



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

**MONDAY, JANUARY 6, 2020
2:30 P.M.**

2180 Milvia Street, 6th Floor, Berkeley, CA – Redwood Room

TELECONFERENCE LOCATION - 701 West Baristo Road, Palm Springs, CA

TELECONFERENCE LOCATION – 2043 Lincoln Street, Berkeley, CA

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

AGENDA

Roll Call

Public Comment

Review of Agendas

- 1. Approval of Minutes: November 25, 2019**
- 2. Review and Approve Draft Agendas:**
 - a. 1/21/20 – 6:00 p.m. Regular City Council Meeting
- 3. Selection of Item for the Berkeley Considers Online Engagement Portal**
- 4. Adjournments In Memory**

Scheduling

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

Referred Items for Review

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. Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings

From: Councilmember Davila

Referred: November 25, 2019

Due: May 24, 2020

Recommendation:

Adopt a Resolution Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and

Social Media by City Councilmembers during Official City Meetings. The Brown Act prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration.

In order to ensure the full attention of the Council to the public and each other, the use of cell phones with access to email, text-messaging, instant messaging, and social media should be prohibited during all City Council meetings. The use of digital technologies outside of the provided City tablets, upon which Agenda Items and notes can be stored, is distracting, disrespectful, and jeopardizing to democratic process.

The Council Rules of Procedure and Order should be amended to include a moratorium on the use of cell phones by Councilmembers on the dais during open and closed session council meetings.

Financial Implications: None

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

9. Updating Berkeley Telecom Ordinances and BMC codes

From: Councilmember Davila

Referred: November 25, 2019

Due: May 24, 2020

Recommendation: Direct the City Manager to adopt a resolution to include the attached sample language and contained hyperlinked references to update the City's Telecom Ordinances and BMC codes.

Financial Implications: None

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Referred Items for Review

10. Referral: Compulsory Composting and Edible Food Recovery

From: Councilmembers Robinson and Hahn

Referred: November 25, 2019

Due: May 24, 2020

Recommendation: Refer to the Zero Waste Commission to develop a plan, in consultation with the public and key stakeholders, to achieve timely compliance with Senate Bill 1383 (Lara, 2016) including: 1. An ordinance making composting compulsory for all businesses and residences in the City of Berkeley. The Commission should also consider the inclusion of compulsory recycling. 2. An edible food recovery program for all Tier 1 and 2 commercial edible food generators.

Financial Implications: See report

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

11. Discussion of Potential Revisions to the City Council Rules of Procedure and Order

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment – Next Meeting Monday, January 13, 2020

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.

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. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.



COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

* * *

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 January 2, 2020.

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

Mark Numainville, City Clerk

Communications

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

BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING MINUTES

MONDAY, NOVEMBER 25, 2019

2:30 P.M.

2180 Milvia Street, 6th Floor, Berkeley, CA – Redwood Room

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

Roll Call: 2:37 p.m. All present.

Public Comment: 9 speakers

Review of Agendas

1. Approval of Minutes: November 18, 2019

Action: M/S/C (Harrison/Wengraf) to approve the Minutes of 11/18/19.

Vote: All Ayes.

2. Review and Approve Draft Agendas:

a. 12/10/19 – 6:00 p.m. Regular City Council Meeting

Action: M/S/C (Wengraf/Harrison) to approve the Agenda of the 12/10/19 regular meeting with the changes and actions noted below.

- Item Added – Martin Luther King, Jr. Day Celebration (Arreguin)
- Item 14 Doubletree Lease (City Manager) – scheduled for 1/21/2020
- Item 15 T1 Phase 1 List (City Manager) – revised item submitted
- Item 31 BART MOU (Arreguin) – scheduled for 12/10/19 Action Calendar
- Item 32 Telecom Ordinance (Davila) – referred to Agenda & Rules Committee
- Item 33 Use of Cell Phones During Meetings (Davila) - referred to Agenda & Rules Committee
- Item 34 Plastic Bags (Harrison) - referred to Facilities, Infrastructure, Transportation, Environment & Sustainability Committee; Councilmember Hahn added as a co-sponsor
- Item 35 Electricity Plans (Harrison) - referred to Facilities, Infrastructure, Transportation, Environment & Sustainability Committee; Mayor Arreguin added as a co-sponsor
- Item 36 Bright Streets Initiative (Hahn) - referred to Facilities, Infrastructure, Transportation, Environment & Sustainability Committee; Councilmember Harrison added as a co-sponsor
- Item 37 Compulsory Composting (Robinson) – referred to Agenda & Rules Committee
- Item 42 Cannabis (City Manager) – scheduled for 1/28/2020

Vote: All Ayes.

3. Selection of Item for the Berkeley Considers Online Engagement Portal

- Item 28 Local Hazard Mitigation Plan

4. Adjournments In Memory

- Hampton Smith, Former City Employee

Scheduling

5. Council Worksessions Schedule

- Presentation from Undergrounding Task Force scheduled for March 17, 2019

6. Council Referrals to Agenda Committee for Scheduling – No action taken

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 of Potential Revisions to the City Council Rules of Procedure and Order

Action: No action taken.

Items for Future Agendas

- **Discussion of items to be added to future agendas - None**

Adjournment – Next Meeting Monday, January 6, 2019

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

Vote: All Ayes.

Adjourned at 3:24 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on November 25, 2019.

Mark Numainville, City Clerk

Communications

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

DRAFT AGENDA



BERKELEY CITY COUNCIL MEETING

**Tuesday, January 21, 2020
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, (510) 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.

Recess Items

- 1. License Agreement: California Jazz Conservatory for Property at 1947 Center Street**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute license agreement with California Jazz Conservatory (“Jazz School”) to use property at 1947 Center Street for a three-month term ending March 31, 2020.
Financial Implications: See report
Contact: David White, City Manager’s Office, (510) 981-7000
- 2. Contract: Capoeira Arts Foundation**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a contract with Capoeira Arts Foundation in an amount not to exceed \$150,000.
Financial Implications: See report
Contact: David White, City Manager’s Office, (510) 981-7000

Consent Calendar

3. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of December 3, 2019 (special closed and regular), December 10, 2019 (special closed and regular) and December 16, 2019 (special closed).

Financial Implications: None

Contact: Mark Numainville, City Clerk, (510) 981-6900

4. City Council Short Term Referral Process

From: City Manager

Recommendation: Approve moving Short Term Referral reporting to a quarterly basis, in alignment with Strategic Plan reporting.

Financial Implications: None

Contact: Mark Numainville, City Clerk, (510) 981-6900

5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 21, 2020

From: City Manager

Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

Financial Implications: Various Funds - \$7,281,620

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

6. Contracts: Citywide Printing and Copying Services

From: City Manager

Recommendation: Adopt two Resolutions authorizing the City Manager to approve contracts and any amendments with the following named firms for Citywide Printing and Copying Services for a total amount not to exceed \$675,000 for a 3 year period starting February 1, 2020 through January 31, 2023, subject to the City's annual budget appropriation process:

1. Synthesis Group Inc. dba Minuteman Press Berkeley in an amount not to exceed \$575,000;

2. In and Out Printing Services, Inc. in an amount not to exceed \$100,000.

Financial Implications: \$675,000

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

7. Contract: Venture Tactical for Personal Protective Equipment for Firefighters

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Venture Tactical to provide personal protective equipment (PPE) for Berkeley Firefighters in an amount up to \$112,000.

Financial Implications: See report

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

Consent Calendar

- 8. Contract: First Spear Of California (FSOC) for Personal Protective Equipment for Firefighters**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with First Spear Of California (FSOC) to provide personal protective equipment (PPE) for Berkeley Firefighters in an amount up to \$47,000.
Financial Implications: See report
Contact: David Brannigan, Fire, (510) 981-3473
- 9. Contract: Michael Brady for Emergency Management Training**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Michael Brady to provide emergency management training for City Emergency Operations Center (EOC) and Department Operations Center (DOC) staff in an amount up to \$166,680.
Financial Implications: See report
Contact: David Brannigan, Fire, (510) 981-3473
- 10. Designate the Line of Succession for the Director of Emergency Services**
From: City Manager
Recommendation: Adopt a Resolution approving the designated line of succession to the position of Director of Emergency Services in the event of an officially declared disaster, and rescinding Resolution No. 68,336-N.S.
Financial Implications: None
Contact: David Brannigan, Fire, (510) 981-3473
- 11. Grant Application: Funding from Bay Area Urban Areas Security Initiative (UASI) to Support Emergency Medical Training Equipment and Fire/Rescue Utility Vehicle Purchases**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to submit grant applications to the Bay Area Urban Areas Security Initiative grant program in the amount of \$56,472 to fund purchase of Emergency Medical Training Equipment and in the amount \$53,134 to fund purchase of a Polaris Fire/Rescue Utility Vehicle, and to accept grant funds and execute resulting grant agreements.
Financial Implications: See report
Contact: David Brannigan, Fire, (510) 981-3473

Consent Calendar

12. Grant Application: Funding from California Department of Forestry and Fire Protection to Support Hazardous Fuels Reduction in Berkeley Wildland Urban Interface

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to submit a grant application in the amount of \$800,484 to the California Department of Forestry and Fire Protection (Cal Fire) California Climate Investments (CCI) program to fund a three-year vegetation mitigation program to operate in the Wildland Urban Interface (WUI) of Berkeley's Fire Zones 2 and 3, and to accept grant funds and execute a resulting grant agreement.

Financial Implications: See report

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

13. Contract No. 31900132 Amendment: BOSS for Representative Payee Services
From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900132 with vendor Building Opportunities for Self-Sufficiency (BOSS) to provide Representative Payee services. The amendment will add \$25,000 to the current contract and extend it through June 30, 2020 for a total contract not to exceed amount of \$100,000. The current contract would be extended by four months, pursuant to the MHSA Plan, with additional funding proportionate to the monthly payment terms of the original contract.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

14. Contract No. 10631B Amendment: Resource Development Associates for HOTT Evaluation Consulting Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10631B with Resource Development Associates (RDA) to provide evaluation consulting services for the Mental Health Division's Homeless Outreach and Treatment Team (HOTT), in an amount not to exceed \$24,000, for a total contract amount not to exceed \$78,500.

Financial Implications: Mental Health Services Act Prevention and Early Intervention Homeless Outreach Fund - \$24,000

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

15. Release of Resale Restrictions on Redevelopment Homeowner Loans

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute releases for resale restrictions on seven homeowner loans made by the former Berkeley Redevelopment Agency.

Financial Implications: None

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Consent Calendar

16. Grant Applications: California Affordable Housing and Sustainable Communities Infrastructure and Agreements in Connection with the Proposed Blake Apartments and Maudelle Miller Shirek Community Projects

From: City Manager

Recommendation: Adopt a Resolution: 1. Authorizing the City Manager to negotiate, enter into, and cause the City to perform its obligation under agreements (including amendments) with the following developers and/or their affiliates relating to grant applications to the California Affordable Housing and Sustainable Communities program for project-related transportation and infrastructure improvements: a. Satellite Affordable Housing Associates for Blake Apartments (2527 San Pablo), for a total grant amount of up to \$1.422 million; and b. Resources for Community Development for Maudelle Miller Shirek Community (2001 Ashby), for a total grant amount of up to \$2.625 million. 2. Authorizing the City Manager to accept up to \$4.047 million in state AHSC funds from the projects and complete selected transportation improvements if awarded.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

17. Approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement, Ground Leases, and Certain Related Documents for 2012 Berkeley Way

From: City Manager

Recommendation: Adopt first reading of an Ordinance approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement for 2012 Berkeley Way, the three ground leases outlined in the Disposition and Development Agreement, and two Reciprocal Easement, Maintenance and Joint Use Agreements required for project operations.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

18. Contract No. 9649 Amendment: Sloan Sakai LLP for Continued Chief Labor Negotiator Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9649 extending services from December 31, 2019 through December 31, 2020 and increasing contract amount by \$35,000 with Sloan Sakai LLP for Chief Labor Negotiator services, for a revised total contract amount not to exceed \$250,000.

Financial Implications: General Fund - \$35,000

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

Consent Calendar

- 19. Classification and Salary: Establish Mental Health Nurse Classification Series From: City Manager**
Recommendation: Adopt a Resolution amending Resolution No. 68,626-N.S. Classification and Salary Resolution for SEIU Local 1021 CSU & PTRLA to establish the classifications of Mental Health Nurse with a monthly salary range of \$9,348.02 - \$11,363; Senior Mental Health Nurse with a monthly salary range of \$9,815.87 - \$11,931.92; and amend Resolution No. 68,710–N.S. Classification and Salary Resolution for Public Employees Union Local to establish a Supervising Mental Health Nurse classification with a monthly salary range of \$10,307.24 - \$12,528.52 – effective January 21, 2019.
Financial Implications: See report
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 20. 2020 Fee Assessment – State of California Self-Insurance Fund (Workers’ Compensation Program) From: City Manager**
Recommendation: Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2020 for administering the Workers’ Compensation Program, in an amount not to exceed \$285,609.
Financial Implications: Workers’ Compensation Self-Insurance Fund - \$285,609
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 21. Contract No. 9791 Amendment: Environmental Systems Research Institute, Inc. (ESRI) for Enterprise Graphical Information Systems (GIS) Software License Maintenance and Support From: City Manager**
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Environmental Systems Research Institute, Inc. (ESRI) for Enterprise GIS software license maintenance and support increasing the amount by \$225,000 for a not-to-exceed total of \$621,000 for the period of July 1, 2020 through June 30, 2023.
Financial Implications: Various Funds - \$225,000
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 22. Contract No. 10264B Amendment: ThirdWave Corporation for Digital Strategic Plan Refresh and RapidWorkflow® Process Modeling (RWPM) Certification Training From: City Manager**
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No 10264B with ThirdWave Corporation for Digital Strategic Plan Refresh and RapidWorkflow® Process Modeling (RWPM) Workshops for an amount not to exceed \$73,658, and a total contract value not to exceed \$329,061 from May 1, 2016 through June 30, 2021.
Financial Implications: Various Funds - \$73,658
Contact: Savita Chaudhary, Information Technology, (510) 981-6500

