter into settlement negotiations and possible agreements. Owners will also continue to receive counselling services from the Rent Board so they too will be fully aware of their rights and obligations as it relates to the ordinance. Rent Board staff will continue to monitor such agreements and maintain the public database.

### **Recommendations**

As continuing pressures are put on tenants to vacate, especially those with rents below the prevailing market, the buy-out provisions of the TBO remain a useful tool which provides tenants a level of transparency in buy-out proceedings and a pathway to access legal assistance from the City's/Board's contract providers as well as core housing counseling services from Rent Board staff.

Both the City and Rent Board staff should remain vigilant in their efforts monitoring the TBO. In order to ascertain whether additional protections and safeguards may need to be added either to the language in the TBO or how it is administered, the 4x4 Committee may also want to follow-up and discuss the contents of this report.





Zero Waste Commission

INFORMATION CALENDAR  
July 23, 2019

To: Honorable Mayor and Members of the City Council  
 From: Zero Waste Commission  
 Submitted by: Christienne de Tournay, Chairperson, Zero Waste Commission  
 Subject: Zero Waste Commission 2019-20 Work Plan

INTRODUCTION

The Zero Waste Commission (ZWC) is responsible for making recommendations on City solid waste policy and goals, including commercial and residential garbage and recycling services, budgets, and other decisions relating to solid waste in the City of Berkeley. The ZWC adopted the FY 2019-20 Work Plan on May 28, 2019.  
 M/S/C: Poliwka/Schueler; Ayes: Unanimous; Abstain: None; Absent: de Tournay, Stein

CURRENT SITUATION AND ITS EFFECTS

Over the last year, the City of Berkeley has made a number of important changes to its Zero Waste services and long-term plans, including:

- Beginning the process to redesign and rebuild the municipal Transfer Station
- Shifting collection of refuse recycling from franchisees to in-house City staff
- Adapting to changes in the recycling export markets
- Implementing the Single Use Foodware and Litter Reduction Ordinance

ZWC is currently looking at ways to follow through with developing the Zero Waste Strategic Plan and Transfer Station rebuild, as well as evaluate new proposed legislation to target some of the larger remaining components of avoidable waste.

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

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

The following goals have been identified for the upcoming year:

| Goal                     | Resources                                       | Program activities                                                | Outputs                                                                | Outcomes                    |
|--------------------------|-------------------------------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------|-----------------------------|
| Transfer Station Rebuild | RFP issued for consultant for Feasibility Study | Consultant presentation at ZWC June 24<br><br>Gather public input | Develop preliminary Commission recommendations to City Council in July | Ongoing Commission feedback |

| Goal                                      | Resources                                                                                                                                                 | Program activities                                                                                                                                                         | Outputs                                                                                  | Outcomes                                                                                                                       |
|-------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Zero Waste Strategic Plan                 | RFP to be issued for consultant in Q3 2019                                                                                                                | Consultant presentation at ZWC<br><br>Gather public input                                                                                                                  | Commission recommendations to City Council                                               | Ongoing Commission Feedback                                                                                                    |
| Food Recovery and Organics Diversion      | Assistance from Community Health Commission and Berkeley Food Network                                                                                     | Continue updates with Berkeley Food Network<br><br>Consider compost quality and SB 1383 compliance<br><br>15 day comment period 6/18-7/3, 2019                             | Provide recommendations as needed to Council and other stakeholders                      | Reduce volume of food waste disposal in black bins from current 35% - single largest item in Alameda County waste stream       |
| Reduce Use of Single-Use Foodware         | Zero Waste Berkeley (which includes the Ecology Center)                                                                                                   | Follow implementation of Single-Use Disposable Reduction Ordinance including stakeholder and public feedback<br><br>Ecology Center pilot of reusable cup program Fall 2019 | Content for educational materials<br><br>Identify preferable compostable product options | Provide feedback to Council on Ordinance Implementation<br><br>Phase II all prepared food vendors change materials Jan 1, 2020 |
| Reduce Landfilling of Construction Debris | Deconstruction Subcommittee                                                                                                                               | Work with builders, material resellers, CEAC, Community Health, Landmarks, Disaster/Fire Safety and Planning to increase reuse of old growth wood debris                   | Recommendations for Council                                                              | Recommendations for Council by end of year 2019<br><br>Bay Area Deconstruction Working Group recommendations                   |
| Annual Updates                            | Culture of Repair - (Fix it Clinics), Urban Ore, Community Conservation Centers, Ecology Center, CAW, NCRA, CPSC, Budget Review, Status of Export Markets | Presentations at ZWC<br><br>Review and recommend relevant legislation<br><br>Review ZW division budget and tonnage/metrics with City staff                                 | Commission feedback to organizations and to Council                                      | Commission feedback to organizations and to Council                                                                            |
| Public Education and Communication        | Subcommittee                                                                                                                                              | Develop educational articles for Berkeleyside, Daily Cal; How to recycle in Berkeley; Single use foodware; How to recycle holiday trees                                    | Improve community understanding and compliance with recycle and trash pickup             | Commission articles to local publications and social media                                                                     |



| Goal                    | Resources   | Program activities                                                        | Outputs | Outcomes                                                                |
|-------------------------|-------------|---------------------------------------------------------------------------|---------|-------------------------------------------------------------------------|
| Cal Sustainable Moveout | UC Berkeley | Support UCB sustainable moveout<br><br>Provide outreach for Cal Yard Sale |         | Work with UCB Zero Waste Department to identify community support needs |

**BACKGROUND**

- Transfer Station Rebuild: Community meetings have been held in past several months. The EIR will study two conceptual plans.
- Zero Waste Strategic Plan: Current plan is for RFP to be issued later this year.
- Food Recovery: Berkeley Food Network is starting its Food Recovery operations.
- Reduction of Single-Use Foodware: The new Foodware Ordinance's first phase has started, 2<sup>nd</sup> phase starts 1/1/2020, will require all disposable foodware to be compostable and includes a 25 cent charge for disposable cups. 3<sup>rd</sup> phase (reusables for dine in) begins 7/1/2020.
- Reducing Landfilling of Construction Debris: Carpet recycling program is starting up at the Transfer Station. Due to multi-city operations of the construction industry, Deconstruction Ordinance likely to be introduced at regional level.
- Public Education and Communication: There is still room to improve in getting existing recyclable and compostable materials into the blue and green bins.
- Cal Sustainable Moveout: In the last few years, there have been small and medium scale efforts to manage Cal Moveout. A larger citywide program could divert additional materials.

**ENVIRONMENTAL SUSTAINABILITY**

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

**POSSIBLE FUTURE ACTION**

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

- Resolution to support a Regional Deconstruction Ordinance
- Resolution to support creating a new Zero Waste Strategic Plan
- Resolution to support a Citywide Reusable Food Container program
- Resolution to support a citywide yard sale during Cal moveout

**FISCAL IMPACTS OF POSSIBLE FUTURE ACTION**

Reusable Food Container program and citywide yard sale may require funding. The Zero Waste Strategic Plan will require hiring a consultant.

**CONTACT PERSON**

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



INFORMATION CALENDAR

July 23, 2019

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor

Subject: City Auditor Amended Fiscal Year 2019 Audit Plan and Fiscal Year 2020 Audit Plan

INTRODUCTION

The Berkeley City Charter requires the City Auditor to provide the City Council with a planned audit schedule by the beginning of each fiscal year and to notify Council when audits are dropped or added. In deciding what to audit, our office considers suggestions from the City Manager, staff, the City Council, commissioners, and other community members. We examine risks that might prevent the City from reaching its goals, including strategic, financial, regulatory, operational, and reputational risks.