Consent Calendar

- 23. Contract No. 10988 Amendment: Presidio Network Solutions, LLC: Develop and Deliver a roadmap for Cyber Resilience Plan (CRP)**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No 10988 with Presidio Network Solutions (“Presidio”) to develop a roadmap for Cyber Resilience Plan (CRP), for an amount not to exceed \$28,620 and a total contract value not to exceed \$128,620 from September 21, 2018 through June 30, 2021.
Financial Implications: Various Funds - \$28,620
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 24. Donation: Memorial Bench at Cesar Chavez Park in memory of Michael H. Weiss**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park at the Berkeley Marina in memory of Michael H. Weiss.
Financial Implications: \$3,400 (Donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 25. Amendment to Contract No. 32000034 with Bellingham to Replace Additional Finger Docks at the Berkeley Marina**
From: City Manager
Recommendation: Adopt a resolution authorizing the City Manager to amend Contract No. 32000034 with Bellingham Inc. to replace damaged finger docks at the Berkeley Marina by increasing the construction contract amount by \$60,000 for a not-to-exceed amount of \$384,335.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 26. Contract No. 31900207 Amendment: Recruiting, Advertising, and Marketing Strategy for the Berkeley Police Department**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 31900207 with Epic Recruiting, to provide additional recruiting and advertising services for police and professional staff vacancies. This amendment would add \$90,000 for a total contract amount not to exceed \$190,000, and extending the term through April 30, 2021.
Financial Implications: General Fund - \$90,000
Contact: Andrew Greenwood, Police, (510) 981-5900

Consent Calendar

27. **Contract No. 10645 Amendment: Recology Blossom Valley Organics - North for the Hauling and Processing of Organic (Compostable) Materials**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10645 for a five (5) year term with Recology, Inc.'s Blossom Valley Organics - North facility for the hauling and processing of organic (compostable green and food waste) materials through February 28, 2025 increasing the amount of the contract by \$13,600,000 for a total amount not-to-exceed \$26,661,930.
Financial Implications: Zero Waste Fund - \$13,600,000
Contact: Phillip Harrington, Public Works, (510) 981-6300
28. **Appointments of Maria Moore, Edward Opton and Farzaneh Izadi to the Mental Health Commission**
From: Mental Health Commission
Recommendation: Adopt a Resolution approving the appointment of Maria Moore as a representative of the Special Public Interest Category; Edward Opton, as a representative of the General Public Interest Category; and Farzaneh Izadi as a representative of the Special Public Interest Category to the Mental Health Commission, for three year terms beginning January 22, 2020 and ending January 21, 2023.
Financial Implications: None
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400
29. **Resolution: Oppose the new U.S. base construction in Henoko-Oura Bay of Okinawa**
From: Peace and Justice Commission
Recommendation: Adopt a resolution in opposition of the new U.S. base construction in Henoko-Oura Bay of Okinawa.
Financial Implications: None
Contact: Nina Goldman, Commission Secretary, (510) 981-7000

Council Consent Items

30. **YMCA of the East Bay Youth & Government Program**
From: Mayor Arreguin
Recommendation: Adopt a Resolution approving the D-13 expenditure of \$1,500 in an amount not to exceed \$300 per Councilmember, to the YMCA of the East Bay's Youth & Government program.
Financial Implications: Mayor's Discretionary Fund - \$300
Contact: Jesse Arreguin, Mayor, (510) 981-7100

Council Consent Items

31. Berkeley Youth Alternatives (BYA) 16th Crab Feed on Thursday, February, 27, 2020: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

From: Councilmember Davila

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$120 from Councilmember Cheryl Davila, to support Berkeley Youth Alternatives, for their 16th Annual Crab Feed Fundraiser on Thursday, February 27, 2020, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Cheryl Davila and Mayor or any other Councilmembers who would like to contribute.

Financial Implications: Councilmember's Discretionary Fund - \$120

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

32. Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability (Reviewed by the Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee)

From: Councilmember Davila

Recommendation: Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee: 1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.” 2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding. 3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.

Financial Implications: To be determined

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Council Consent Items

33. National Zero Waste Conference: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds From: Councilmember Hahn and Mayor Arreguin

Recommendation:

1. Adopt a resolution co-sponsoring the National Zero Waste Conference at UC Berkeley on March 18-19, 2020.
2. Adopt a resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$250 from Councilmember Hahn, to the National Recycling Coalition, the fiscal sponsor of the conference, with funds relinquished to the City's general fund for this purpose from the discretionary Council office budget of Councilmember Hahn, and any other Councilmembers who would like to contribute.

Financial Implications: See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

34. Co-sponsor Supervisor Keith Carson's Berkeley 2020 Census Town Hall From: Councilmember Wengraf

Recommendation: That the City of Berkeley co-sponsor Supervisor Keith Carson's Berkeley 2020 Census Town Hall to be held on February 20, 2020 from 5:30 – 7 PM at the Ed Roberts Campus. By co-sponsoring, the Mayor and Councilmembers pledge to publicize and promote the Town Hall to their constituents, and attend themselves if possible.

Financial Implications: None

Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

35. Holocaust Remembrance Day Event: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

From: Councilmembers Wengraf, Hahn, Bartlett, and Mayor Arreguin

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 each from Councilmembers Wengraf, Hahn and Bartlett and Mayor Arreguin, to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf, Hahn, Bartlett and Mayor Arreguin's discretionary Council Office Budgets, and all other Councilmembers who would like to contribute, allows the City of Berkeley to hold the City's 18th Annual Holocaust Remembrance Day program. All are invited to attend on Sunday, April 19th, 11:30 AM at the Magnes Collection of Jewish Art and Life.

Financial Implications: Mayor and Councilmembers' Discretionary Funds - \$500

Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Action Calendar

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

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.

- 36. Implement Residential Preferential Parking (RPP) Program on the 1500 Block of Lincoln Street** *(Continued from December 10, 2019)*
From: City Manager
Recommendation: Conduct a public hearing and upon its conclusion, adopt a Resolution amending Resolution No. 56,508-N.S. Section 25N by adding a subsection to implement Residential Preferential Parking (RPP) on the 1500 block of Lincoln Street in RPP Area N.
Financial Implications: General Fund - \$2,000
Contact: Phillip Harrington, Public Works, (510) 981-6300
- 37. Extension of the Urgency Ordinance Amending the Accessory Dwelling Unit (ADU) Ordinance to Comply with New State Law and Establish Interim Limits on Development for a Period of 10 Months and 15 Days**
From: City Manager
Recommendation: Conduct a public hearing and, upon conclusion, adopt an extension of the Urgency Ordinance (Number 7,683-N.S.) amending Berkeley's ADU Ordinance to comply with new State law, and extend limits on ADU development for a period of 10 months and 15 days, pending further analysis and adoption of local regulations that ensure public safety in Fire Zones 2 and 3.
Financial Implications: None
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Action Calendar – Public Hearings

- 38. Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; BMC Chapter 2.12**
From: Fair Campaign Practices Commission
Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts. (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).
Financial Implications: None
Contact: Samuel Harvey, Commission Secretary, (510) 981-6950
- 39. Amendments to the Berkeley Election Reform Act; BMC Chapter 2.12**
From: Fair Campaign Practices Commission
Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Elections Reform Act, BMC Chapter 2.12, regarding the public financing program.
Financial Implications: None.
Contact: Samuel Harvey, Commission Secretary, (510) 981-6950

Action Calendar – Old Business

- 40. City Council Rules of Procedure and Order Revisions** *(Reviewed by the Agenda & Rules Committee) (Continued from December 3, 2019. Item contains revised and supplemental material.)*
From: City Manager
Recommendation: Adopt a Resolution revising the City Council Rules of Procedure and Order to integrate the previously adopted regulations for policy committees and make associated changes to other sections; update outdated references and practices; conform to the Open Government Ordinance; make other technical corrections; and rescinding any preceding amendatory resolutions.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 41. Purchase Order: National Auto Fleet Group for Nine Ford F-Series Pickup Trucks with Various Service Body Configurations** *(Continued from December 10, 2019)*
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Sections 67.2 allowing the City to participate in Sourcewell contract bid procedures, and authorizing the City Manager to execute a purchase order for nine (9) Ford Super Duty F-Series Pickup Trucks with varying service body configurations with National Auto Fleet Group in an amount not to exceed \$492,284, and a subsequent purchase order for the conversion of the nine (9) Ford Super Duty F-Series Pickup Trucks to plug in hybrid vehicles in an amount not to exceed \$245,000 using XL Fleet technology when it becomes commercially available.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, (510) 981-6300

Action Calendar – Old Business

42a. Public Works Commission Recommendation for the Five-Year Paving Plan

(Continued from December 10, 2019)

From: Public Works Commission

Recommendation: Adopt a resolution that recommends approval of the Five-Year Paving Plan for FY2020 to FY2024 as proposed by Staff and recommends the creation of a Long-Term Paving Master Plan.

Financial Implications: See report.

Contact: Nisha Patel, Commission Secretary, (510) 981-6300

42b. Companion Report: Public Works Commission Recommendation for the Five-Year Street Rehabilitation Plan *(Continued from December 10, 2019)*

From: City Manager

Recommendation: Adopt a Resolution updating the City's Five-Year Street Rehabilitation Plan for FY 2020 to FY 2024 and refer to the City Manager consideration of a Long-Term Paving Master Plan to be started after the completion of the public process of T1 Phase 2. The City Council may consider the information put forth by the Public Works Commission relevant to adoption of the recommended plan.

Financial Implications: See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

Action Calendar – New Business

43. Utilize Substantial Portion of Cannabis Tax Proceeds to Fund Subsidies under 1000 Person Plan

From: Homeless Commission

Recommendation: That Council direct a substantial portion of the incoming cannabis tax proceeds to fund subsidies under the 1000 Person Plan.

Financial Implications: See report

Contact: Brittany Carnegie, Commission Secretary, (510) 981-5400

44. Change to the Council Rules and Procedures: Public access to changing status of a Consent Calendar Item

From: Open Government Commission

Recommendation: Adopt a Resolution changing and updating the "Council Rules and Procedures" to give the public a procedure for moving items on the consent calendar to the Action Calendar.

Financial Implications: None

Contact: Samuel Harvey, Commission Secretary, (510) 981-6950

Action Calendar – New Business

45. Change to the Council Rules and Procedures: Public Comment on Council Agenda Action Items

From: Open Government Commission

Recommendation: Adopt a Resolution changing and updating the “Council Rules and Procedures” to change the public comment section that would allow a more comprehensible discussion between the Council and the public.

Financial Implications: None

Contact: Samuel Harvey, Commission Secretary, (510) 981-6950

46a. Recommendation that the City Council pass a resolution regarding procurement, sales and serving of sugar-sweetened beverages.

From: Sugar Sweetened Beverage Product Panel of Experts

Recommendation: The Sugar Sweetened Beverage Product Panel of Experts recommends that the Berkeley City Council adopt a Resolution that City of Berkeley departments and City food services contractors shall not: 1. Serve sugar-sweetened beverages at City meetings and events on City property; 2. Procure sugar-sweetened beverages with City funds; or, 3. Sell sugar-sweetened beverages on City property, including in vending machines.

Financial Implications: See report

Contact: Dechen Tsering, Commission Secretary, (510) 981-5300

46b. Companion Report: Recommendation that the City Council pass a resolution regarding procurement, sales, and serving sugar-sweetened beverages

From: City Manager

Recommendation: Recommend that the City Council adopt an amended resolution that recognizes the important principles in the Commission recommendation, clarifies the intent of the measure and provides some flexibility for City programs and staff while still emphasizing availability of healthy options. This amended resolution would require that the majority of all beverages provided or sold at any City event or on any City property (including vending machines) be non-sugar sweetened beverages (as defined in chapter 7.72 of the Berkeley Municipal Code) and education materials be provided to all COB staff to actively discourage the consumption of sugar-sweetened beverages and encourage the consumption of water.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Council Action Items

- 47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow** *(Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee)*
From: Councilmember Harrison
Recommendation:
1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow.
 2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.
- Financial Implications:** See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 48. Establishing an Outdoor Emergency Shelter** *(Reviewed by Health, Life Enrichment, Equity & Community Committee)*
From: Councilmembers Harrison and Davila, Mayor Arreguin, and Councilmember Robinson
Recommendation:
1. Refer to the City Manager to establish an outdoor emergency shelter in Berkeley. Such a shelter should consider the following amenities to be provided but not required: A. Climate-controlled, wind-resistant durable tents with wooden pallets for support. B. Seeking an agency to manage and oversee the emergency shelter. C. Portable toilet service and handwashing service. D. Shower and sanitation services. E. Garbage pickup and safe needle disposal.
 2. Refer to the November budget process \$615,000 to be considered alongside other Measure P recommendations.
 3. Temporarily waive BMC Article 9 Section 19.28.100 Section N106, to allow for the installation of tents and membrane structures that may be erected for longer than 180 days even if they do not meet all physical requirements.
 4. Refer to the City Manager protocol for selecting residents that mirror other shelter selection criteria and are less restrictive than HUD protocols.
- Financial Implications:** See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Council Action Items

49. Recommendations Related to Code Enforcement and Receivership Actions

(Reviewed by Health, Life Enrichment, Equity, and Community Committee)

From: Health, Life Enrichment, Equity & Community Committee

Recommendation: On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee took action to send an item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Financial Implications: See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150; Rashi Kesarwani, Councilmember, District 1, (510) 981-7110; Cheryl Davila, Councilmember, District 2, (510) 981-7120

Action Calendar – Policy Committee Track Items

50. Confirm Council Action on Measure P Revenue Allocations for FY 2020-2021

From: Mayor Arreguin

Recommendation: Confirm the City Council's action taken on December 3, 2019 to allocate General Funds generated by the Measure P Transfer Tax increase for existing and new homeless programs and implementation for Fiscal Years 2020 and 2021. Detailed listing of approved expenditures is included in Attachment 1 to the report.

Financial Implications: See report

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

Action Calendar – Policy Committee Track Items

- 51. Budget Referral to Conduct an Equal Pay Audit**
From: Councilmember Harrison
Recommendation:
1. Refer to the June 2020 Budget Process \$20,000 to pay for an Equal Pay Audit for City of Berkeley employees. The audit would include pay band analyses and analyses of job segregation and glass ceilings.
2. Issue an RFP to complete the Equal Pay Audit
Financial Implications: \$20,000
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 52. Small Business Listening Sessions**
From: Councilmember Hahn
Recommendation: Refer to the City Council's Land Use, Housing & Economic Development policy committee to establish regular Small Business/Enterprise Listening Sessions.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
- 53. Resolution Reaffirming the City of Berkeley's Commitment to Roe v. Wade**
From: Councilmember Wengraf
Recommendation: Adopt a Resolution reaffirming the City of Berkeley's commitment to Roe v. Wade and honoring the 47th anniversary of its passage.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Information Reports

- 54. 2019 Business Survey Results**
From: City Manager
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 55. Referral Response: Small Business Retention Programs**
From: City Manager
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 56. Update on Measure T1 City Infrastructure Bond Program**
From: City Manager
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700; Phillip Harrington, Public Works, (510) 981-6300
- 57. Animal Care Commission FY 2019/2020 Work Plan**
From: Animal Care Commission
Contact: Amelia Funghi, Commission Secretary, (510) 981-6600

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

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

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

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

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

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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

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



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

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Mental Health Commission

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Mental Health Commission  
 Submitted by: boona cheema, Chairperson, Mental Health Commission  
 Subject: Appointments of Maria Moore, Edward Opton and Farzaneh Izadi to the Mental Health Commission

RECOMMENDATION

Adopt a Resolution approving the appointment of Maria Moore as a representative of the Special Public Interest Category; Edward Opton, as a representative of the General Public Interest Category; and Farzaneh Izadi as a representative of the Special Public Interest Category to the Mental Health Commission, for three year terms beginning January 22, 2020 and ending January 21, 2023.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Mental Health Commission is authorized to be composed of thirteen members. However, there are presently six vacancies on the Commission. These vacancies impair the Commission's ability to adequately review and evaluate the community's mental health needs, resources, and programs.

Approval of the recommended action will allow the Commission to move one step closer to having a full and diverse complement of commissioners.

BACKGROUND

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

Currently, the Mental Health Commission consists of the following: two Berkeley Special Public Interest Commissioners; three Berkeley General Public Interest Commissioners; one Albany General Public Interest Commissioner; and one Mayoral appointee.

At the September 26, 2019 meeting, the Mental Health Commission interviewed Maria Moore who works as a Human Resource Analyst but has previously worked as a case manager and a mental health counselor in the bay area. She is involved in numerous community groups and has a passion to work with the mental health population. The secretary has determined that Ms. Moore is eligible for the Berkley Special Interest seat on the Mental Health Commission.

On September 26, 2019 the Mental Health Commission passed the following motion:

Interview and vote on nomination of Maria Moore to the Mental Health Commission M/S/C (Castro, Davila) \*Motion to nominate Maria Moore by the Mental Health Commission in order to send to Berkeley City Council for appointment.  
Ayes: Castro, cheema, Davila, Fine, Heda, Kealoha-Blake, Prichett; Noes: None; Abstentions: None; Absent: None.

Also at the September 26, 2019 meeting the Mental Health Commission interviewed Edward Opton for the General Public Interest seat. Mr. Opton is a retired attorney and has a Ph.D in clinical psychology and has volunteered at the National Center for Youth Law to improve mental health treatment for children in foster care. Mr. Opton has also been active in the community working on numerous issues that affect the community.

On September 26, 2019 the Mental Health Commission passed the following motion:

Interview and vote on nomination of Edward Opton to the Mental Health Commission M/S/C (Davila, Prichett) \*Motion to nominate Edward Opton by the Mental Health Commission in order to send to Berkeley City Council for appointment.  
Ayes: Castro, cheema, Davila, Fine, Heda, Kealoha-Blake, Prichett; Noes: None; Abstentions: None; Absent: None.

At the October 24, 2019 meeting the mental Health Commission interviewed Farzaneh Izadi who is a mental health consumer of Berkeley Mental Health. She is also an immigrant who came to the US in 2006. She was formally a teacher and a business owner.

On October 24, 2019 the Mental Health Commission passed the following motion:

Interview and vote on nomination of Farzaneh Izadi to the Mental Health Commission M/S/C (Davila; Kealoha-Blake) Motion to nominate Farzaneh Izadi and send to city council for appointment to the Mental Health Commission.  
Ayes: Castro, cheema, Davila, Fine, Kealoha-Blake, Prichett; Noes: None; Abstentions: None; Absent: Heda

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Jamie Works-Wright, Commission Secretary, (510) 981-7721

Attachments:

1: Resolution

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

APPOINTMENTS OF MARIA MOORE AND FARZANEH IZADI TO THE MENTAL HEALTH COMMISSION AS REPRESENTATIVES OF THE SPECIAL PUBLIC INTEREST CATEGORY; AND EDWARD OPTION AS A REPRESENTATIVE OF THE GENERAL PUBLIC INTEREST CATEGORY

WHEREAS, membership of the Mental Health Commission is composed of thirteen appointments by the City Council as a whole, including one appointment by the Mayor (or designee), six special public interest appointments, two appointments of residents of Albany (one of which shall be a representative of the special public interest category), and four general public interest appointments; and

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

WHEREAS, the Mental Health Commission, at the September 26, 2019 meeting recommended the appointment of Maria Moore and Edward Opton and at October 24, 2019 the Mental Health Commission also recommended the appointment of Farzaneh Izadi to the Mental Health Commission.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council appoints Maria Moore, to the Mental Health Commission, as representative of special public interest category. Edward Opton, to the Mental Health Commission, as representative of the general public interest category and Farzaneh Izadi, to the Mental Health Commission, as representative of the special public interest category, for a three year term beginning January 22, 2020 and ending January 21, 2023.



Office of the City Manager

CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Berkeley Peace & Justice Commission

Submitted by: Igor Tregub, Chairperson

Subject: Resolution: Oppose the new U.S. base construction in Henoko-Oura Bay of Okinawa

RECOMMENDATION

Adopt a resolution in opposition of the new U.S. base construction in Henoko-Oura Bay of Okinawa.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

A new U.S. military base is being constructed in the Pacific Ocean, in Okinawa's Oura Bay in the Henoko region of Okinawa. Oura Bay is one of the most bio-diverse ecosystems on the planet with over 5,300 species and world-renowned coral reef systems. Fully 262 of the species in Oura Bay are endangered, including the dugong, a medium-sized marine mammal, which have been closely monitored internationally by environmental groups due to its diminishing numbers as well as its status as a designated of indigenous historical value.

The construction of this base has been repeatedly opposed by the Okinawan people. Most recently on February 24, 2019, over 70% of Okinawans voted in opposition to the construction of this U.S. Marine Corps base.

At its regular meeting on November 4, 2019, the Peace and Justice Commission recommended that the Council of the City of Berkeley adopt a resolution opposing the new U.S. base construction in Henoko-Oura Bay of Okinawa. The vote for the attached resolution was as follows:

M/S/C: Bohn/Meola

Ayes: Askary, Bohn, Lippman, Maran, Meola, Morizawa, Pancoast, Pierce, Rodriguez

Noes: None

Abstain: None

Absent: al-Bazian, Gussman, Tregub

Excused: None

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts or opportunities associated with the subject of this report. This resolution is a statement against U.S. involvement in grave environmental destruction in the Pacific Ocean off the coast of Okinawa.

RATIONALE FOR RECOMMENDATION

The Japanese government, in partnership with the U.S. government, is causing irreversible harm to the ecosystem by dropping concrete blocks on top of precious coral and suffocating the marine habitat. The construction is already adversely impacting the region, contributing to species collapse and furthering environmental damage already sustained from rapid climate change.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

The City Manager takes no position.

CONTACT PERSON

Igor Tregub, Chairperson, Peace and Justice Commission

Erin Steffen, Commission Secretary, City Manager's Office (510) 981-7017

Attachment:

1. Resolution in opposition of the new U.S. base construction in Henoko-Oura Bay of Okinawa



RESOLUTION NO. ##,###-N.S.  
OPPOSE THE NEW U.S. BASE CONSTRUCTION IN HENOKO-OURA BAY OF  
OKINAWA

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

WHEREAS, a new U.S. military base is being constructed in the Pacific Ocean, in Okinawa's Oura Bay,<sup>i</sup> in the Henoko region of Okinawa. Oura Bay is one of the most bio-diverse ecosystems on the planet with over 5,300 species and world-renowned coral reef systems. 262 of the species in Oura Bay are endangered, including the dugong, a medium-sized marine mammal, which have been closely monitored internationally by environmental groups due to its diminishing numbers as well as its status as a designated cultural property<sup>ii</sup> of indigenous historical value; and

WHEREAS, the Japanese government, in partnership with the U.S. government, is causing irreversible harm to the ecosystem by dropping concrete blocks on top of precious coral and suffocating the marine habitat with dirt and concrete. The construction is already adversely impacting the region, contributing to species collapse and furthering environmental damage already sustained from rapid climate change; and

WHEREAS, the construction of this base has been repeatedly opposed by the Okinawan people.<sup>iii</sup> Most recently on February 24, 2019, over 70% of Okinawans voted in opposition to the construction of this particular U.S. Marine Corps base; and

WHEREAS, Okinawa has already been forced to host nearly 70% of U.S. military facilities in Japan<sup>iv</sup> despite consisting of only 0.6% of Japan's national landmass; and

WHEREAS, this treatment of Okinawa as a colonial military outpost has continued since the Japanese annexation of the once sovereign nation of the Ryūkyū Kingdom. Then during WWII, Okinawan land was destroyed in a war between U.S. and Japan, killing almost a third of the entire Okinawan population. From there, the U.S. construction of military bases began against the will of the Okinawan people and continues today;<sup>v</sup> and

WHEREAS, the Okinawan people have employed all legal and peaceful means of opposing this new base from being forced upon them – from elders staging nonviolent protests and sit-ins to Okinawan governors challenging the Japanese government through the legal system, only to be disregarded in Tokyo and Washington, D.C. Okinawan Diaspora members of Global Uchinanchu Alliance (GUA)<sup>vi</sup> have come together to reach out for support in this international crisis; and

WHEREAS, the City of Berkeley has expressed its solidarity with the Okinawan people by passing a resolution in support of the immediate halting of new U.S. military base

construction at Henoko, Okinawa, passed by the Berkeley City Council on September 9, 2015.<sup>vii</sup>

NOW THEREFORE BE IT RESOLVED that the Council of the City of Berkeley that the City stands in solidarity with the people of Okinawa in demanding the immediate and complete halt of the U.S. Marine Corps base construction and ocean destruction in Henoko, Okinawa.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley ask the City Clerk to send a copy of this resolution to Representative Barbara Lee and Senators Dianne Feinstein and Kamala Harris, and to the chairs of the U.S. House and Senate Committees on Armed Services.

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<sup>i</sup> “Expansion of US Military base puts endangered Henoko Bay Dugong at risk on Okinawa, Japan”, May, 1, 2019 (last update), <https://ejatlas.org/conflict/henoko-bay-dugong-or-us-base-for-okinawa>

<sup>ii</sup> “Okinawa Dugong Lawsuit Judge asks why US govt did not consult with environmental experts and Okinawans about Landfill, Construction Impact on Okinawa Dugong Cultural Heritage”, June 28, 2018, <https://tenthousandthingsfromkyoto.blogspot.com/2018/06/okinawa-dugong-lawsuit-judge-asks-why.html>

<sup>iii</sup> “We shall overcome (戦場ぬ止み Ikusaba Nu Tudumi)” Trailer, YouTube video, October 3, 2015, [https://www.youtube.com/watch?v=FEc\\_D\\_meOBY&list=PL55Jwk9JymqyuApWq7gi08uWQKyZhK3cH&index=20&t=0s](https://www.youtube.com/watch?v=FEc_D_meOBY&list=PL55Jwk9JymqyuApWq7gi08uWQKyZhK3cH&index=20&t=0s)

<sup>iv</sup> Okinawa Prefectural Government, September 2011, “US Military Base Issues in Okinawa.” <https://www.pref.okinawa.jp/site/chijiko/kichitai/documents/us%20military%20base%20issues%20in%20okinawa.pdf>

<sup>v</sup> “Message to Obama from a Veteran in Okinawa,” YouTube video, February 29, 2016, <https://www.youtube.com/watch?v=6p5kXBod1gg&list=PL55Jwk9JymqyuApWq7gi08uWQKyZhK3cH&index=4&t=11s>

<sup>vi</sup> [Global Uchinanchu Alliance](https://uchinanchu.com/), <https://uchinanchu.com/>

<sup>vii</sup> Resolution in support of the immediate halting of new U.S. military base construction at Henoko, Okinawa, passed through the Berkeley City Council on September 9, 2015: [https://www.cityofberkeley.info/...Council/.../2017-05-30\\_Item\\_34\\_Support\\_the\\_Immediate\\_Halting.aspx](https://www.cityofberkeley.info/...Council/.../2017-05-30_Item_34_Support_the_Immediate_Halting.aspx)

CONSENT CALENDAR

January 21, 2020

To: Honorable Members of the City Council  
From: Mayor Jesse Arreguín  
Subject: YMCA of the East Bay Youth & Government Program

RECOMMENDATION

Adopt a Resolution approving the D-13 expenditure of \$1,500 in an amount not to exceed \$300 per Councilmember, to the YMCA of the East Bay's Youth & Government program.

BACKGROUND

The YMCA of the East Bay provides two different programs in Youth & Government. The Model United Nations provides middle schoolers an opportunity to build leadership skills while gaining knowledge about the world around them and different cultures. The Model Legislature & Court gives high schoolers hands-on civic engagement through a five-day trip to Sacramento and the State Capitol, providing extensive knowledge of California's state government and courts system. Both these programs encourages these students to think critically, strengthen interpersonal communication skills, and raise awareness and engagement in community issues.

To help low-income youth participate in the program, they are requesting donations that will be used to cover expenses that may be financially out of reach for some families.

FINANCIAL IMPLICATIONS

\$300 from the Mayor's D-13 account and other Councilmembers who wish to contribute.

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1: Resolution

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR THE YMCA OF THE EAST BAY'S YOUTH & GOVERNMENT PROGRAM

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

WHEREAS, a California non-profit tax exempt corporation YMCA of the East Bay seeks funds in the amount of \$1500 to provide the following public services: Providing low-income youth financing for their Youth & Government program; and

WHEREAS, the Youth & Government program provides middle and high school students with invaluable hands-on experience in critical thinking, communication, and community engagement through the lens of government and democracy.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$300 per office shall be granted to YMCA of the East Bay.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Berkeley Youth Alternatives (BYA) 16th Crab Feed on Thursday, February, 27, 2020: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

#### RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$120 from Councilmember Cheryl Davila, to support Berkeley Youth Alternatives, for their [16<sup>th</sup> Annual Crab Feed Fundraiser](#) on Thursday, February 27, 2020, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Cheryl Davila and Mayor or any other Councilmembers who would like to contribute.