CURRENT SITUATION AND ITS EFFECTS

On [July 24, 2018](#)<sup>1</sup>, we presented our Audit Plan for the 2019 fiscal year. As required by the City Charter, we are notifying the Council of a modification to our annual audit plan: We added **an audit of the City's Domestic Violence** Leave Policy to the fiscal year 2019 audit plan to determine whether the policy is in line with state law and best practices.

For Fiscal Year 2020, we have identified areas we hope to address in the upcoming year:

- Housing and homelessness
- Streets
- Recruitment and retention
- Fiscal accountability
- Climate change and disaster response
- Follow-up on prior audit recommendations
- Rollover from FY 2019 – Equipment Replacement Fund Follow-up audit, Library Tax audit, and Domestic Violence Leave Policy audit

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<sup>1</sup> City Auditor Fiscal Year 2019 Audit Plan (7/24/19) <http://bit.ly/2VBJwDQ>

## BACKGROUND

The mission of the Berkeley City Auditor is to promote transparency and accountability in Berkeley government. This is achieved through independent evaluations of City programs **and activities. The 2020 Audit Plan reflects Auditor Wong's steadfast commitment to** continuous improvement by enhancing the value, products, staffing, communications, and **overall impact of the Berkeley City Auditor's Office on behalf of Berkeley** residents, businesses, and visitors.

## ENVIRONMENTAL SUSTAINABILITY

This report is not associated with identifiable environmental effects or opportunities.

## POSSIBLE FUTURE ACTION

Our future audit recommendations will address the risks that could prevent the City from providing efficient, effective, and equitable service delivery. We will be asking Council to accept those recommendations and request that the City Manager report on its actions to implement them. We may also make recommendations requiring Council action.

## FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Audit work leads to new or enhanced revenue, cost recovery, and increased efficiency, with economic impact well beyond the audit costs. Long-range financial benefits of our audits result in significant improvements to internal controls and service delivery.

Ensuring timely implementation of audit recommendations could result in additional savings and risk reduction, including fraud risk. Reducing fraud risk more than protects money; it builds trust in government. Maintaining a strong audit function and prudent program and fiscal management will reduce future costs and enhance public trust.

## CONTACT PERSON

Jenny Wong, City Auditor, 510-981-6750

Attachment:

1. Audit Plan Fiscal Year 2020

# Audit Plan Fiscal Year 2020

## **Inside**

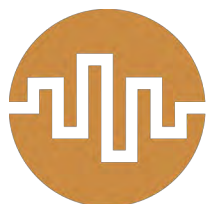
Letter from the Auditor

Planned Audits

Plan Description

Audit Selection Process

Auditor's Authority



BERKELEY CITY AUDITOR

# Letter from the Auditor



**I am pleased to present the Berkeley City Auditor's Fiscal Year 2020 Audit Plan.<sup>1</sup>**

Our office is responsible for conducting performance audits of City functions - deep dives into the working of our various City programs with the goal of maximizing taxpayer dollars and delivering top-quality services. Since taking office, I have been meeting with my office's staff, department heads, the City Manager, Council Members, former auditors, and others in the community to better understand how things have functioned in the past and how to effectuate these responsibilities going forward.

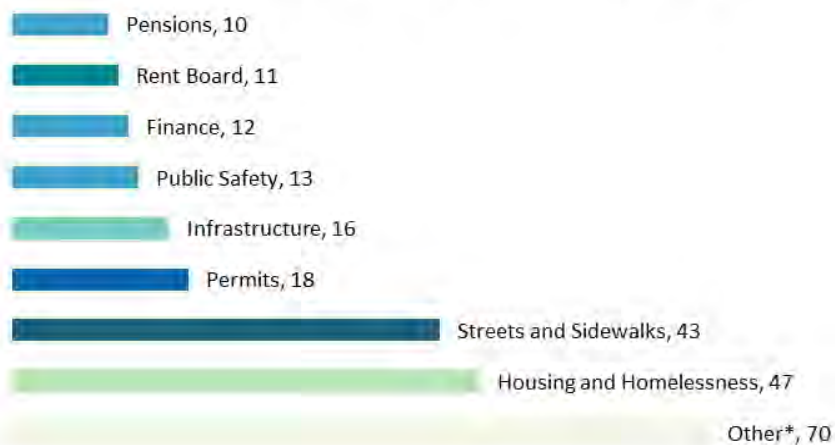
In drafting this plan, we considered input from a wide range of sources and the people of Berkeley. To gather community input, I talked with thousands of residents and conducted a survey where 300 Berkeley residents responded on issues of greatest concern. Since taking office, I have met with Berkeley elected officials and management about their unique operational risks and challenges. Finally, my staff and I identified existing or emerging areas of risk where we can add value, including reviewing issues that **haven't been examined, such as** recruitment and retention practices.

While I want to address many issues of concern, resource limitations mean my office can only conduct a few audits a year. The top departments the community wants to be audited include Public Works (our streets); Health, Housing and Community Services (housing and homelessness); and Planning (permitting process). I recently learned that the Permit Center is taking initiative to gather public information about the permitting process. Our office can best add value to that area after this process has been completed.

The other areas, which include streets, homelessness, and housing – along with producing reports on the status of outstanding audit recommendations – **will form part of our office's priorities. I will also be** conducting an audit of City payments to address one of the core functions of our office that has not been a focus in prior years. This will be another priority and will require additional resources.

I look forward to carrying out these audits to deliver independent, transparent, and accountable oversight, **thereby safeguarding the public's investments in the City of Berkeley. I am committed to providing ongoing** information on how tax dollars are spent and how government operates on behalf of everyone who cares about Berkeley, including residents, business owners, visitors, workers, and decision-makers.

## Areas of Concern from Community Survey



\* Responses varied widely, including topics outside our jurisdiction.

Source: Community survey conducted by Jenny Wong, 2018

<sup>1</sup> We emailed this audit plan to City Council on June 28, 2019 as required by the Berkeley Municipal Code.

# Planned Engagements 2020

## Housing and Homelessness

Berkeley's strategic plan clearly lays out the first steps towards the City's goal to, "Create affordable housing and housing support services for our most vulnerable community members." Berkeley housing and homelessness problems are complex and involve a multitude of factors, both internal and external. The City has made strides to address homelessness through programs, services, and partnerships with community agencies.

## Streets

Berkeley did not pave any City streets in 2018, even though the City had set aside \$8.6 million for repairs. The delay means that the conditions of **Berkeley's streets, which are not very good to begin with, will deteriorate** further. Ultimately, the longer the City takes to repair streets the more costly the repairs become.

## Recruitment and retention

**People are the City's greatest resource. An immediate threat to** operations and strategic planning is workload capacity: The City may not have the staffing resources to provide expected and critical services.

## Fiscal accountability

**The Auditor's office will review selected City contracts, payments, and** agreements as required under Berkeley City Charter Section 61, to evaluate and ensure performance, value, and proper City oversight.

## Climate change and disaster response

Is the City of Berkeley adequately adapting to the risks posed by climate change? In response to climate change risks, Berkeley voters committed **to reduce the entire City's greenhouse gas emissions by 80 percent below** 2000 levels by 2050 with the passage of Measure G in 2006 and the City adopted the Berkeley Climate Action Plan. Our region has also faced increased fire risk to wildland-urban interface zones. As a city, we have a responsibility to mitigate these risks to the City through appropriate policies and emergency response plans. The ability to undertake this will be contingent upon the availability of staffing resources.

## Follow-up

**The Auditor's office tracks and follows-up** on all audit recommendations to determine if they were properly implemented by City government.