#### BACKGROUND

Berkeley Youth Alternatives (BYA) is community based 501(c) 3 organization that was established in 1969 as a runaway youth shelter. BYA has since expanded its operations to include support for youth and families, with an emphasis on education, health/well-being and economic self-sufficiency. BYA provides quality services such as mental health, case management, academic support, mentoring, health education, sports, fitness, recreation, job training and youth internships. BYA is also certified Small, Local, and Emerging Business (SLEB) vendor, #13-00074, with Alameda County.

We are proposing that the City Council make a minimum grant of \$120 to the Berkeley Youth Alternatives 16th Crab Feed on Thursday, February, 27, 2020, from 7 PM to 9 PM, located at 1255 Allston Way. The funds raised at this event are used to provide services to approximately 1,200 youth and their families per year through a variety of activities.

#### FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact. \$120 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (011-11-102-000-0000-000-411).

#### ENVIRONMENTAL SUSTAINABILITY

Supporting our youth is itself an act of environmental sustainability.

#### CONTACT PERSON

Cheryl Davila,  
Councilmember District 2  
510.981.7120, [cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

#### ATTACHMENT:

1. [Berkeley Youth Alternatives 16th Crab Feed](#) on Thursday, February 27, 2020
2. Resolution

(Limited seating available)



# BYA 16th CRAB FEED



## Thursday, February 27, 2020

**Location: 1255 Allston Way, Berkeley, CA**

(Directions: Take University Avenue, between San Pablo Avenue and Sacramento Street, turn onto Bonar Street, left onto Allston Way.)

**Dinner- 7:00pm to 9:00pm**  
**ALL TICKETS \$60**

Come Early  
No Host Wine  
Bar 6:00 pm

Reserve table for 6. Add \$40.00 to the overall reservation.  
(ex: Table for six \$400.00) Check has to be written by one person to reserve a table.

**ONLY 200 TICKETS AVAILABLE!**



NO  
TICKETS  
AT THE  
DOOR

To order tickets please contact BYA at (510) 845-9010 ext 201 or send payment to:

**BYA, 1255 Allston Way, Berkeley, CA 94702**

Purchase online at <https://donatenow.networkforgood.org/byacrabfeed>



I would like to purchase \_\_\_\_\_ ticket(s) to the event at \$60 each.

I would like to reserve a table at the event \_\_\_\_\_.

I enclose a check payable to **BYA** for

\$ \_\_\_\_\_

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

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

WHEREAS, Councilmember Cheryl Davila has surplus funds in her office expenditure account (budget code 011-11-102-000-0000-000-411); and

WHEREAS, a California non-profit tax-exempt corporation Berkeley Youth Alternatives, a community-serving non-profit is seeking donations of support in the amount of \$120 for their 16th Crab Feed on Thursday, February, 27, 2020, from 7 PM to 9 PM, located at 1255 Allston Way; and

WHEREAS, Berkeley Youth Alternatives provides broad support to Berkeley youth and their families to achieve academic success, sound health and well-being, and economic self-sufficiency;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$250 per office shall be granted to Berkeley Youth Alternatives 16th Crab Feed.







Cheryl Davila  
Councilmember  
District 2

## REVISED AGENDA MATERIAL

**Meeting Date:** January 21, 2020

**Item Description:** Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability

**Submitted by:** Councilmember Cheryl Davila

Updated agenda report and resolution to reflect the actions from December 5, 2019 Council Facilities, Infrastructure, Transportation, Environment and Sustainability Committee meeting:

Send the item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation, the establishment of a new department, in the committee as a discussion item. Also, the committee took action to amend the recommendations:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”
2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.
3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
January 21, 2020  
~~December 3, 2019~~

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability

~~Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 day~~

**RECOMMENDATION**

Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”

~~Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:~~

- ~~1. Establishment of a new department – Create a Climate Emergency Mobilization Department (CEMD) and transition existing city staff (current Chief Sustainability and Resilience Officers) into the new department. The CEMD is proposed to have oversight authority of existing departments and boards regarding planning and coordination of the City’s response to climate change, including public education and outreach. In addition, the CEMD would measure and track ongoing greenhouse gas emissions and pollutants, develop an annual climate emissions budget and identify grant funding.~~
- ~~2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.~~
- ~~2. External Community Engagement – Provide a timeline for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.” As part of this process, the proposal further recommends that community capacity building in the form of training and education be provided, and that potential pilot projects be considered which could be tested in these communities.~~
- ~~3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.~~

~~3. A Report from the City Manager within 90 days regarding: The number of positions to adequately implement and operate the CEM department; and recommendations for funding in the upcoming fiscal year budget.~~

#### POLICY COMMITTEE RECOMMENDATION

On December 5, 2019, the Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to send the item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation, the establishment of a new department, in the committee as a discussion item.

Amend the recommendation to read as follows:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities”.
2. A Report from the City Manager within 90 days regarding: The resources needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding.
3. Recommend that all staff reports address climate change in addition to environmental sustainability.

Vote: All Ayes.

#### BACKGROUND

The Berkeley City Council unanimously passed the Climate Emergency Declaration June 12, 2018. Since then, Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations. There are over 48 cities throughout the United States who have declared, as well as over 1,146 governments and 22 countries throughout the world. The declaration is the first step.

As unprecedented winter wildfires are impacting our City with fierce urgency, we must begin to prepare for our future in these times of climate disruption. Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth’s climate. To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters.

While the wildfires and mudslides demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impact lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South. Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen this after hurricanes Katrina, Sandy, Harvey, Irma and Maria how environmentally and economically vulnerable people have been left to fend for themselves.

The City must therefore aggressively move to reduce and remove greenhouse gas emissions, adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeleyans can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity.

At the December 5, 2019 meeting of the Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Council Committee, the committee requested to send this item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation “the establishment of a new department” in the FITES committee as a discussion item. Also, the committee took action to amend the recommendations: (1) Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities”. (2) Short Term Referral to the City Manager to report back and identify the resources and funding needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding. (3) Implement and require all City Council reports/items, and staff reports include Climate Impacts in addition to Environmental Sustainability.

FISCAL IMPACTS OF RECOMMENDATION

To be determined.

ENVIRONMENTAL SUSTAINABILITY

The Berkeley City Council unanimously passed the Climate Emergency Declaration in June 2018, it is important, now more than ever to take the next step to insure that we are prepared and ready for the climate crisis we will face.

CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

ATTACHMENTS:

1. Resolution
2. Track changes from original Council item

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY TO ESTABLISH A NEW CITY DEPARTMENT CALLED CLIMATE EMERGENCY MOBILIZATION DEPARTMENT

WHEREAS, The Berkeley City Council unanimously passed the Climate Emergency Declaration on June 12, 2018; and

WHEREAS, the cities of Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa

Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations; and

WHEREAS, There are over 48 cities throughout the United States who have declared, as well as over 1,146 governments and 22 countries throughout the world. The declaration is the first step; and

WHEREAS, The Climate Emergency Declaration was the first step, and creating the Climate Emergency Mobilization Department is the next step; and

WHEREAS, As unprecedented winter wildfires and ensuing mudslides destroyed parts of our City and region, a climate emergency mobilization of our City has never been more fiercely urgent; and

WHEREAS, Such an effort must end to the maximum extent technically feasible city-wide greenhouse gas emissions in every sector by 2025 and begin a large-scale effort to safely and justly remove carbon from the atmosphere; and

WHEREAS, Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate; and

WHEREAS, To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters; and

WHEREAS, abnormal wildfires, tornadoes, mudslides and other demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impacted lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South; and

WHEREAS, Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen after Hurricanes Katrina, Sandy, Harvey, Irma and Maria how environmentally and economically vulnerable have been generally left to fend for themselves; and

WHEREAS, The City must therefore aggressively move to reduce and remove greenhouse gas emissions and adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeleyan can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity; and

At the December 5, 2019 meeting of the Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Council Committee, the committee requested to send this item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation "the establishment of a new department" in the FITES committee as a discussion item. Also, the committee took action to amend the recommendations: (1) Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect "marginalized and front-line communities". (2) Short Term Referral to the City Manager to report back and identify the resources and funding needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding. (3) Implement and require all City Council

reports/items, and staff reports include Climate Impacts in addition to Environmental Sustainability.

NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council directs a Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:

Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee:  
1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”

~~Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:~~

~~1. *Establishment of a new department* – Create a Climate Emergency Mobilization Department (CEMD) and transition existing city staff (current Chief Sustainability and Resilience Officers) into the new department. The CEMD is proposed to have oversight authority of existing departments and boards regarding planning and coordination of the City’s response to climate change, including public education and outreach. In addition, the CEMD would measure and track ongoing greenhouse gas emissions and pollutants, develop an annual climate emissions budget and identify grant funding.~~  
~~2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.~~

~~2. *External Community Engagement* – Provide a timeline for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.” As part of this process, the proposal further recommends that community capacity building in the form of training and education be provided, and that potential pilot projects be considered which could be tested in these communities.~~

~~3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.~~

~~3. *A Report from the City Manager within 90 days regarding:* The number of positions to adequately implement and operate the CEM department; and recommendations for funding in the upcoming fiscal year budget.~~

BE IT FURTHER RESOLVED, that the City Council directs the City Planning Department to report back on opportunities for radical greenhouse gas emissions reductions and carbon drawdown and removal opportunities through the City’s General Plan and Community Plan Updates, including on metrics which can prioritize climate-adaptive land use planning.

BE IT FURTHER RESOLVED, that the City Council directs the City Manager or Designee to report back on opportunities and funding to address climate emergencies and mitigation through existing hazard mitigation programs.

BE IT FURTHER RESOLVED, that the City Council direct the City Clerk to work with the City Manager to include greenhouse gas impact statements and greenhouse gas removal or reduction statements in all relevant Council motions, much as it currently includes fiscal impact statements.



Cheryl Davila  
Councilmember  
District 2

## REVISED AGENDA MATERIAL

**Meeting Date:** January 21, 2020

**Item Description:** Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability

**Submitted by:** Councilmember Cheryl Davila

Updated agenda report and resolution to reflect the actions from December 5, 2019 Council Facilities, Infrastructure, Transportation, Environment and Sustainability Committee meeting:

Send the item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation, the establishment of a new department, in the committee as a discussion item. Also, the committee took action to amend the recommendations:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”
2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.
3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
January 21, 2020  
~~December 3, 2019~~

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability

~~Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 day~~

**RECOMMENDATION**

Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”

~~Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:~~

- ~~1. Establishment of a new department – Create a Climate Emergency Mobilization Department (CEMD) and transition existing city staff (current Chief Sustainability and Resilience Officers) into the new department. The CEMD is proposed to have oversight authority of existing departments and boards regarding planning and coordination of the City’s response to climate change, including public education and outreach. In addition, the CEMD would measure and track ongoing greenhouse gas emissions and pollutants, develop an annual climate emissions budget and identify grant funding.~~
- ~~2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.~~
- ~~2. External Community Engagement – Provide a timeline for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.” As part of this process, the proposal further recommends that community capacity building in the form of training and education be provided, and that potential pilot projects be considered which could be tested in these communities.~~
- ~~3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.~~

~~3. A Report from the City Manager within 90 days regarding: The number of positions to adequately implement and operate the CEM department; and recommendations for funding in the upcoming fiscal year budget.~~

## BACKGROUND

The Berkeley City Council unanimously passed the Climate Emergency Declaration June 12, 2018. Since then, Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations. There are over 48 cities throughout the United States who have declared, as well as over 1,146 governments and 22 countries throughout the world. The declaration is the first step.

As unprecedented winter wildfires are impacting our City with fierce urgency, we must begin to prepare for our future in these times of climate disruption. Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate. To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters.

While the wildfires and mudslides demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impact lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South. Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen this after hurricanes Katrina, Sandy, Harvey, Irma and Maria how environmentally and economically vulnerable people have been left to fend for themselves.

The City must therefore aggressively move to reduce and remove greenhouse gas emissions, adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeleyans can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity.

At the December 5, 2019 meeting of the Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Council Committee, the committee requested to send this item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation "the establishment of a new department" in the FITES committee as a discussion item. Also, the committee took action to amend the recommendations: (1) Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect "marginalized and front-line communities". (2) Short Term Referral to the City Manager to report back and identify the resources and funding needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding. (3) Implement and require all City Council reports/items, and staff reports include Climate Impacts in addition to Environmental Sustainability.

## FISCAL IMPACTS OF RECOMMENDATION

To be determined.

## ENVIRONMENTAL SUSTAINABILITY

The Berkeley City Council unanimously passed the Climate Emergency Declaration in June 2018, it is important, now more than ever to take the next step to insure that we are prepared and ready for the climate crisis we will face.

CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

ATTACHMENTS:

1. Resolution
2. [Track changes from original Council item](#)

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY TO ESTABLISH A NEW CITY DEPARTMENT CALLED CLIMATE EMERGENCY MOBILIZATION DEPARTMENT

WHEREAS, The Berkeley City Council unanimously passed the Climate Emergency Declaration on June 12, 2018; and

WHEREAS, the cities of Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations; and

WHEREAS, There are over 48 cities throughout the United States who have declared, as well as over 1,146 governments and 22 countries throughout the world. The declaration is the first step; and

WHEREAS, The Climate Emergency Declaration was the first step, and creating the Climate Emergency Mobilization Department is the next step; and

WHEREAS, As unprecedented winter wildfires and ensuing mudslides destroyed parts of our City and region, a climate emergency mobilization of our City has never been more fiercely urgent; and

WHEREAS, Such an effort must end to the maximum extent technically feasible city-wide greenhouse gas emissions in every sector by 2025 and begin a large-scale effort to safely and justly remove carbon from the atmosphere; and

WHEREAS, Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate; and

WHEREAS, To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters; and

WHEREAS, abnormal wildfires, tornadoes, mudslides and other demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impacted lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South; and

WHEREAS, Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen after Hurricanes Katrina, Sandy, Harvey, Irma and Maria how environmentally and economically vulnerable have been generally left to fend for themselves; and

WHEREAS, The City must therefore aggressively move to reduce and remove greenhouse gas emissions and adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeley can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity; and

At the December 5, 2019 meeting of the Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Council Committee, the committee requested to send this item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation “the establishment of a new department” in the FITES committee as a discussion item. Also, the committee took action to amend the recommendations: (1) Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities”. (2) Short Term Referral to the City Manager to report back and identify the resources and funding needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding. (3) Implement and require all City Council reports/items, and staff reports include Climate Impacts in addition to Environmental Sustainability.

NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council directs a Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:

Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee:  
1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”

Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:

1. Establishment of a new department – Create a Climate Emergency Mobilization Department (CEMD) and transition existing city staff (current Chief Sustainability and Resilience Officers) into the new department. The CEMD is proposed to have oversight authority of existing departments and boards regarding planning and coordination of the City’s response to climate change, including public education and outreach. In addition, the

~~CEMD would measure and track ongoing greenhouse gas emissions and pollutants, develop an annual climate emissions budget and identify grant funding.~~

~~2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.~~

~~2. *External Community Engagement* - Provide a timeline for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect "marginalized and front-line communities." As part of this process, the proposal further recommends that community capacity building in the form of training and education be provided, and that potential pilot projects be considered which could be tested in these communities.~~

~~3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.~~

~~3. *A Report from the City Manager within 90 days regarding:* The number of positions to adequately implement and operate the CEM department; and recommendations for funding in the upcoming fiscal year budget.~~

BE IT FURTHER RESOLVED, that the City Council directs the City Planning Department to report back on opportunities for radical greenhouse gas emissions reductions and carbon drawdown and removal opportunities through the City's General Plan and Community Plan Updates, including on metrics which can prioritize climate-adaptive land use planning.

BE IT FURTHER RESOLVED, that the City Council directs the City Manager or Designee to report back on opportunities and funding to address climate emergencies and mitigation through existing hazard mitigation programs.

BE IT FURTHER RESOLVED, that the City Council direct the City Clerk to work with the City Manager to include greenhouse gas impact statements and greenhouse gas removal or reduction statements in all relevant Council motions, much as it currently includes fiscal impact statements.

**SOPHIE HAHN**

Berkeley City Council, District 5  
 2180 Milvia Street, 5th Floor  
 Berkeley, CA 94704  
 (510) 981-7150  
 shahn@cityofberkeley.info

CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Sophie Hahn and Mayor Jesse Arreguin  
 Subject: National Zero Waste Conference: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

1. Adopt a resolution co-sponsoring the National Zero Waste Conference at UC Berkeley on March 18-19, 2020.
2. Adopt a resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$250 from Councilmember Hahn, to the National Recycling Coalition, the fiscal sponsor of the conference, with funds relinquished to the City's general fund for this purpose from the discretionary Council office budget of Councilmember Hahn, and any other Councilmembers who would like to contribute.

BACKGROUND

The National Zero Waste Conference is a two day educational and networking event organized by the National Recycling Coalition (NRC) as their contribution to Zero Waste Week. The upcoming National Zero Waste Conference will be held at UC Berkeley.

NRC is a non-profit organization that is focused on the promotion and enhancement of recycling in the U.S. NRC is composed of 23 affiliated recycling organizations, with a network of more than 6,000 members that extends across waste reduction, reuse, recycling, and composting. The organization works to maintain a prosperous and productive recycling system that is committed to accelerating the conservation of natural resources, as well as sustainable approaches to the management of discarded materials.

The upcoming National Zero Waste Conference will be held at the ASUC Student Union: Martin Luther King Jr. Building, 2495 Bancroft Way, at UC Berkeley on March 18-19, 2020. More information can be found at <https://zwconference.org/>.

FISCAL IMPACTS

A total of up to \$4,500 from Councilmembers' discretionary budgets.

ENVIRONMENTAL SUSTAINABILITY

This item is consistent with the City's vision on sustainability.

CONTACT: Sophie Hahn, District 5: (510) 981-7150

ATTACHMENTS:

- 1: Resolution on City Sponsorship
- 2: Resolution on Expenditure of Surplus Funds



RESOLUTION #####-N.S.

CITY SPONSORSHIP OF THE NATIONAL ZERO WASTE CONFERENCE  
TO BE HELD AT UC BERKELEY, MARCH 18-19, 2020

WHEREAS, the National Recycling Coalition (NRC) is a non-profit organization that is focused on the promotion and enhancement of recycling in the U.S., made up of 23 affiliated recycling organizations, with a network of more than 6,000 members that extends across waste reduction, reuse, recycling, and composting.

WHEREAS, NRC works to maintain a prosperous and productive recycling system that is committed to accelerating the conservation of natural resources, as well as sustainable approaches to the management of discarded materials.

WHEREAS, NRC is organizing a National Zero Waste Conference, a two day educational and networking event, to hear from national and international experts on the latest updates and best practices to get to Zero Waste.

WHEREAS, the City of Berkeley has a longstanding commitment to reducing and ultimately eliminating/diverting the waste that goes to landfills, and established one of the first municipal recycling programs in the nation.

WHEREAS, the City of Berkeley's new Single Use Foodware and Litter Reduction Ordinance, a component of the City's Zero Waste goal, is designed to reduce the use and disposal of single use foodware, including disposable cups, lids, utensils, straws, and clamshells, which are a major contributor to street litter, marine pollution, harm to wildlife, greenhouse gas emissions, and waste sent to landfills.

WHEREAS, the upcoming National Zero Waste Conference will be held at the ASUC Student Union: Martin Luther King Jr. Building, 2495 Bancroft Way, at UC Berkeley on March 18-19, 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley hereby co-sponsors the National Zero Waste Conference, and the National Recycling Coalition has permission to use the City's name and logo in the conference's promotional materials and signage naming the City of Berkeley as a co-sponsor solely for the purpose of the City indicating its endorsement of the National Zero Waste Conference at UC Berkeley on March 18-19, 2020.

BE IT FURTHER RESOLVED that this co-sponsorship does not: (1) authorize financial support, whether in the form of fee waivers, a grant or provision of City services for free; (2) constitute the acceptance of any liability, management, or control on the part of the City for or over the National Zero Waste Conference; or (3) constitute regulatory approval of the event.

RESOLUTION #####-N.S.

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

WHEREAS, the National Recycling Coalition (NRC) is a non-profit organization that is focused on the promotion and enhancement of recycling in the U.S., made up of 23 affiliated recycling organizations, with a network of more than 6,000 members that extends across waste reduction, reuse, recycling, and composting.

WHEREAS, NRC works to maintain a prosperous and productive recycling system that is committed to accelerating the conservation of natural resources, as well as sustainable approaches to the management of discarded materials.

WHEREAS, NRC is organizing a National Zero Waste Conference, a two day educational and networking event, to hear from national and international experts on the latest updates and best practices to get to Zero Waste.

WHEREAS, the City of Berkeley has a longstanding commitment to reducing and ultimately eliminating/diverting the waste that goes to landfills, and established one of the first municipal recycling programs in the nation.

WHEREAS, the City of Berkeley's new Single Use Foodware and Litter Reduction Ordinance, a component of the City's Zero Waste goal, is designed to reduce the use and disposal of single use foodware, including disposable cups, lids, utensils, straws, and clamshells, which are a major contributor to street litter, marine pollution, harm to wildlife, greenhouse gas emissions, and waste sent to landfills.

WHEREAS, the upcoming National Zero Waste Conference will be held at the ASUC Student Union: Martin Luther King Jr. Building, 2495 Bancroft Way, at UC Berkeley on March 18-19, 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by Councilmember Hahn of \$250 and any funds, up to \$500 per Council Office Budget, from the Mayor and other Councilmembers shall be granted to the National Recycling Coalition to fund the National Zero Waste Conference and to support its efforts to promote best practices to get to Zero Waste.



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf  
Subject: Co-sponsor Supervisor Keith Carson’s Berkeley 2020 Census Town Hall

RECOMMENDATION

That the City of Berkeley co-sponsor Supervisor Keith Carson’s Berkeley 2020 Census Town Hall to be held on February 20, 2020 from 5:30 – 7 PM at the Ed Roberts Campus. By co-sponsoring, the Mayor and Councilmembers pledge to publicize and promote the Town Hall to their constituents, and attend themselves if possible.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

Alameda County Supervisor Keith Carson is holding a number of Town Halls in his district. This Town Hall is specifically for the City of Berkeley.

Council has shown its support for a successful 2020 Census count. On September 10, 2019<sup>th</sup> the City Council unanimously approved Resolution 69-072-N.S. recognizing the Importance of the 2020 Census and encouraging residents of the City of Berkeley to promote and complete the Census to ensure a fair and complete count. Council also met for a Work Session on Census 2020 on October 22<sup>nd</sup>, 2020.

The City has formed a Census 2020 Complete Count Committee which consists of representatives throughout the organization, and dedicated a new temporary position to work on Census outreach efforts and coordination in Berkeley.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

Councilmember Wengraf                      Council District 6                      510-981-7160

Attachments:

- 1: Resolution 69-072-N.S

RESOLUTION NO. 69,072-N.S.

A RESOLUTION RECOGNIZING THE IMPORTANCE OF THE 2020 CENSUS AND ENCOURAGING RESIDENTS OF THE CITY OF BERKELEY TO PROMOTE AND COMPLETE THE CENSUS TO ENSURE A FAIR AND COMPLETE COUNT

WHEREAS, the U.S. Census Bureau is required by Article I, Section 2 of the U.S. Constitution to conduct an accurate count of the population every ten years; and

WHEREAS, the next enumeration will be April 1, 2020 and the 2020 Census will be the first to rely heavily on online responses; and

WHEREAS, the primary and perpetual challenge facing the U.S. Census Bureau is the undercount of certain population groups; and

WHEREAS, that challenge is amplified in California, given the size of the state and the diversity of communities; and

WHEREAS, California has a large percentage of individuals that are considered traditionally hard to count; and

WHEREAS, these diverse communities and demographic populations are at risk of being missed in the 2020 Census; and

WHEREAS, California receives nearly \$77 billion in federal funding that relies, in part, on census data; and

WHEREAS, a complete and accurate count of California's population is essential; and

WHEREAS, the data collected by the decennial Census determines the number of seats each state has in the U.S. House of Representatives and is used to distribute billions of dollars in federal funds to state and local governments; and

WHEREAS, the data is also used in the redistricting of state legislatures, county boards of supervisors and city councils; and

WHEREAS, the decennial census is a massive undertaking that requires cross-sector collaboration and partnership in order to achieve a complete and accurate count; and

WHEREAS, California's leaders have dedicated a historic amount of funding and resources to ensure every Californian is counted once, only once and in the right place; and

WHEREAS, this includes coordination between tribal, city, county, state governments, community-based organizations, education, and many more; and

WHEREAS, the U.S. Census Bureau is facing several challenges with Census 2020, including constrained fiscal environment, rapidly changing use of technology, declining response rates, increasingly diverse and mobile population, thus support from partners and stakeholders is critical; and

WHEREAS, the City of Berkeley is committed to ensuring a complete and accurate count by partnering with other local governments, the State, businesses, schools, and community organizations; and

WHEREAS, the City of Berkeley has committed resources to perform and implement outreach and communication strategies to not only raise community awareness but to ensure that the City's the hardest-to-count individuals are counted.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley recognizes the importance of the 2020 U.S. Census and encourages residents to promote and complete the Census to ensure a complete, fair, and accurate count.

The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2019 by the following vote:

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

Noes: None.

Absent: None.

Jesse Arreguin, Mayor



Attest:   
Mark Numainville, City Clerk





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Wengraf, Hahn, Bartlett and Mayor Arreguin  
 Subject: Holocaust Remembrance Day Event: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 each from Councilmembers Wengraf, Hahn and Bartlett and Mayor Arreguin, to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf, Hahn, Bartlett and Mayor Arreguin's discretionary Council Office Budgets, and all other Councilmembers who would like to contribute, allows the City of Berkeley to hold the City's 18<sup>th</sup> Annual Holocaust Remembrance Day program. All are invited to attend on Sunday, April 19<sup>th</sup>, 11:30 AM at the Magnes Collection of Jewish Art and Life.

FINANCIAL IMPLICATIONS

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

BACKGROUND

The City of Berkeley's 18<sup>th</sup> Annual Holocaust Remembrance Day program includes a candle lighting ceremony, a Holocaust Survivor's story, an artist presentation, a grandchild's story, live cultural music, and refreshments afterwards. The community event invites attendees to enjoy Jewish history, honor those who survived and perished in the Holocaust and strengthen convictions to never let the Holocaust happen again.

Expenses for this event, including rental rates and auxiliary costs, have increased dramatically over the last few years. We are asking for Councilmember's generous support.

ENVIRONMENTAL SUSTAINABILITY

No impact

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments: 1: Resolution

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

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

WHEREAS, Councilmembers Susan Wengraf, Sophie Hahn, Ben Bartlett and Mayor Arreguin have surplus funds in their office expenditure account and will contribute \$500 each, and invite other Councilmembers to join them in contributing; and

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

WHEREAS, the provision of such services would fulfill the municipal public purpose of providing a community program supporting Holocaust survivors, community recognition and education about the Holocaust, and unity among Berkeley residents. The grants provide a spacious venue, video documentation, and light refreshments.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget, up to \$500 per office, shall be granted to the Jewish Community Center to fund the City of Berkeley's 18<sup>th</sup> Annual Holocaust Remembrance Day program on April 19<sup>th</sup>, 2020.





Fair Campaign Practices Commission

PUBLIC HEARING

January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Fair Campaign Practices Commission  
 Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission  
 Subject: Amendments to the Berkeley Election Reform Act to prohibit  
 Officeholder Accounts

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt an ordinance amending the Berkeley Election Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts (See [Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission](#)).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

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 November 21, 2019.

**Action:** M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (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

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

## **Definition of an Officeholder Account**

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, [Section 18531.62](#) (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's [Public Access Portal](#).) If, however, a complaint is filed that an Officeholder Account is used for

campaign contributions or to pay “campaign expenses,” BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda’s conclusions remain valid and are still controlling guidance.

### **Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official’s Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

### **Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for “campaign expenses,” BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a “campaign expense,” would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder’s position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent’s name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not “campaign expenses,” also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

### **Recommendation**

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. ([Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10](#))

#### **Part 8 - OFFICEHOLDER ACCOUNTS**

##### **12.06.810 - Officeholder account prohibited.**

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

#### **2.12.157 Officeholder Account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

#### **2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

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<sup>1</sup> Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

#### ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

#### CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

#### CONTACT PERSON

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

#### Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

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

OFFICERHOLDER ACCOUNT PROHIBITED

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

**BMC 2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation


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## GOVERNMENT CODE - GOV

**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 5. Limitations on Contributions [85100 - 85802]** ( Chapter 5 added June 7, 1988, by initiative Proposition 73. )

### ARTICLE 3. Contribution Limitations [85300 - 85321]

( Article 3 added June 7, 1988, by initiative Proposition 73. )

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.



(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees.

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

- (A) Paying outstanding officeholder expenses.
- (B) Repaying contributions to contributors to the officeholder account.
- (C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

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apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

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<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

**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 prohibition of officeholder accounts.

The hearing will be held on, January 21, 2020, 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 **January 9, 2020**.