## Rollover from FY 2019

- Equipment Replacement Follow-up
- Domestic Violence Leave Policy
- Library Tax

# Plan Description

The mission of the Berkeley City Auditor is to promote transparency and accountability in Berkeley government. This is achieved through independent evaluations of City programs and activities. The 2020 **Audit Plan reflects Auditor Wong's steadfast commitment to continuous improvement by enhancing the value, products, staffing, communications, and overall impact of the Berkeley City Auditor's Office on behalf of Berkeley residents, businesses, and visitors.**

## Auditing Under the City Charter

The Charter provides that the Auditor shall have the authority to conduct:

- Performance and financial audits or special studies of all phases of the City of Berkeley government in accordance with government auditing standards;
- Financial, compliance, efficiency and economy, and program results auditing; and
- Examinations of payrolls, bills, and other claims and demands made against the City.

The 2020 Audit Plan ensures broad audit coverage throughout the City while also addressing specific performance, financial, contractual, and system risks. Audit resources are limited, thus prohibiting one hundred percent coverage each year. This significant limiting factor is inherent in the concept of using risk assessment to help prioritize audits. According to the City Charter, the ultimate decision to perform any audit shall be at the sole discretion of the Auditor. Our approach to scheduling audits is flexible and subject to change throughout the year based on newly identified risks.

## Audit Follow-up Program

Audit follow-up activities are conducted for every audit to assess whether City personnel implemented the **agreed-upon audit recommendations. The Auditor's Office issues follow-up** audit reports to City Council on the status of our recommendations. We will issue a report this fall on outstanding recommendations. Our office measures the audit recommendation implementation rate as an indicator of the degree to which the City is using information provided by our audit reports to mitigate identified risks and to enhance efficiency, effectiveness, and economy of operations.

## Focus on Integrity, Independence, Impact, and Inclusion

The concepts of integrity, independence, impact, and inclusion are core tenets of operations within the **Berkeley City Auditor's Office. Although the Auditor operates independently from other City entities,** Auditor Wong and staff meet regularly with the Mayor, City Council, City personnel, neighborhood groups, and civic leaders to solicit input regarding risks. The objective of this strategy is to improve services and stewardship of City resources.



# Audit Selection Process

Developing an annual Audit Plan is an iterative process, conducted by assembling ideas from a variety of internal and external stakeholders, examining a broad range of City programs and activities, and assessing risk factors together with additional considerations. This approach results in a diverse list of departments, programs, and activities that are examined to determine whether they are operating efficiently, effectively, and in accordance with the law and other requirements.

In developing a list of potential audits, ideas come from a variety of sources:

- Input from the community, elected officials, department staff, and City management;
- Assessment of operations and controls in previous audit reports;
- Assessment of Citywide risks;
- Consideration of current local events, financial conditions, capital improvement projects, and public policy issues; and
- Consideration of risks identified in other government audits that could emerge in Berkeley.

Our office identifies and prioritizes potential audits and other assessments using a risk-based approach that examines a variety of factors that may expose the City to fraud, misuse of funds, waste, liability, or reputational harm. The following risk factors are used to determine the audits included in the audit plan:

- Perception of risk from management, City Council, the community, and audit staff;
- Economic factors such as financial impact, volume of transactions, number of personnel, and revenue generated;
- Changes in organization, management, key personnel, and information systems; and
- Time since last audit.

After the plan is finalized, new information may come to light; events, initiatives, priorities, and risks within the City may change. The flexible nature of the Audit Plan as a living document provides the ability to change course when it is in the best interest of the City.

# Auditor's Authority

The Berkeley City Auditor's Office provides independent oversight of City operations. Audits, conducted by the Office, provide the City Manager, City Council, and the public with objective, timely, and accurate information about City program performance. By providing this information and making recommendations for improvement, the Office helps to hold government accountable in its stewardship of public resources.

**Berkeley City Charter, Section 61, establishes this independence and provides for the Auditor's general authority and duties.** The Charter also establishes the duty to present a planned audit schedule to City Council at the beginning of each fiscal year.

**Several key components serve as the cornerstone for Berkeley's auditing framework. These elements provide the Auditor with the independence that results in the office's ability to conduct high-impact audits.**

**Elected Auditor** — The City of Berkeley has an elected Auditor who is independent from all other elected officials and City management.

**Comprehensive Access** — The City Charter and Municipal Code authorize the Auditor to have unrestricted access to all officials, employees, records, and reports maintained by the City, and to all external entities, records, and personnel related to contracted business interactions with the City.

**Audit Response Requirements** — City Municipal Code requires that City management formally **respond to all audit findings and recommendations, establishing the Auditor's ability to work in conjunction with audited departments while maintaining independence.**

**Recommendation Follow-up Requirements** — City Municipal Code requires that City management report back to Council on the status of audit recommendations every six months until **all recommendations are implemented, establishing the Auditor's ability to determine the adequacy, effectiveness, and timeliness of management's actions to correct reported issues and recommendations.**

**Adherence to Professional Auditing Standards** — **The Auditor's Office conducts all audits in accordance with Generally Accepted Government Auditing Standards produced by the United States Government Accountability Office.**



BERKELEY CITY AUDITOR

2180 Milvia Street, 3rd Floor, Berkeley, California 94704

510-981-6750

[www.cityofberkeley.info/auditor](http://www.cityofberkeley.info/auditor)

| Upcoming Workshops – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                                                  |
|----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Scheduled Dates                                                            |                                                                                                                                                  |
| Sept. 17                                                                   | <ol style="list-style-type: none"> <li>1. Arts and Culture Plan</li> <li>2. Zero Waste Rate Review</li> <li>3. Adeline Corridor Plan</li> </ol>  |
| Oct. 22                                                                    | <ol style="list-style-type: none"> <li>1. Berkeley's 2020 Vision Update</li> <li>2. Census 2020 Update</li> <li>3. Short Term Rentals</li> </ol> |
| Nov. 5                                                                     | <ol style="list-style-type: none"> <li>1. Transfer Station Feasibility Study</li> <li>2. Vision Zero Action Plan</li> </ol>                      |

| Unscheduled Workshops                                                               |
|-------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> </ol> |

| Unscheduled Presentations |
|---------------------------|
| None                      |

|    | <b>City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <p><b>61a. Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley</b> <i>(Referred from the July 24, 2018 agenda)</i><br/> <b>From: Housing Advisory Commission</b><br/> <b>Recommendation:</b> 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.<br/> <b>Financial Implications:</b> See report<br/> Contact: Amy Davidson, Commission Secretary, 981-5400</p> <p><b>61b. Companion Report: Use of U1 Funds for Property Acquisition at 1001, 1007, and 1011 University Avenue and 1925 Ninth Street, Berkeley</b> <i>(Referred from the July 24, 2018 agenda)</i><br/> <b>From: City Manager</b><br/> <b>Recommendation:</b> 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.<br/> <b>Financial Implications:</b> See report<br/> Contact: Dee Williams-Ridley, City Manager, 981-7000</p> |
| 2. | <p><b>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</b> <i>(Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.)</i> <b>March 18, 2019 Action:</b> <i>Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.</i><br/> <b>From: Councilmember Worthington</b><br/> <b>Recommendation:</b> 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.<br/> <b>Financial Implications:</b> Minimal<br/> Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p>                                                                                                                                                                                                                                                                                                      |
| 3. | <p><b>4. Disposition of City-Owned, Former Redevelopment Agency Properties at 1631 Fifth Street and 1654 Fifth Street</b> <i>(Referred from the September 25, 2018 agenda)</i><br/> <b>From: City Manager</b><br/> <b>Recommendation:</b><br/> 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).<br/> 2. Direct the City Manager to issue a Request for Proposals to select a real estate broker to manage the sale.<br/> <b>Financial Implications:</b> See report<br/> Contact: Kelly Wallace, Housing and Community Services, 981-5400<br/> <b>Note:</b> <i>At the June 11, 2019 meeting, Council approved a recommendation directing 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.</i></p>                                                                                                                                                                                                                        |

4. **17. Short-term referral to City Manager and budget referral for creation of a “vehicle dweller program” in Berkeley** *(Referred from the April 2, 2019 agenda.)*

**From: Councilmember Davila**

**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.

Vehicles with permits are exempt from Berkeley Municipal Code (BMC) Chapter 12.76 and BMC Section 14.40.120.

**Financial Implications:** See report

Contact: Cheryl Davila, Councilmember, District 2, 981-7120

| <b>CITY CLERK DEPARTMENT</b>                                                               |                              |                               |                                                  |                           |
|--------------------------------------------------------------------------------------------|------------------------------|-------------------------------|--------------------------------------------------|---------------------------|
| <b>WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br/>BEFORE THE CITY COUNCIL</b>        |                              |                               |                                                  |                           |
| <b>Address</b>                                                                             | <b>Board/<br/>Commission</b> | <b>Appeal Period<br/>Ends</b> | <b>Determination<br/>on Appeal<br/>Submitted</b> | <b>Public<br/>Hearing</b> |
| <b>NOD – Notices of Decision</b>                                                           |                              |                               |                                                  |                           |
| 1111 Allston Way (single-family dwelling)                                                  | ZAB                          | 7/8/2019                      |                                                  |                           |
| 2198 San Pablo Ave (new mixed-use development)                                             | ZAB                          | 7/8/2019                      |                                                  |                           |
| 0 Euclid Ave - Berryman Reservoir (denial of telecom facility)                             | ZAB                          | 7/17/2019                     |                                                  |                           |
|                                                                                            |                              |                               |                                                  |                           |
| <b>Public Hearings Scheduled</b>                                                           |                              |                               |                                                  |                           |
| 2325 Sixth St (single-family residence)                                                    | ZAB                          |                               |                                                  | 9/24/2019                 |
|                                                                                            |                              |                               |                                                  |                           |
|                                                                                            |                              |                               |                                                  |                           |
|                                                                                            |                              |                               |                                                  |                           |
| <b>Remanded to ZAB or LPC</b>                                                              |                              |                               |                                                  |                           |
| 1155-73 Hearst Ave (develop two parcels)<br>90-Day Deadline: May 19, 2019                  | ZAB                          |                               |                                                  |                           |
| 2701 Shattuck Ave (construct 5-story mixed-use building)<br>90-Day Deadline: June 30, 2019 | ZAB                          |                               |                                                  |                           |
|                                                                                            |                              |                               |                                                  |                           |
| <b>Notes</b>                                                                               |                              |                               |                                                  |                           |
|                                                                                            |                              |                               |                                                  |                           |
|                                                                                            |                              |                               |                                                  |                           |
|                                                                                            |                              |                               |                                                  |                           |

Last Updated: 7/2/19



City Clerk Department

July 1, 2019

To: Agenda and Rules Committee

From: Mark Numainville, City Clerk

Subject: Amendments to the City Council Rules of Procedure and Order

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The attached document contains significant amendments to City Council Rules of Procedure and Order. The amendments are needed to update the Rules of Procedure (ROP) to incorporate the regulations adopted to govern City Council Policy Committees in Resolution 68,726-N.S. adopted on December 11, 2018. In addition, with three months of policy committee meetings completed, the need for amendments to the original policy committee regulations have surfaced. The amendments related to policy committees have ripples throughout the document and require changes to the sections for the Agenda Committee and the legislative process.

Some of the amendments related to policy committees are related to the participation of councilmembers. These amendments are being proposed due to a re-evaluation of the Brown Act's applicability to the policy committee process. After thorough review by the City Attorney's Office, the City Clerk Department, and the Chair of the League of California Cities Brown Act Committee, staff has concluded that new rules limiting participation by councilmembers are required. These changes are located on pages 20-21 of the attachment.

With the significant amendments needed to incorporate policy committees, staff recommends using this update to make other amendments related to the items below.

- Revised and Supplemental materials per the Open Government Ordinance
- Outdated language and agenda headings
- Clarification regarding public comment on appeals
- Parliamentary clarifications to adhere to Roberts Rules of Order
- Updates to reflect the move to BUSD Board Room
- Other minor modifications and technical corrections

A fully annotated version of the revised document with all amendments in track changes is attached.

The Rules of Procedure and Order are adopted by Resolution. Staff is seeking comments and suggestions from the Committee on the proposed changes and will submit the amendments to the full Council after the committee has taken action on the amendments.

\* \* \*



---

# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. 68,753–N.S.  
Effective  
January 29, 2019

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## I. DUTIES

### A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

Commented [NML1]: Standard current practice per City Charter

### B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

### C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

### D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak.

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

### E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified

by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to ~~absent~~recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

Commented [NML2]: Correct terminology

**F. Requests for Technical Assistance and/or Reports**

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

**G. City Council Policy for Naming and Renaming Public Facilities**

The City Council Policy for Naming and Renaming Public Facilities adopted on January 31, 2012, and all its successors, is incorporated by reference into the City Council Rules of Procedure and included as Appendix A to this document.

## II. MEETINGS

### A. Call to Order - Presiding Officer

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair at the conclusion of the business presently before the Council. In the absence of the two officers specified in this section, the ~~Councilmember~~~~council member~~ present with the longest period of Council service shall preside.

Commented [NML3]: Amended to standardize use throughout the document

### B. Roll Call

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

### C. Quorum Call

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

### D. Council Meeting ~~Schedule~~Conduct of Business

~~The City Council shall hold a minimum of twenty four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.~~

Commented [NML4]: Moved to more appropriate location below

~~Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.~~

~~Regular City Council meetings shall begin no later than 6:00 p.m.~~

The agenda for the regular business meetings shall include the following: Ceremonial; Comments from the City Manager; Comments from the City Auditor; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. ~~Items removed from the Consent Calendar will be moved to the Action Calendar.~~ The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Commented [NML5]: Items removed from Consent may have many other actions taken and listing this single action is misleading.

Upon request by any ~~Councilmember~~~~council member~~, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by any ~~Councilmember~~~~council member~~, a ~~Councilmember~~~~council member~~ may also move an item from the Action Calendar to the Consent Calendar.

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the

~~Agenda Committee~~ Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Commented [NML6]: Amended to standardize use throughout the document

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

**E. Adjournment**

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

**F. Unfinished Business**

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the ~~Agenda Committee~~ Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

**G. City Council Schedule and Recess Periods**

The City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m. ~~Ceremonial~~ items may be taken up as special items noticed to be heard in advance of the scheduled start time of the regular meeting.

Commented [NML7]: Allows for possibility of starting earlier for ceremonial items

A recess period is defined as a period of time longer than 21 days without a regular ~~or special~~ meeting of the Council.

Commented [NML8]: Special meetings are as needed and are not factored in to the annual schedule that is adopted, which includes the recess periods.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary

## II. MEETINGS

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for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the ~~Agenda Committee~~ Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend ~~through~~ up to the deadline for submission of staff reports for date of the first meeting after the Council recess.

Commented [NML9]: The existing definition left a significant gap that did not allow City Manager action on administratively urgent items

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

### H. Pledge of Allegiance to the Flag

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the ~~program~~ Ceremonial Calendar will be the Pledge of Allegiance.

### I. Ad Hoc Subcommittees

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Council ~~members~~ may ~~become~~ be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from ~~the~~ residents, related commissions, and other groups. Ad Hoc Subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in public and in accessible locations that are open to the public. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.



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## II. MEETINGS

-City staff may attend and participate in subcommittee meetings. Depending on the desires of the subcommittee members, City staff may participate the same as members of the public, or may be called upon to offer insights or provide information during discussion.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

Certain requirements listed above may not apply to ad hoc subcommittees seeking legal advice and assistance from the City Attorney or meeting with the City Manager or his/her designees for purposes of real estate or labor negotiations.

### III. AGENDA

#### A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items ~~carried over~~ continued from a previous meeting and published on a revised agenda.

Commented [NML10]: Additional clarification

#### B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by any ~~Councilmember~~ council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if a ~~Councilmember~~ council member so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter.