For further information, please contact Samuel Harvey, 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:** January 10, 2020 – 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 January 9, 2020.

Mark Numainville, City Clerk



Fair Campaign Practices Commission

PUBLIC HEARING

January 21, 2020

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

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt an ordinance amending the Berkeley Elections Reform Act, BMC 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 November 21, 2019.

Action: M/S/C (Smith/McLean) to adopt the proposed amendments to BERA related to public financing.

Vote: Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: None; Abstain: None; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, the 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

The City's public-financing program, created by the Fair Elections Act of 2016, sets specific dollar amounts for contribution limits, the fundraising threshold to qualify to participate in the program, the total funding available to candidates, and the value of capital assets purchased with public campaign funds.

The Act requires the Fair Campaign Practices Commission to make cost-of-living adjustments to these dollar amounts, among others, during every odd-numbered year

based on the Consumer Price Index. (See BMC, §§ 2.12.075, 2.12.545.) The Commission approved cost-of-living adjustments for the 2020 election cycle at its September 19, 2019 meeting and adopted a regulation codifying these adjustments at its November 21, 2019 meeting. The Commission followed the formula set by the State Fair Political Practices Commission, which also regularly issues cost-of-living adjustments through regulation. (See, e.g., FPPC Regulation 18545, 2 Cal. Code Regs., § 18545.)

At the November meeting, the Commission also adopted minor amendments to the corresponding Berkeley Election Reform Act (BERA) provisions to state expressly that cost-of-living adjustments are issued by regulation. This will avoid any possible confusion by candidates and the public about the operative dollar amounts, while allowing the Commission to make routine cost-of-living adjustments without needing to amend BERA.

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 clarifying language for several passages.

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
Samuel Harvey, Commission Secretary, Fair Campaign Practices Commission, 981-6998

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT RELATED TO
PUBLIC FINANCING FOR CAMPAIGNS

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

Section 1. That Berkeley Municipal Code Section 2.12.167 is amended to read as follows:

2.12.167 Qualified contribution.

“Qualified Contribution” means a monetary contribution, excluding loans, made directly in aid of the nomination or election of one or more candidates not greater than fifty dollars (\$50) made by a natural person resident of the City of Berkeley. [This dollar amount may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.](#)

Section 2. 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). [These dollar amounts may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.](#)

- 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 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.
- 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 3. 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.

[These dollar amounts may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.](#)

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 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 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 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 4. 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) Any expense that provides a direct personal benefit to the candidate, including clothing and other items related to the candidate's personal appearance;
 - b) 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;
 - c) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
 - d) An independent expenditure as defined in Berkeley Municipal Code Section 2.12.142 as may be amended;
 - e) 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](#).
- D. [The dollar amounts in Section 2.12.530.B.3.b may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.](#)

Section 5. That Berkeley Municipal Code Section 2.12.545 is amended to read as follows:

2.12.545 Cost of living adjustments.

The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.500.A.3, 2.12.505.B and 2.12.530.B.~~2.c~~[3.b](#) for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections 2.12.167, 2.12.500.A.3 and 2.12.530.B.2.c and one thousand dollars (\$1,000) with respect to Section 2.12.505.B.

Section 6. 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, January 21, 2020 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 as of **January 9, 2020**.

For further information, please contact Samuel Harvey, 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.