Council agenda items are limited to a maximum of three Co-Authors. Co-Authors to a Council agenda item must be designated and included on the agenda item when it is originally submitted to the City Clerk. Co-Authors may not be added after the item is initially submitted to the City Clerk.

Commented [NML11]: Must have certainty at the time of submission and throughout the process to properly monitor participation in policy committee meetings per the Brown Act. Limiting to three allows for more flexibility for compliance in the legislative process.

Agenda items shall contain all relevant documentation, including the information listed below and the recommended points of analysis in the Council Report Guidelines in Appendix B. following as applicable:

Commented [NML12]: Adding reference to the new guidelines.

- a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report ~~and action requested;~~
- b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
- c) Recommendation of the ~~City Manager~~ report author that describes the action to be taken on the item, if applicable; (these provisions shall not apply to Mayor and Council items.);
- d) Fiscal impacts of the recommendation;
- e) A description of the current situation and its effects;
- f) Background information as needed;

Commented [NML13]: Required by the Brown Act for all agenda items.

- g) Rationale for recommendation;
- h) Alternative actions considered;
- i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);

j) Person or persons to contact for further information, with telephone number.

k) Additional information and analysis as required.

~~j) If the author of any report believes additional background information beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.~~

Commented [NML14]: Outdated. We publish all materials except for the full administrative record of ZAB appeal.

2. "Co-Author" means the primary author of a council agenda item and other Councilmembers designated by the primary author to be co-authors of the council agenda item.

3. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.

4. "Packet" means the agenda plus all its corresponding duplicated agenda items.

5. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:

- a) A work stoppage or other activity which severely impairs public health, safety, or both;
- b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

6. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier, ~~as uncompleted items.~~

7. "Old Business" Items carried over from a prior agenda of a meeting ~~as uncompleted items occurring occurring more than 11 days earlier.~~

Commented [NML15]: Per Open Government Ordinance

**C. Procedure for Bringing Matters Before City Council**

**1. Persons Who Can Place Matters on the Agenda.**

Matters may be placed on the agenda by any ~~Councilmember~~council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items, other than board and commission items shall be subject to review by ~~an the Agenda Committee~~Agenda & Rules Committee, which shall be a standing committee of the City Council. ~~The Agenda Committee shall consist of the Mayor and two councilmembers, nominated by the Mayor and approved by the Council. A third council member, nominated by the Mayor and approved by the Council, will serve as an alternate on the Committee in the event that an Agenda Committee member cannot attend a meeting.~~

Commented [NML16]: Superseded by policy committee section below

The ~~Agenda Committee~~Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. ~~Pursuant to BMC Section 1.04.080, if the 15<sup>th</sup> day prior to the Council meeting falls on a holiday, the Committee will meet the next business day.~~ The ~~Agenda Committee~~Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. 4 days before the ~~Agenda Committee~~Agenda & Rules Committee meeting.

Commented [NML17]: Clarification

The ~~Agenda Committee~~Agenda & Rules Committee shall have the powers set forth below.

- a) **Items Authored by a Councilmember or the Auditor.** As to items authored by the Mayor, a Councilmember, or the Auditor, the ~~Agenda Committee~~Agenda & Rules Committee shall review the item and may recommend that the matter be referred to a commission, to the City Manager, a policy committee, or back to the author for adherence to required form or for additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

The author of a "referred" item must inform the City Clerk within 24 hours of the adjournment of the ~~Agenda Committee~~Agenda & Rules Committee meeting whether ~~he or she~~they prefers to: 1) hold the item for a future meeting pending modifications as suggested by the Committee; 2) have the item appear on the Council agenda under consideration as originally submitted; 3) pull the item completely; or 4) re-submit the item with revisions as requested by the ~~Agenda Committee~~Agenda & Rules Committee within 24 hours of the adjournment of the Agenda CommitteeAgenda & Rules Committee meeting for the Council agenda under consideration. Option 2 is not available for items eligible to be referred to a policy committee.

Commented [NML18]: Current practice

Commented [NML19]: Per policy committee regulations

In the event that the City Clerk does not receive guidance from the author of the referred item within 24 hours of the ~~Agenda Committee~~Agenda & Rules Committee's adjournment, the recommendation of the ~~Agenda Committee~~Agenda & Rules Committee will take effect.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk. ~~If changes made to the item extend beyond the scope of the Agenda Committee referral recommendations, the item must be re-submitted as a new Council item.~~

Commented [NML20]: Unecessary. If the item is being submitted for a future meeting, it is a "new" item.

~~For authors of referred items that select option 2) above, the referred item will automatically be placed at the end of the Action Calendar under the heading "Referred Items". The Agenda Committee shall specify the reason for the referral from the categories listed below. This reason shall be printed with the item on the agenda.~~

Commented [NML21]: No longer needed with the policy committee system.

~~Reason 1 — Significant Lack of Background or Supporting Information  
Reason 2 — Significant Grammatical or Readability Issues~~

- b) **Items Authored by the City Manager.** The ~~Agenda Committee~~Agenda & Rules Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the ~~Agenda Committee~~Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the ~~referral recommendation of the Agenda Committee~~Agenda & Rules Committee or ~~revised items that have not been resubmitted to the Agenda Committee~~ will automatically be placed on the Action Calendar.

Commented [NML22]: Inconsistent with current practices. Staff reports are still in review and are not printed in the Agenda & Rules Committee packet.

- c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the ~~Agenda Committee~~Agenda & Rules Committee.

- i) For a commission item that does not require a companion report from the City ~~Mananger~~Manager, the ~~Agenda Committee~~Agenda & Rules Committee may act on an agendized commission report in the following manner:

1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports

submitted in response to a Council referral shall receive higher priority for scheduling.

3. Allow the item to proceed as submitted.

ii) For any commission report that requires a companion report, the ~~Agenda Committee~~ [Agenda & Rules Committee](#) will schedule the item on a Council agenda for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the ~~Agenda Committee~~ [Agenda & Rules Committee](#). A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.

d) The ~~Agenda Committee~~ [Agenda & Rules Committee](#) shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E ~~of the Rules of Procedures and Order~~.

**2. Scheduling Public Hearings Mandated by State, Federal, or Local Statute.**

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

**3. Submission of Agenda Items.**

a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.

b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.

c) **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 ~~Councilmember~~ [council member](#) is received by the City Clerk after established deadlines and is not included on the ~~Agenda Committee~~ [Agenda & Rules Committee](#)'s published agenda.

The author of the report shall bring any reports submitted as Time Critical to the meeting of the ~~Agenda Committee~~ [Agenda & Rules Committee](#). Time Critical items must be accompanied by complete reports and statements of financial implications. If the ~~Agenda Committee~~ [Agenda & Rules Committee](#) finds the matter to meet the definition of Time Critical, the ~~Agenda Committee~~ [Agenda & Rules Committee](#) may place the matter on the Agenda on either the Consent or Action Calendar.

- d) The City Clerk may not accept any agenda item after the adjournment of the ~~Agenda Committee~~Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

**4. Submission of Supplemental and Revised Agenda Material.**

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

- a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council-member evaluation.

- b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation.

Commented [NML23]: Per Open Government Ordinance

a)-

- b)c) After ~~5~~12:00 p.m. ~~seven~~one calendar days prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a

comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Council member evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

**5. Scheduling a Presentation.**

Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda.

Commented [NML24]: Reflects current practice, which is much less formal than deleted text.

~~Any request for a presentation to the Council will be submitted as an agenda item and follow the time lines for submittal of agenda reports. The agenda item should include general information regarding the purpose and content of the presentation; information on the presenters; contact information; and the length of the presentation. The request may state a preference for a date before the Council. The Agenda Committee will review the request and recommend a presentation date and allotted time based on the Council's schedule.~~

~~The City Clerk will notify the presenters of the date and time of the presentation and will coordinate use of any presentation equipment and receipt of additional written material.~~

**D. Packet Preparation and Posting**

**1. Preparation of the Packet.**

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding duplicated agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4. Reports carried over, as Continued Business or Old Business need not be reproduced again.

Commented [NML25]: Inconsistent with OGO

**2. Distribution and Posting of Agenda.**

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.



**3. Distribution of the Agenda Packet.**

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- a) distribute the Agenda Packet to each member of the City Council;
- b) post the Agenda Packet to the City's website;
- c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- d) make the Agenda Packet available to members of the press.

**4. Failure to Meet Deadlines.**

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
  - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.5.
  - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

**E. Agenda Sequence and Order of Business**

The Council agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, Comments from the City Manager, [Comments from the City Auditor, Non-Agenda](#) Public Comment)
2. Consent Calendar
3. Action Calendar
  - a) Appeals
  - b) Public Hearings
  - c) Continued Business
  - d) Old Business
  - e) New Business

Commented [NML26]: Edits to reflect current order

~~f) — Referred Items~~

~~4. Information Reports~~

~~4.5. Non-Agenda Public Comment~~

~~5.6. Adjournment Communications~~

~~6.7. Communications Adjournment~~

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

The ~~Agenda Committee~~ Agenda & Rules Committee shall have the authority to reorder the items on the Action Calendar regardless of the default sequence prescribed in this section.

**F. Closed Session Documents**

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and Members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.
3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

G. Regulations Governing City Council Policy Committees

**1A. Legislative Item Process**

All agenda items begin with submission to the Agenda CommitteeAgenda & Rules Committee.

Commented [NML27]: Regulations from the Policy Committee resolution are inserted in red text; changes to the resolution language are in track changes

**Full Council Track**

Items under this category are exempt from Agenda CommitteeAgenda & Rules Committee discretion to refer them to a policy committee. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

- a. Items submitted by the City Manager and City Auditor
- b. Items submitted by Boards and Commissions
- c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- d. Position Letters and/or Resolutions of Support/Opposition
- e. Donations from Councilmember District Office Budgets
- f. Referrals to the Budget Process
- g. Proclamations
- h. Sponsorship of Events
- i. Information Reports
- j. Presentations from Outside Agencies and Organizations
- k. Ceremonial Items
- k.l. Committee and Regional Body Appointments

Commented [NML28]: Clarification

Notwithstanding the exemption stated above, the Agenda CommitteeAgenda & Rules Committee, at its discretion, may route a Full Council Track item submitted by a Councilmember to a policy committee if the item has 1) a significant lack of background or supporting information, or 2) significant grammatical or readability issues.

Commented [NML29]: Standard administrative item

The Agenda CommitteeAgenda & Rules Committee has discretion to determine if an item falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item.

**Policy Committee Track**

Items submitted by Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda CommitteeAgenda & Rules Committee on a draft City Council agenda (on a list).

Commented [NML30]: Clarification

The Agenda CommitteeAgenda & Rules Committee must refer an item to a policy committee at the first meeting that the item appears before the Agenda CommitteeAgenda & Rules Committee.

### III. AGENDA

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& Rules Committee. The ~~Agenda Committee~~ Agenda & Rules Committee may only assign the item to a single policy committee.

For a Policy Committee Track item, the ~~Agenda Committee~~ Agenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a policy committee.

#### Time Critical Track

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 Mayor or ~~Council member~~ council member is received by the City Clerk after established deadlines and is not included on the ~~Agenda Committee~~ Agenda & Rules Committee's published agenda.

The ~~Agenda Committee~~ Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass policy committee review if determined to be time critical. If such an item is deemed not to be time critical, it will be referred to a Policy Committee.
- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the ~~Agenda Committee~~ Agenda & Rules Committee may go directly on a council agenda if determined to be time critical.

#### **B2. Council Referrals to Committees**

The full Council may refer any agenda item to a policy committee by majority vote.

#### **3. Participation Rules for Policy Committees Pursuant to the Brown Act**

- a. The quorum of a three-member policy committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two policy committee members may not discuss any item within the committee's subject matter jurisdiction outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a policy committee may co-author an item provided that one of the authors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or and action on the item. For purposes of the item, the appointed alternate will serve as a committee member in place of the non-participating co-author.

Commented [NML31]: New requirements due to re-evaluation of Brown Act applicability to policy committees

- d. All three members of a policy committee may not be co-authors of an item that will be heard by the committee.
- e. Only one co-author who is not a member of the policy committee may attend the committee meeting to participate in discussion of the item.
- f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an author is present to participate in the discussion of their item, no other councilmembers may attend as observers.
- g. An item may be considered by only one policy committee before it goes to the full Council.

**C4. Functions of the Committees**

Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
- e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.
- f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.
- f.g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.
- g.h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.
- i. Reports leaving a policy committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.
- h.j. No final action may be taken on an item for which revised or supplemental materials were submitted at the meeting. Per Brown Act regulations, any such materials must

Commented [NML32]: Clarification of authority; reflects Charter

Commented [NML33]: Added for transparency and to avoid violations arising from submission of materials only tangentially related to the agendized items

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be direct revisions or supplements to the item that was published in the agenda packet.

Items referred to a policy committee from the ~~Agenda Committee~~Agenda & Rules Committee or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, the committee must vote to either (1) accept the author's request that the item remain in committee until a date certain (more than one extension may be requested by the author); or (2) send the item to the ~~Agenda Committee~~Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

1. Positive Recommendation (recommending Council pass the item as proposed),
2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's ~~will include their~~ recommendation will be included in a ~~new~~separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a city board or commission.

Commented [NML34]: Clarification of authority. Commissions are advisory to the Full Council

The original Council author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and Recommendations originating from the policy committee are submitted to the agenda process by the members of the committee.

Commented [NML35]: Clarification of responsibility for shepherding items through process

A policy committee may refer an item to another policy committee for review. The total time for review by all policy committees is limited to the initial 120-day deadline.

Commented [NML36]: Inconsistent with Brown Act – review by two committees would result in an illegal serial meeting

If a policy committee does not take final action by the 120-day deadline, the item is returned to the ~~Agenda Committee~~Agenda & Rules Committee and appears on the next available Council agenda. The ~~Agenda Committee~~Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a policy committee may not be

Commented [NML37]: Closes "endless loop" loophole

referred to a policy committee and must remain on the full Council agenda for consideration.

Non-legislative or discussion items may be added to the Policy Committee agenda by members of the Committee with the concurrence of a quorum of the Committee. These items are not subject to the 120-day deadline for action.

Commented [NML38]: Clarification

Once the item is voted out of a policy committee, the final item will be resubmitted to the agenda process by the author, and it will return to the ~~Agenda Committee~~ Agenda & Rules Committee on the next available agenda. The ~~Agenda Committee~~ Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

Commented [NML39]: Clarification

The lead author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the item first appeared on the committee agenda.

**5D. Number and Make-up of Committees**

Six committees are authorized, each comprised of three Cecouncilmembers with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The committees are as follows:

Commented [NML40]: This will allow two members of a policy committee to co-author an item. The Alternate will substitute for one of the co-authors while the item is heard by the policy committee.

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda CommitteeAgenda & Rules Committee shall establish the policy committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing policy committees of the City Council are considered "legislative bodies" under the Brown Act and must conduct all business in accordance with the Brown Act.

Commented [NML41]: Clarification

**6E. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at

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the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.



## IV. CONDUCT OF MEETING

### A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on action items, appeals and/or public hearings as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall stand identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry.

#### 1. Public Comment on Consent Calendar and Information Items.

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."

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. 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.

**2. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

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.

If ten or fewer persons are interested in speaking, each speaker 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.