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Published: January 10, 2020 – The Berkeley Voice
Pursuant to Berkeley Municipal Code Section 2.12.051

~~~~~  
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 January 9, 2020.

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





Public Works Commission

ACTION CALENDAR

January 21, 2020

*(Continued from December 10, 2019)*

To: Honorable Mayor and Members of the City Council

From: Public Works Commission

Submitted by: Ray Yep, Chair, Public Works Commission

Subject: Public Works Commission Recommendation for the Five-Year Paving Plan

RECOMMENDATION

Adopt a resolution that recommends approval of the Five-Year Paving Plan for FY2020 to FY2024 as proposed by Staff and recommends the creation of a Long-Term Paving Master Plan.

SUMMARY

This Report to Council is comprised of three sections:

1. Recommendations on the City's Proposed 5-Year Paving Plan
2. Report to Council on requested actions from 2017 and 2018
3. Recommendation from the Public Works Commission (PWC) to address the on-going paving condition deficit through the creation and implementation of a Long-Term Paving Master Plan.

The City of Berkeley's Street Rehabilitation and Repair Policy (Street Policy) requires that a 5-year paving plan be reviewed each year and adopted formally by the City Council, with advice from the PWC. The Rehabilitation Plan (commonly called the Paving Plan) for FY 2020 to FY 2024 has been reviewed by the PWC and it is recommending adoption of all five years of the plan.

At their meetings in December 2017 and 2018, City Council directed Staff to coordinate with the PWC on the items outlined in their motions. A progress report on the action items was submitted to Council on July 24, 2018. All of the action items have been worked on and this report highlights the status.

Berkeley's streets are in an "at-risk" condition, far from the City's target of having our streets in "good" condition, and continue to decline year on year. The PWC recommends that a master plan be prepared to understand the funding and resources needed to improve Berkeley's streets to a "good" condition.

FISCAL IMPACTS OF RECOMMENDATION

This Paving Plan is based on the Adopted Biennial Budget for Fiscal Years 2020 & 2021, and on the following estimated available funding levels from all sources, including State Transportation (Gas) Tax, Measure B, Measure BB, Measure F, and the General Fund.

| Five-Year Paving Program Funding Sources by Year, in \$ |                  |                  |                  |                  |                  |
|---------------------------------------------------------|------------------|------------------|------------------|------------------|------------------|
| Fund Description                                        | FY 2020          | FY 2021          | FY 2022          | FY 2023          | FY 2024          |
| State Transportation Tax                                | 495,303          | 495,303          | 495,303          | 495,303          | 495,303          |
| State Transportation Tax –SB1                           | 1,500,000        | 1,700,000        | 1,700,000        | 2,000,000        | 2,000,000        |
| Measure B - Local Streets & Roads                       | 700,000          | 1,000,000        | 700,000          | 0                | 0                |
| Measure BB – Local Streets & Roads                      | 2,200,000        | 1,700,000        | 2,000,000        | 2,700,000        | 2,700,000        |
| Measure F Vehicle -Registration Fee                     | 155,000          | 155,000          | 155,000          | 155,000          | 155,000          |
| Capital Improvement Fund                                | 1,925,000        | 1,925,000        | 1,925,000        | 1,925,000        | 1,925,000        |
| <b>TOTAL</b>                                            | <b>6,975,303</b> | <b>6,975,303</b> | <b>6,975,303</b> | <b>7,272,303</b> | <b>7,272,303</b> |

In addition to the City's program funding, additional grant and bond funding has been made available for paving in FY 2020 and 2021, summarized below.

| Other Funding for Paving by Year, in \$ |                   |                  |          |          |          |
|-----------------------------------------|-------------------|------------------|----------|----------|----------|
| Funding Source                          | FY 2020           | FY 2021          | FY 2022  | FY 2023  | FY 2024  |
| Measure T1 approved                     | 7,500,000         | 1,000,000        | 0        | 0        | 0        |
| Grants                                  | 2,777,000         | 1,200,000        | 0        | 0        | 0        |
| <b>TOTAL</b>                            | <b>10,277,000</b> | <b>2,200,000</b> | <b>0</b> | <b>0</b> | <b>0</b> |

The PWC is recommending the preparation of a Long-Term Paving Master Plan. This is currently not budgeted and a request to fund the work needs to be prepared and submitted.

CURRENT SITUATION AND ITS EFFECTS

In December 2017 and 2018, the PWC made recommendations on the 5-year paving plan and provided a detailed analysis of Berkeley's street condition in our reports to Council. Based on the city-wide Pavement Condition Index (PCI), Berkeley's streets continue to be evaluated as "at risk," and do not meet the City's target to be in "good" condition. Council requested certain analysis and action be taken.

This report addresses the following topics:

1. Recommendations on the City's Proposed 5-Year Paving Plan
2. Report to Council on requested actions from 2017 and 2018

3. Recommendation from the Public Works Commission (PWC) to address the on-going paving condition deficit through the creation and implementation of a Long-Term Paving Master Plan.

#### Review of 5-year Paving Plan

A significant amount of street paving was done in the summer of 2019. This includes the paving delayed from 2018, the paving approved for 2019, and paving the Panoramic Hill area.

Staff prepared a list of paving projects for the new 5-year planning period (FY 2020 – 2024). This was prepared using guidance from Berkeley’s Street Rehabilitation Policy, StreetSaver program analysis, knowledge of what has been accomplished in recent years, and available funding. The proposed plan is summarized as follows.

|                                        | FY2020         | FY2021         | FY2022         | FY2023         | FY2024         | Total            | % of Total |
|----------------------------------------|----------------|----------------|----------------|----------------|----------------|------------------|------------|
| <b><u>Square Footage of Paving</u></b> |                |                |                |                |                |                  |            |
| Arterials, sq. ft.                     | 84,360         | 0              | 77,580         | 6,600          | 0              | 168,540          | 6          |
| Collectors, sq. ft.                    | 400,480        | 6,900          | 58,810         | 63,250         | 163,170        | 754,710          | 26         |
| Residential, sq. ft.                   | 284,758        | 477,584        | 474,528        | 366,739        | 365,668        | 1,969,277        | 68         |
| <b>Total sq. ft.</b>                   | <b>769,598</b> | <b>546,584</b> | <b>610,918</b> | <b>436,589</b> | <b>528,838</b> | <b>2,892,527</b> | <b>100</b> |
| <b><u>Miles</u></b>                    |                |                |                |                |                |                  |            |
| Arterials, miles                       | 0.32           | 0.00           | 0.41           | 0.04           | 0.00           | 0.77             | 5          |
| Collectors, miles                      | 1.77           | 0.51           | 0.23           | 0.62           | 0.81           | 3.94             | 24         |
| Residential, miles                     | 1.58           | 3.33           | 2.39           | 2.17           | 1.93           | 11.40            | 71         |
| <b>Total miles</b>                     | <b>3.67</b>    | <b>3.84</b>    | <b>3.03</b>    | <b>2.83</b>    | <b>2.74</b>    | <b>16.11</b>     | <b>100</b> |
| <b><u>Cost</u></b>                     |                |                |                |                |                |                  |            |
| Arterials, \$millions                  | \$0            | \$0            | \$0.896        | \$0.078        | \$0            | \$0.974          | 3          |
| Collectors, \$millions                 | \$2.521        | \$0.881        | \$0.956        | \$1.290        | \$1.946        | \$7.594          | 24         |
| Residential, \$millions                | \$3.744        | \$5.041        | \$2.996        | \$3.252        | \$3.957        | \$18.990         | 60         |
| Discretionary, \$millions              | \$0            | \$1.046        | \$1.046        | \$1.091        | \$1.091        | \$4.274          | 13         |
| <b>Total cost, \$millions</b>          | <b>\$6.265</b> | <b>\$6.968</b> | <b>\$5.894</b> | <b>\$5.711</b> | <b>\$6.994</b> | <b>\$31.832</b>  | <b>100</b> |

The above summary does not include \$7.5 million in FY 2020, and \$1 million in FY 2021 from Measure T1 funding. It also does not include \$3.98 million in grant funding in FY2020 and FY2021.

The PWC paving subcommittee discussed the plan with Public Works Department staff and we have the following comments.

1. The Paving Plan uses asphalt paving technology. As such, the plan is not contributing to reducing greenhouse gas emissions. The PWC encourages staff to use greener and more sustainable technologies to help meet our climate action

goals. One suggestion is to start calling this a “street surface treatment plan” and not paving plan.

2. Staff prepared a process flow diagram that describes the inputs used to prepare the 5-year paving plan. This document provides a high-level overview of all the work that staff puts into the development of the paving plan and it has been very informative for the PWC. This has been included as Attachment 3 to this report for Council’s review.
3. Many of the City’s streets with the lowest PCI are residential streets. The proposed plan by staff shifts more focus of the paving plan to residential streets. While this is outside of the City’s Paving Policy for allocation of paving funds by street type, this plan helps address the roads that are in the greatest need and will do the most to improve the City-wide average PCI. The PWC believes that on a long-term basis, the Paving Policy is still valid to prioritize funding for arterials, collectors, bike routes, and bus routes. The following is a breakdown as compared to the Paving Policy:

|                     | <b>Cost Breakdown<br/>Per Paving Policy</b> | <b>Cost Breakdown<br/>Per 5-Year Paving Plan<br/>(FY2020-2024)</b> |
|---------------------|---------------------------------------------|--------------------------------------------------------------------|
| Arterial streets    | 10%                                         | 3%                                                                 |
| Collector streets   | 50%                                         | 24%                                                                |
| Residential streets | 25%                                         | 60%                                                                |
| Discretionary       | 15%                                         | 13%                                                                |

4. The plan was reviewed with the City of Berkeley’s Bicycle Plan 2017. Of the total length of streets to be paved, 5.8 miles (36%) are current or future bike routes. However, of those 5.8 miles, 1.6 miles (27%) are on Hopkins or Cedar and just doing the pavement does not bring the streets to the requirements of the Berkeley Bicycle Plan. To complete the bikeways on these streets, additional funding is needed from the Transportation Division and a project is needed prior to paving beginning on these streets. The plan was also reviewed with the Transportation Commission and with their concerns about bike routes.
5. The PWC has reviewed the plan for contiguous streets and that the work is bundled for cost effective implementation. This is balanced with having the paving work be spread across all Council Districts of the City. Over the 5-year Paving Plan, the cost is distributed between 7% to 16% for each District.
6. The PWC agrees with including the streets that were approved under Phase 1 of Measure T1. However, the PWC recommends that bond funds be used only for work that will last for at least as long as the duration of the bond repayment period (this would be 40 years in the case of projects funded by Measure T-1 bond proceeds). Road treatments that match this recommendation only include full street reconstruction work, as other standard maintenance may extend the life of these assets beyond the duration of the bond repayment period. Maintenance work, such

as overlays, cape and slurry seals, should be funded from the Paving Program funds or the General Fund.

7. Specific attention should be given to the Adeline Corridor Specific Plan and its proposed changes to the street alignment. The street will be repaved using Measure T1 funds. This means that changes to the street may occur before the debt financing is paid off.
8. The PWC agrees that 15% of the available funding should be reserved for discretionary and/or demonstration projects. The PWC is in the process of developing a recommendation for criteria to help prioritize projects to be funded with the discretionary reserve.

#### Progress with Council Requested Actions

At their meetings in December 2017 and 2018, City Council directed Staff to coordinate with the PWC on the items outlined in their motions. A progress report on the action items was submitted to Council on July 24, 2018. Progress continues to be made on the action items and we would like to highlight the following.

1. Use of life cycle cost analysis – The City received a grant from the Metropolitan Transportation Commission (MTC) for technical assistance to evaluate life cycle cost analysis for street paving technologies. The MTC has retained Pavement Engineering Inc. (PEI) to conduct the analysis. The PWC paving sub-committee is working closely with PEI and staff on the study. The study will evaluate the life cycle cost of asphalt and alternative technologies, including permeable pavement, and will consider multiple benefits from each. These benefits, called externalities, include considerations for attenuating storm water peak flows, improving water quality, reducing traffic speeds, enhanced public safety, and reducing greenhouse gas emissions. PEI's analysis is projected to be completed in fall 2019.
2. Use of 15% discretionary and demonstration funds – The PWC paving sub-committee is working with staff to identify potential sites for permeable pavement projects or alternative durable pavement technologies. We are developing a matrix of criteria and candidate locations. The criteria include current condition, soil permeability, constructability, location attributes, life cycle cost analysis, and other factors. An allocation of 15% discretionary and demonstration funds has been included in FY2021-2024.
3. Work with consultants who have experience with long-lasting innovative technologies – The City retained several new on-call civil engineering consultants in 2018. The consultants include Bellecci and Associates, Harrison Engineering Inc., Pavement Engineering Inc., and Mark Thomas Company. All of these firms have demonstrated experience with long-lasting innovative and green infrastructure.
4. Report to Council on funding sources for scheduled and completed paving – A report to Council was made on September 10, 2019 on the breakdown of paving costs.

5. Annual report to Council on Measure M – The Public Works Department staff will prepare a report on the performance of Measure M at the completion of the 2019 paving season and the completion of the Woolsey Street stormwater cistern project.
6. Consult with Transportation Commission – Members from the Transportation Commission have participated at the PWC’s paving sub-committee meetings and a presentation of the 5-year paving plan was given to the Transportation Commission on June 20, 2019.

Master Plan to Improve the Condition of Berkeley’s Streets

The current citywide average PCI is 58 on a scale of 100, and is firmly in the “at risk,” category. Streets in this category tend to degrade at a more accelerated rate than those in a “good” or “fair” condition. Under the proposed paving plan, the PCI is estimated to dip to 52 by 2023. This is far from the City’s target of having our streets in “good” condition (PCI of 70 -79), and it is clear that action is needed to reverse this trend before our road fall into “failing” condition. Below is a summary of the current conditions of Berkeley’s streets by road type. This information was prepared by staff and PEI.

| Section/Area        | PCI in 2019 |
|---------------------|-------------|
| Overall system      | 58          |
| Arterial streets    | 66          |
| Collector streets   | 64          |
| Residential streets | 55          |
| Bus routes          | 66          |
| Bike lanes          | 62          |

The PWC recommends that a master plan be prepared to understand the funding and resources needed to improve Berkeley’s streets to a “good” condition. The master plan should represent street paving priorities that align with the values of the city and should consider the following:

1. Update the Street Policy – The policy was last updated in 2009. The policy should be reviewed and updated to incorporate current thinking about using life cycle cost analysis, Vision Zero, equity, sustainable multi-benefit technologies, the Bicycle Plan recommendations, Climate Action Plan, Resilience Strategy, Local Hazard Mitigation Plan, and other factors. With these considerations in mind, the updated policy should include new performance metrics that capture the diverse objectives the City holds for our road network.
2. A long-term paving capital plan – The Master Plan should include a 40-year paving or road surfacing plan to help the City identify the most efficient path to move the current PCI from “at risk” to “good.” This approach spans two cycles of typical asphalt roads expected useful life, and allows for decisions on street surfacing to be

optimized for the greatest bang for our buck over the full life of our assets, rather than the current short-term approach.

3. Equity -- The City's Street Policy calls for street paving to be equitably allocated among the City's nine districts. This is a worthy goal; however, the policy stops there and does not provide a clear method for how to evaluate equity. Should it be measured by dollars spent, miles paved, miles treated, the average PCI in a district, and should this equity be for each year of the paving plan over the full five years of the paving plan, or measured retrospectively? The Master Plan will propose a more definitive metric that will provide a clear directive to staff moving forward and provide the community with enhanced transparency in the City's paving decisions.
4. Financing Strategy -- Lack of funding for street paving plays a major role in the overall condition of the City's streets. As part of the Master Plan, the work should include a long-term funding gap analysis, a financial plan to address the funding gap, a cost-of-service rate study to develop recommended rates needed to sustainably finance the Paving Program, and an impact fee analysis to allow the City to recoup the cost of accelerated wear on our roads imposed by heavy vehicles. We also recommend the master plan include an evaluation of grant funding opportunities.
5. Public Engagement -- Public feedback is critical to the successful implementation of any City Plan. The Master Plan should provide guidance for public engagement strategies that will allow the collection and synthesis of public feedback regarding the future of the City streets.

The recommendation to approve both the 5-year paving plan and the recommendation for a Paving Master Plan and to forward it to Council was discussed by the Public Works Commission at its July 11, 2019 meeting.

Action: M/S/C (Schueler/Dominguez)

Vote: (8 Ayes: Yep, Schueler, Dominguez, Hitchen, Constantine, Krpata, Erbe, Freiberg; 0 Noes; 1 Absent: McGrath; 0 Abstain)

#### ENVIRONMENTAL SUSTAINABILITY

Permeable pavers provide a way of reducing the volume of storm water entering the City storm drain system; improving the quality of urban runoff from the roadway that is conveyed to local creeks and the Bay; and reducing greenhouse gas emissions by installing a durable product that requires less maintenance than traditional asphalt concrete.

Full Depth Reclamation (FDR), a cost-effective alternative to traditional street reconstruction methods, is planned for use in several of the streets selected for rehabilitation. It recycles much of the existing pavement on site, and incorporates it into the pavement subgrade, thereby reducing truck trips to and from construction sites.

In addition, the Paving Plan includes repair of the City's deteriorating storm drain infrastructure that minimizes degradation of water quality in local creeks and the Bay. These repairs are consistent with the City of Berkeley's 2011 Watershed Management Plan. Furthermore, the Paving Plan also proposes approximately 5.8 miles of improvements to bicycle routes, and improvements to sidewalk and curb ramps adopted from the Bicycle and Pedestrian Plans. These steps result in lower emissions of greenhouse gases into the environment, which is consistent with the goals of the 2009 Berkeley Climate Action Plan.

RATIONALE FOR RECOMMENDATION

It is the policy of the City of Berkeley that there shall be a Five-year Street Rehabilitation Plan for the entire City to be adopted by the City Council. Further, the proposed plan provides for much needed street infrastructure improvements that are consistent with the City's Street Policy.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER REPORT

See companion report.

CONTACT PERSON

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Joe Enke, Supervising Civil Engineer (510) 981-6411

Attachments:

1. Resolution

Exhibit A: Five-Year Street Rehabilitation Plan Update to Council, July 24, 2018

2. 5-Year Paving Plan Process Flow Diagram



Attachment 1

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

APPROVAL OF THE FIVE-YEAR PAVING PLAN FOR FY 2020 TO FY2024 AND  
RECOMMENDATION FOR THE CREATION OF A LONG-TERM PAVING MASTER  
PLAN

WHEREAS, the Street Rehabilitation Policy, Resolution No. 55,384-N.S. approved on May 22, 1990, requires there be a Five-Year Street Paving Plan for the entire City to be adopted by the City Council, and

WHEREAS, the City Council requests advice from the Public Works Commission on the Five-Year Paving Plan; and

WHEREAS, on July 11, 2019, the Public Works Commission voted to approve submitting the FY 2020 to FY2024 Five-year Paving Plan to City Council, attached as Exhibit A;

WHEREAS, the condition of Berkeley's streets are at an "at risk" condition and a long-term strategy is needed to improve the condition to the "good" level,

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the FY 2020 to FY2024 Five-Year Paving Plan attached as Exhibit A hereof and the request to create a long-term paving master plan, are hereby adopted.

Exhibit A: Five-Year Paving Plan for FY2020 to FY2024

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From              | To                    | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P   | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                 |