[This procedure also applies to public hearings except those types of public hearings specifically provided for in this section.](#)

**3. Appeals Appearing on Action Calendar.**

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants [of a single appeal](#) collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. [If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment.](#) Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

Commented [NML42]: Reflects existing due process standards

**4. Public Comment on Non Agenda Matters.**

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, 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.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

~~According to the current Rules and Procedures Pursuant to this document, no~~ Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the ~~Agenda Committee~~ [Agenda & Rules Committee](#) for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

**5. Ralph M. Brown Act Pertaining to Public Comments.**

The "Brown Act" prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

**B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, ~~C~~ouncilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

IV. CONDUCT OF MEETING

It is the policy of the Council that ~~C~~eouncilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

**C. Information Reports Called Up for Discussion**

Reports for Information designated for discussion at the request of any ~~Councilmember~~council member shall be added to the appropriate section of ~~the Reports for Action~~ Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of any ~~Councilmember~~council member a Report for Information may be acted upon by the Council.

**D. Communications**

Letters from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." \_

All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. A ~~Councilmember~~council member may refer a communication to ~~staff~~ the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

Commented [NML43]: Clarification per OGO

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review

in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

Commented [NML44]: Same as above

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.

If ten or fewer persons are interested in speaking, each speaker 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. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. 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.

Commented [NML45]: Current practice. Matches existing language for appeals above.

**F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

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. If ten or fewer persons are interested in speaking, each speaker 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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**G. Public Discussions**

Commented [NML46]: Unnecessary. A "public discussion" must still occur at a noticed meeting which is regulated by the Brown Act, OGO, and this document.

#### IV. CONDUCT OF MEETING

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~~The City Council may, from time to time, schedule a matter for public discussion and may limit the amount of time to be devoted to said discussions. At the time the public discussion is scheduled, the City Council may seek comment from others if they so determine.~~

#### H. Protocol

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a ~~Councilmember~~council member except through the Presiding Officer.

## V. PROCEDURAL MATTERS

### A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

### B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council. ~~message to or contact with any member of the Council while the Council is in session shall be through the City Clerk.~~

Commented [NML47]: Clarification that Clerk forwards written communications only, not verbal messages

### C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

### D. Precedence of Motions

When a question is before the Council, no motion shall be entertained except:

1. To adjourn,
2. To fix the hour of adjournment,
3. To lay on the table,
4. For the previous question,
5. To postpone to a certain day,
6. To refer,
7. To amend,
8. To substitute, and

9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to ~~adjourn~~, amend, or substitute, shall be put to a vote without debate.

Commented [NML48]: Motion to adjourn is not debatable pursuant to Roberts Rules

**E. Roberts Rules of Order**

Roberts Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall ~~supercede~~supersede.

**F. Rules of Debate**

**1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

**2. Getting the Floor - Improper References to be avoided.**

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

**3. Interruptions.**

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

**4. Privilege of Closing Debate.**

The ~~Councilmember~~council member moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the ~~Councilmember~~council member moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

**5. Motion to Reconsider.**

A motion to reconsider any action taken by the Council may be made only during the same session on the day such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made ~~and seconded~~ by a member one of the prevailing sides, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

Commented [NML49]: Must happen at the same meeting, not just the same day.

Commented [NML50]: Inconsistent with Roberts Rules. Requiring a seconder to be on the prevailing side could infringe on a single member's right to reconsider their vote.



**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

**G. Debate Limited**

1. ~~Except as provided in Section V.F.b hereof, e~~ Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of ~~Good of the City Information Reports~~; provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, the previous question, which, if passed, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph ~~a-1~~ hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any ~~Councilmember~~ council member to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any ~~Councilmember~~ council member may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in ~~subparagraph Section a-4D~~ hereof is made and is passed.

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

~~Any person desiring to address the Council shall first secure the permission of the presiding officer to do so.~~ Under the following headings of business, unless the presiding officer rules otherwise, any ~~qualified and~~ interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

**1. Written Communications.**

Commented [NML51]: Exactly restated later in same paragraph

Commented [NML52]: Not sure what could be meant by "qualified"

Interested parties or their authorized representatives may address the Council ~~by in the form of~~ written communications in regard to matters of concern to them ~~by submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.~~

~~Communications pertaining to an item on the agenda which are received by the City Clerk after the deadline for inclusion in the Council Agenda packet and through 5:00 p.m. seven calendar days prior to the meeting shall be compiled into a supplemental communications packet. The supplemental communications packet shall be made available to the City Council, public and members of the press no later than five days prior to the meeting.~~

~~Communications received by the City Clerk after the aforementioned deadline and by noon on the day of a Council meeting shall be duplicated by the City Clerk and submitted to the City Council at the meeting if related to an item which is on the agenda for that meeting. Communications submitted at the Council meeting will be included in the public viewing binder and in the Clerk Department the day following the meeting.~~

Commented [NML53]: Described elsewhere and unnecessary here.

**2. Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

**3. Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than a ~~Councilmember~~council member shall address the Council without first securing the permission of the presiding officer or Council to do so.

## VI. FACILITIES

### A. Council Chamber Capacity

~~Council Chamber~~ Attendance at council meetings shall be limited to the posted seating capacity of the meeting location~~thereof~~. Entrance to the ~~City Hall~~ meeting location will be appropriately regulated by the City Manager on occasions when the ~~Council Chamber~~ capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the ~~Council Chamber~~ meeting room except to address the Council, and sitting on the floor shall not be permitted. ~~The Council proceedings may be conveyed by loudspeaker to those who have been unable to enter the Council Chambers.~~

Commented [NML54]: Updated to reflect new locations of meetings and to not be as specific with regards to meeting locations

### B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the ~~City Council Chambers~~ School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the ~~City Council Chambers~~ Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the ~~City Council Chambers~~ Board Room.

### C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the ~~Council Chamber~~ meeting location during Council meetings.

### D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and ~~l~~ or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

### E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the ~~Council Chambers~~ meeting location ~~has~~ have reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

### Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### Objective

A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### Section 1 – Lead Commission

The City Council designates the following commissions as the 'Lead Commissions' in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

#### Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

#### Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

---

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the [Agenda Committee](#) ~~Agenda & Rules Committee~~ to request that the author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
  - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d. Fiscal impacts of the recommendation;
  - e. A description of the current situation and its effects;
  - f. Background information as needed;
  - g. Rationale for recommendation;
  - h. Alternative actions considered;
  - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j. Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.



Guidelines for City Council Items:

1. Title
  2. Consent/Action/Information Calendar
  3. Recommendation
  4. Summary Statement/Current situation and its effects
  5. Background
  6. Review of Existing Plans, Programs, Policies and Laws
  7. Actions/Alternatives Considered
  8. Consultation/Outreach Overview and Results
  9. Rationale for Recommendation
  10. Implementation, Administration and Enforcement
  11. Environmental Sustainability
  12. Fiscal Impacts
  13. Outcomes and Evaluation
  14. Contact Information
  15. Attachments/Supporting Materials
- 

**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

#### 7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

#### 8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

#### 9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal Impacts**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., *"it is expected that 100 homeless people will be referred to housing every year"*) and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**



**Date:** June 25, 2019

**To:** Jesse Arreguin, Mayor

**From:** Jenny Wong, City Auditor *zw*

**Topic:** Operational Considerations of New Council Directives and Ordinances

### Background and Current Situation

Drafting and considering a new ordinance requires thorough research and input from a variety of stakeholders. While there is suggested guidance, the current rules do not require new ordinances to go to the new policy committees. This can lead to inadequate vetting of a new ordinance. In addition, the current lack of operational information on City Council items leaves a gap in information for this legislative body to make informed decisions.

On January 29, 2019, the City Council referred the issue to the Agenda and Rules Committee to consider amendments related to opportunity costs. On February 4, 2019, the City Manager introduced an operational impacts analysis for use in staff reports. However, this information is not currently being used. As of today, this issue of operational and opportunity cost is not consistently available and therefore not considered in decision making by the City Council.

### Suggested Action

Amend the Berkeley City Council Rules of Procedure and Order to require all ordinances be automatically referred to a policy committee; and identify the operational considerations as requirements to be included in agenda items that will result in the use of staff time.

### Operational Considerations

It is in the best interest of the public and transparency in government when adequate information is provided for the City Council to make decisions. Currently, there is no requirement that operational cost, including opportunity cost (tradeoffs), be included in council directives, including ordinances. The lack of information does not equip City Council with information about what staff can reasonably accomplish given its available resources, nor does it give City Council an understanding of the tradeoffs they are making when proposing new items. New projects, new ordinances, and similar directives all require staff time and staff time has fiscal implications.

Many staff are working at high-capacity and any new work or need realistically means that they must stop working on one service or program in order to address new demands. This makes sense as City Council sets new priorities given the needs of the community. It is, therefore, essential for Council to have this information to think in terms of tradeoffs as they work to address the many, diverse needs of the community. This information will also serve as transparency and provide expectations to the public about the timeframes and resources related to the rollout of a new directive.

The term opportunity costs may seem more daunting than need be. While over time this concept can be developed into something more robust with a deeper analysis, the City can start from a more basic position to inform their decisions and remain accountable to the public. When drafting new items, Councilmembers can be better informed by working with city management to get an understanding of the operational impact that the new directive will require. The following outlines a way for City Council to prepare their item for review and consideration by the Policy Committee:

- **Analyze what is being gained against what must be lost (tradeoffs):**

A new commitment to the public without new resources, i.e., new staff, to provide the service means that an existing commitment can no longer be kept. To ensure that public needs are met, there some questions to ask of management when developing a new directive include: How severe would the shift from an existing service to the new service be? Is the new promise more important than the old? Is there a middle ground? Will critical projects have to be delayed? Will crucial work not get done? Are there fiscal implications of not doing that work? Does diverting staff's time risk noncompliance with laws and regulations? Will the public still expect the former promises to be kept?

Those are just some of the questions to guide the discussion because while there will always be strictly fiscal implications, the real issue to think about is the need to shift staff from one project to another, either entirely or at least partially, which removes the ability to get other work done or greatly delays it.

- **Assess the shift in staff priorities in terms of time and dollars:**

The discussion with management should also consider how much time it will take of staff to do the work. This will first require an open discussion about what the expectations are of the new item. Questions to ask include: How soon does this need to be done? Is it an ongoing need or short-term? Is it a high-priority? Does it require proactive enforcement? What other work needs to be done to make it happen?

After having those and other questions answered, management will be better able to identify resource needs in terms of staff time, e.g., “it’ll take two full weeks (80 hours),” or “a ½ FTE.” This then will allow management to assess dollars using known salaries and fringe benefit rates.

- **Set timeframes for the information:**

Management will need some time to provide City Council with the information they need. For some items, that are less complex and have a known comparison, a two-week turnaround to get the information may be feasible. For complex items involving multiple departments and that do not have an existing framework to build upon, more time will be needed, e.g., a month. There is no one size fits all but guidelines can set up these expectations.

### Agenda Item Requirements

To better inform Councilmembers who will vote on an agenda item and ensure that the public is provided transparent information on what services they may lose or have reduced as the result of a new Council directive, we suggest that Council amend the Berkeley City Council Rules of Procedure and Order (Rules):

- **Ordinances automatically referred to a policy committee:**

This will help ensure that a proposed policy is fully vetted and includes a discussion on both operational considerations and fiscal implications before sent to City Council for a vote.

- **Include service and program tradeoffs as an agenda item requirement:**

Adopting a new ordinance or giving a directive to have city staff produce an item will always require the use of a resource – staff time – and those always translate into fiscal implications. This should be transparent to both City Council considering the adoption of the new item and the public impacted by the new item. Page nine of the Berkeley City Council Rules of Procedure and Order (Rules) list the requirements for agenda items. Missing from those is the requirement to provide information on tradeoffs – shifting of staff time from one service or program to another and the impact of that shift.

- **Change “Implementation, Administration, and Enforcement” to “Operational Considerations:”**

Administration and enforcement are subsets of implementation and all are the operational considerations that Council should understand before adopting an item. This section should be used to discuss the service and program tradeoffs, including what services and programs will diminish and by how much and how long.

- **Move “Fiscal Implications” below “Operational Considerations:”**

Fiscal implications and operational considerations are intricately linked. By having fiscal implications shifted above environmental sustainability, this will be more transparent to both City Council and the public.

- **Dollarize staff time and make this a requirement:**

Staff time is the city’s largest cost and new Council directives requiring either short-term or ongoing staff time will result in fiscal implications that shift the use of existing budgeted funds. A well vetted agenda item that has identified staff time, e.g., ½ FTE, should automatically require that the time be translated into salaries and benefit costs and clarify that these are budgeted funds being shifted from an existing service to another. This practice is done on some items but not all. Making it a requirement will ensure Council has this information to make informed decisions.



### III. AGENDA

#### A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items carried over.

#### B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by any council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if a council member so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter.
2. Agenda items shall contain all relevant documentation, including the following as applicable:
  - a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c) Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d) Operational considerations of the recommendation;
  - e) Fiscal impacts of the recommendation;
  - f) A description of the current situation and its effects;
  - g) Background information as needed;
  - h) Rationale for recommendation;
  - i) Alternative actions considered;
  - j) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);

- j) Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.
- 3. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.
- 4. "Packet" means the agenda plus all its corresponding duplicated agenda items.
- 5. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:
  - a) A work stoppage or other activity which severely impairs public health, safety, or both;
  - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.
- 6. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier, as uncompleted items.
- 7. "Old Business" Items carried over from a prior agenda of a meeting as uncompleted items.

**C. Procedure for Bringing Matters Before City Council**

**1. Persons Who Can Place Matters on the Agenda.**

Matters may be placed on the agenda by any council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items, other than board and commission items shall be subject to review by an Agenda Committee, which shall be a standing committee of the City Council. The Agenda Committee shall consist of the Mayor and two councilmembers, nominated by the Mayor and approved by the Council. A third council member, nominated by the Mayor and approved by the Council, will serve as an alternate on the Committee in the event that an Agenda Committee member cannot attend a meeting. **Proposed ordinances are automatically referred to policy committee for review.**

The Agenda Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. The Agenda Committee packet, including a draft agenda and Councilmember and Commission

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

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  8. Consultation/Outreach Overview and Results
  9. Rationale for Recommendation
  10. ~~Implementation, Administration and Enforcement~~  
Operational considerations of the recommendation;
  11. Environmental Sustainability
  12. Fiscal Impacts
  13. Outcomes and Evaluation
  14. Contact Information
  15. Attachments/Supporting Materials
- 

### 1. **Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

### 2. **Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

### 3. **Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

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- Adopt a resolution
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- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

## **7. Actions/Alternatives Considered**

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

## **8. Consultation/Outreach Overview and Results**

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

## **9. Rationale for Recommendation**

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. Implementation, Administration and Enforcement Operational Considerations of the Recommendation**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation? What are the tradeoffs, including what services and programs will diminish and by how much and how long when staff shift their efforts from an existing service or program to the proposed item? What is the estimated staff time needed for the proposed item, e.g., 1/2 FTE?

**11. Fiscal Implications**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs. Translate the estimated staff time from item 10 into salaries and benefit costs and clarify that these are budgeted funds being shifted from an existing service to another, or a new funding source.

**12. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.


**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., "*it is expected that 100 homeless people will be referred to housing every year*") and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**





No Material  
Available for  
this Item

There is no material for this item.

**City Clerk Department**  
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(510) 981-6900

**The City of Berkeley, City Council's Web site:**  
<http://www.cityofberkeley.info/citycouncil/>