|-------------|-----------|------------|-------------------|-------------------|-----------------------|-------|------------------------------|--------------------|----------|-----|---------|-------------|---------------|----------|----------------------------|
| 2020        | 321100    | 30         | CEDAR ST          | 6TH ST            | SAN PABLO AVE         | C     | Reconstruct                  | \$ 1,239,036       | 1        | 3C* | 0.31    | 27          | 10/1/1994     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2020        | 320685    | 10         | MARINA BLVD       | SPINNAKER WAY     | UNIVERSITY AVE        | C     | Heavy Mtce                   |                    | 1        | N   | 0.43    | 58          | 9/1/1986      | A - AC   | OVERLAY                    |
| 2020        | 735382    | 60         | MILVIA ST         | BLAKE ST          | RUSSELL ST            | R     | Heavy Rehab                  | \$ 764,300         | 3        | 3E  | 0.44    | 28          | 9/1/1993      | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2020        | 516492    | 75         | ROSE ST           | LE ROY AVE        | LA LOMA AVE           | R     | Reconstruct                  | \$ 205,000         | 6        | N   | 0.14    | 0           |               | A - AC   |                            |
| 2020        | 319525    | 35         | SANTA FE AVE      | GILMAN ST         | CORNELL AVE & PAGE    | R     | Heavy Rehab                  | \$ 409,600         | 1        | 3C* | 0.27    | 49          | 7/1/1995      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2020        | 319525    | 30         | SANTA FE AVE      | NORTH CITY LIMIT  | GILMAN ST             | R     | Light Mtce                   | \$ 37,355          | 1        | 3C* | 0.11    | 60          | 8/31/2004     | O -      | MILL AND THIN OVERLAY      |
| 2020        | 115532    | 77         | SHASTA RD         | GRIZZLY PEAK BLVD | PARK GATE             | C     | Heavy Rehab                  | \$ 86,667          | 6        | N   | 0.05    | 14          | 11/1/1988     | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2020        | 115532    | 79         | SHASTA RD         | PARK GATE         | EAST CITY LIMIT (GOLF | C     | Reconstruct                  | \$ 234,789         | 6        | N   | 0.11    | 10          | 11/1/1988     | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2020        | 320686    | 10         | SPINNAKER WAY     | BREAKWATER DR     | MARINA BLVD           | R     | Reconstruct                  | \$ 1,000,000       | 1        | N   | 0.28    | 24          | 8/1/1991      | A - AC   | OVERLAY                    |
| 2020        | 213386    | 22         | MONTEREY AVE      | THE ALAMEDA       | HOPKINS ST            | C     | Heavy Rehab                  | \$ 960,667         | 5        | 2A  | 0.57    | 54          | 11/30/2011    | A - AC   | MILL AND OVERLAY           |
| 2020        | 933653    | 40         | WARD ST           | SAN PABLO AVE     | ACTON ST              | R     | Reconstruct                  | \$ 1,328,400       | 2        | N   | 0.31    | 20          | 9/1/1991      | A - AC   | MILL AND OVERLAY W/FABRIC  |
| 2020        | 320620    | 15         | UNIVERSITY AVE    | MARINA BLVD       | WEST FRONTAGE RD      | C     | Reconstruct                  |                    | 1, 2     | N   | 0.30    | 0           | 12/1/1989     | A - AC   | OVERLAY                    |
| 2020        | 729533    | 55         | SHATTUCK AVE      | CENTER ST         | ALLSTON WAY           | A     | Reconstruct                  |                    | 4        |     | 0.06    | 2           | 7/1/1994      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2020        | 729533    | 57         | SHATTUCK AVE (SB) | CENTER ST         | UNIVERSITY AVE        | A     | Reconstruct                  |                    | 4        |     | 0.13    | 12          | 7/1/1994      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2020        | 729007    | 64         | ADDISON ST        | SHATTUCK AVE      | SHATTUCK AVE          | R     | Heavy Rehab                  |                    | 4        |     | 0.03    |             |               |          |                            |
| 2020        | 729051    | 52         | BERKELEY SQUARE   | ADDISON ST        | CENTER ST             | A     | Heavy Rehab                  |                    | 4        |     | 0.06    |             |               |          |                            |
| 2020        | 729535    | 50         | SHATTUCK SQUARE   | UNIVERSITY AVE    | ADDISON               | A     | Heavy Rehab                  |                    | 4        |     | 0.07    | 28          | 7/1/1994      | O -      | MILL AND OVERLAY W/FABRIC  |
|             |           |            |                   |                   |                       |       |                              | \$ 6,265,814       |          |     | 3.69    |             |               |          |                            |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From               | To                | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P         | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                 |
|-------------|-----------|------------|-------------------|--------------------|-------------------|-------|------------------------------|--------------------|----------|-----------|---------|-------------|---------------|----------|----------------------------|
| 2021        | 940005    | 70         | ACTON ST          | ASHBY ST           | 66TH ST           | R     | Light Mtce                   | \$ 83,640          | 2        | N         | 0.23    | 60          | 8/29/2007     | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 516020    | 30         | ARCADE AVE        | GRIZZLY PEAK BLVD  | FAIRLAWN DR       | R     | Heavy Rehab                  | \$ 63,378          | 6        | N         | 0.06    | 7           | 6/1/1995      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 628042    | 78         | BANCROFT WAY      | BOWDITCH ST        | COLLEGE AVE       | C     | Heavy Mtce                   | \$ 161,036         | 7        | 3C*       | 0.13    | 62          | 12/1/1990     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 627042    | 80         | BANCROFT WAY      | COLLEGE AVE        | PIEDMONT AVE      | C     | Heavy Rehab                  | \$ 254,076         | 7        | 3C*       | 0.13    | 57          | 12/1/1990     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 829102    | 60         | CENTER ST         | MARTIN LUTHER KING | MILVIA ST         | R     | Heavy Rehab                  | \$ 315,645         | 4        |           | 0.13    | 59          | 7/1/1991      | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2021        | 729102    | 63         | CENTER ST         | MILVIA ST          | SHATTUCK          | R     | Heavy Rehab                  | \$ 564,000         | 4        | 2A*       | 0.13    | 72          | 7/1/1991      | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2021        | 111127    | 10         | CRESTON RD        | GRIZZLY PEAK BLVD  | SUNSET LANE       | R     | Heavy Mtce                   | \$ 93,378          | 6        | N         | 0.36    | 67          | 6/1/1995      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 115127    | 20         | CRESTON RD        | SUNSET LANE        | GRIZZLY PEAK BLVD | R     | Heavy Mtce                   | \$ 116,258         | 6        | N         | 0.36    | 64          | 11/1/1988     | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2021        | 728140    | 50         | DANA ST           | BANCROFT WAY       | DWIGHT WAY        | R     | Heavy Rehab                  | \$ 467,400         | 7        | 2A to 2B* | 0.25    | 51          | 12/1/1989     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 739141    | 70         | DEAKIN ST         | ASHBY AVE          | PRINCE ST         | R     | Light Mtce                   | \$ 45,920          | 3        | N         | 0.16    | 76          | 4/3/2008      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 736141    | 68         | DEAKIN ST         | RUSSELL ST         | ASHBY AVE         | R     | Light Rehab                  | \$ 109,200         | 3        | N         | 0.10    | 57          | 7/1/1988      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 940148    | 70         | DOHR ST           | ASHBY AVE          | PRINCE ST         | R     | Heavy Rehab                  | \$ 176,569         | 2        | N         | 0.14    | 53          | 10/1/1992     | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 115344    | 80         | LATHAM LANE       | MILLER AVE         | GRIZZLY PEAK      | R     | Heavy Mtce                   | \$ 38,500          | 6        | N         | 0.10    | 61          | 6/1/1994      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 115380    | 70         | MILLER AVE        | HILLDALE AVE       | SHASTA RD         | R     | Light Rehab                  | \$ 425,880         | 6        | N         | 0.66    | 58          | 6/1/1994      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 830491    | 58         | ROOSEVELT AVE     | CHANNING WAY       | DWIGHT WAY        | R     | Light Rehab                  | \$ 172,480         | 4        | N         | 0.13    | 65          | 12/1/1989     | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2021        | 728584    | 50         | TELEGRAPH AVE     | BANCROFT WAY       | DWIGHT WAY        | C     | Heavy Rehab                  | \$ 473,060         | 7        | 3C*       | 0.25    | 52          | 7/1/1988      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 931657    | 55         | WEST ST           | BANCROFT WAY       | DWIGHT WAY        | R     | Heavy Mtce                   | \$ 263,822         | 2        | N         | 0.25    | 65          | 10/1/1994     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 320528    | 47         | 2ND ST            | DELAWARE ST        | HEARST AVE        | R     | Reconstruct                  | \$ 775,833         | 1        | N         | 0.09    | 2           | NA            |          |                            |
| 2021        | 320528    | 48         | 2ND ST            | HEARST AVE         | UNIVERSITY AVE    | R     | Heavy Rehab                  | \$ 762,222         | 1        | N         | 0.09    | 46          | NA            |          |                            |
| 2021        | 920528    | 50         | 2ND ST            | UNIVERSITY AVE     | ADDISON ST        | R     | Heavy Rehab                  | \$ 560,000         | 2        | N         | 0.09    | 0           | 8/27/1997     |          | MILL AND OVERLAY W/FABRIC  |
| 2021        |           |            | 15% DISCRETIONARY |                    |                   |       |                              | \$ 1,046,295       |          |           |         |             |               |          |                            |
|             |           |            |                   |                    |                   |       |                              | \$ 6,968,593       |          |           | 3.84    |             |               |          |                            |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From         | To               | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P   | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                   |
|-------------|-----------|------------|-------------------|--------------|------------------|-------|------------------------------|--------------------|----------|-----|---------|-------------|---------------|----------|------------------------------|
| 2022        | 931073    | 50         | BROWNING ST       | ADDISON ST   | DWIGHT WAY       | R     | Heavy Rehab                  | \$ 911,600         | 2        | N   | 0.50    | 63          | 10/1/1995     | O -      | MILL AND OVERLAY W/FABRIC    |
| 2022        | 638115    | 70         | COLLEGE AVE       | ASHBY AVE    | SOUTH CITY LIMIT | A     | Heavy Rehab                  | \$ 896,480         | 8        | N   | 0.41    | 51          | 8/23/2000     | A - AC   | RECONSTRUCT STRUCTURE (AC)   |
| 2022        | 729152    | 60         | DURANT AVE        | MILVIA ST    | SHATTUCK AVE     | C     | Reconstruct                  | \$ 693,355         | 4        | N   | 0.13    | 0           | 11/1/1992     | O -      | MILL AND OVERLAY W/FABRIC    |
| 2022        | 729152    | 64         | DURANT AVE        | SHATTUCK AVE | FULTON ST        | C     | Heavy Rehab                  | \$ 262,880         | 4        | N   | 0.10    | 28          | 8/12/1997     | O -      | MILL AND OVERLAY W/FABRIC    |
| 2022        | 728180    | 50         | ELLSWORTH ST      | BANCROFT WAY | DWIGHT WAY       | R     | Reconstruct                  | \$ 422,400         | 7        | N   | 0.25    | 20          | 11/1/1992     | O -      | MILL AND OVERLAY W/FABRIC    |
| 2022        | 736180    | 60         | ELLSWORTH ST      | DWIGHT WAY   | WARD ST          | R     | Light Mtce                   | \$ 129,360         | 7        | N   | 0.38    | 83          | 5/11/2011     | A - AC   | RECONSTRUCT SURFACE (AC)     |
| 2022        | 736180    | 65         | ELLSWORTH ST      | WARD ST      | ASHBY AVE        | R     | Light Mtce                   | \$ 99,307          | 3        | N   | 0.29    | 87          | 5/11/2011     | A - AC   | RECONSTRUCT SURFACE (AC)     |
| 2022        | 736227    | 60         | FULTON ST         | DWIGHT WAY   | BLAKE ST         | R     | Heavy Mtce                   | \$ 76,128          | 3        | 3E* | 0.06    | 61          | 6/1/1993      | O -      | MEDIUM AC OVERLAY (2 INCHES) |
| 2022        | 736227    | 61         | FULTON ST         | BLAKE ST     | PARKER ST        | R     | Heavy Mtce                   | \$ 27,840          | 3        | 3E* | 0.07    |             |               |          |                              |
| 2022        | 736227    | 63         | FULTON ST         | PARKER ST    | STUART ST        | R     | Heavy Mtce                   | \$ 321,592         | 3        | 3E* | 0.25    | 61          | 2/1/1992      | O -      | THIN AC OVERLAY(1.5 INCHES)  |
| 2022        | 835431    | 65         | OTIS ST           | RUSSELL ST   | ASHBY AVE        | R     | Heavy Rehab                  | \$ 224,000         | 3        | N   | 0.13    | 61          | 4/1/2001      | A - AC   | RECONSTRUCT STRUCTURE (AC)   |
| 2022        | 736561    | 70         | STUART ST         | FULTON ST    | HILLEGASS AVE    | R     | Heavy Rehab                  | \$ 784,000         | 7        | N   | 0.46    | 54          | 11/13/1998    | A - AC   | RECONSTRUCT STRUCTURE (AC)   |
| 2022        |           |            | 15% DISCRETIONARY |              |                  |       |                              | \$ 1,046,295       |          |     |         |             |               |          |                              |
|             |           |            |                   |              |                  |       |                              | \$ 5,895,237       |          |     | 3.03    |             |               |          |                              |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From            | To              | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P     | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                 |
|-------------|-----------|------------|-------------------|-----------------|-----------------|-------|------------------------------|--------------------|----------|-------|---------|-------------|---------------|----------|----------------------------|
| 2023        | 729042    | 65         | BANCROFT WAY      | SHATTUCK AVE    | FULTON ST       | C     | Heavy Rehab                  | \$ 277,778         | 4        | 4*    | 0.09    | 32          | 8/7/1997      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2023        | 729042    | 60         | BANCROFT WAY      | MILVIA WAY      | SHATTUCK AVE    | C     | Heavy Rehab                  | \$ 359,836         | 4        | N     | 0.13    | 28          | 12/1/1989     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 736140    | 65         | DANA ST           | BLAKE ST        | WARD ST         | R     | Light Rehab                  | \$ 454,080         | 7        | 3E*   | 0.25    | 45          | 7/30/2008     | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 739186    | 60         | EMERSON ST        | ADELINE ST      | SHATTUCK AVE    | R     | Light Rehab                  | \$ 180,320         | 3        | N     | 0.15    | 65          | 4/1/2001      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 839191    | 60         | ESSEX ST          | ADELINE ST      | TREMONT ST      | R     | Heavy Mtce                   | \$ 76,160          | 3        | N     | 0.06    | 76          | 4/1/2001      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 739191    | 62         | ESSEX ST          | TREMONT ST      | SHATTUCK AVE    | R     | Light Rehab                  | \$ 129,920         | 3        | N     | 0.11    | 62          | 4/1/2001      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 637217    | 80         | FOREST AVE        | COLLEGE AVE     | CLAREMONT BLVD  | R     | Heavy Rehab                  | \$ 600,000         | 8        | N     | 0.36    | 50          | 8/1/1996      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 516340    | 36         | LA LOMA AVE       | ROSE ST         | BUENA VISTA WAY | C     | Heavy Rehab                  | \$ 248,827         | 6        | N     | 0.16    | 36          | 6/1/1995      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2023        | 516340    | 38         | LA LOMA AVE       | BUENA VISTA WAY | CEDAR ST        | C     | Heavy Rehab                  | \$ 221,340         | 6        | N     | 0.14    | 51          | 6/1/1995      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2023        | 834371    | 65         | MC GEE AVE        | DERBY ST        | RUSSELL ST      | R     | Light Rehab                  | \$ 461,992         | 3        | N     | 0.25    | 60          | 12/10/1998    | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 834371    | 60         | MC GEE AVE        | DWIGHT WAY      | DERBY ST        | R     | Light Rehab                  | \$ 302,400         | 3        | N     | 0.26    | 59          | 7/1/1988      | O -      | THIN OVERLAY w/FABRIC      |
| 2023        | 319293    | 47         | HOPKINS ST        | GILMAN ST       | SACRAMENTO ST   | R     | Heavy Rehab                  | \$ 203,942         | 5        | 3A, C | 0.10    | 0           | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 213293    | 50         | HOPKINS ST        | HOPKINS CT      | MONTEREY AVE    | C     | Light Rehab                  | \$ 75,193          | 5        | 3A, C | 0.05    | 54          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 213293    | 52         | HOPKINS ST        | MONTEREY AVE    | MC GEE AVE      | C     | Heavy Rehab                  | \$ 107,167         | 5        | 2A, C | 0.05    | 71          | 12/1/1989     |          | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 319293    | 45         | HOPKINS ST        | NORTHSIDE AVE   | PERALTA AVE     | R     | Light Mtce                   | \$ 233,587         | 1        | N     | 0.10    | 78          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 319293    | 46         | HOPKINS ST        | PERALTA AVE     | GILMAN ST       | R     | Heavy Mtce                   | \$ 433,031         | 1, 5     | N     | 0.27    | 64          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 319293    | 49         | HOPKINS ST        | SACRAMENTO ST   | HOPKINS CT      | A     | Heavy Rehab                  | \$ 77,755          | 5        | 3A, C | 0.04    | 30          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 319293    | 40         | HOPKINS ST        | SAN PABLO AVE   | STANNAGE AVE    | R     | Light Mtce                   | \$ 19,188          | 1        | N     | 0.09    | 73          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 319293    | 42         | HOPKINS ST        | STANNAGE AVE    | NORTHSIDE AVE   | R     | Heavy Mtce                   | \$ 157,658         | 1        | N     | 0.17    | 80          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        |           |            | 15% DISCRETIONARY |                 |                 |       |                              | \$ 1,091,295       |          |       |         |             |               |          |                            |
|             |           |            |                   |                 |                 |       |                              | \$ 5,711,469       |          |       | 2.86    |             |               |          |                            |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From               | To                   | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P         | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                  |
|-------------|-----------|------------|-------------------|--------------------|----------------------|-------|------------------------------|--------------------|----------|-----------|---------|-------------|---------------|----------|-----------------------------|
| 2024        | 729014    | 63         | ALLSTON WAY       | MILVIA ST          | SHATTUCK AVE         | R     | Heavy Rehab                  | \$ 228,800         | 4        | N         | 0.14    | 19          | 11/1/1990     | O -      | MILL AND THIN OVERLAY       |
| 2024        | 729014    | 65         | ALLSTON WAY       | SHATTUCK AVE       | OXFORD ST            | R     | Reconstruct                  | \$ 344,036         | 4        | N         | 0.11    | 10          | 11/1/1992     | O -      | MILL AND OVERLAY W/FABRIC   |
| 2024        | 729104    | 63         | CHANNING WAY      | MILVIA ST          | SHATTUCK AVE         | R     | Heavy Rehab                  | \$ 267,640         | 4        | 2A to 2B* | 0.13    | 27          | 9/1/1991      | O -      | MILL AND OVERLAY W/FABRIC   |
| 2024        | 829104    | 60         | CHANNING WAY      | MARTIN LUTHER KING | MILVIA ST            | R     | Reconstruct                  | \$ 462,920         | 4        | 2A to 2B* | 0.13    | 10          | 5/1/1995      | O -      | THIN AC OVERLAY(1.5 INCHES) |
| 2024        | 322142    | 48         | DELAWARE ST       | ACTON ST           | SACRAMENTO ST        | C     | Heavy Mtce                   | \$ 78,175          | 1        | 4*        | 0.13    |             |               |          |                             |
| 2024        | 636146    | 78         | DERBY ST          | HILLEGASS AVE      | COLLEGE AVE          | R     | Reconstruct                  | \$ 498,560         | 8        | 3E*       | 0.14    |             |               |          |                             |
| 2024        | 627155    | 85         | DWIGHT WAY        | HILLSIDE AVE       | DEAD END ABOVE       | R     | Reconstruct                  | \$ 406,204         | 8        | N         | 0.11    | 0           | 9/1/1993      | A - AC   | RECONSTRUCT SURFACE (AC)    |
| 2024        | 627155    | 83         | DWIGHT WAY        | PIEDMONT AVE       | HILLSIDE AVE         | R     | Reconstruct                  | \$ 526,688         | 7, 8     | N         | 0.14    | 3           | 9/1/1993      | O -      | MILL AND OVERLAY W/FABRIC   |
| 2024        | 111249    | 17         | GRIZZLY PEAK BLVD | KEELER AVE         | MARIN AVE            | C     | Reconstruct                  | \$ 843,578         | 6        | 3C*       | 0.27    |             |               |          |                             |
| 2024        | 920275    | 40         | HEINZ AVE         | 7TH ST             | SAN PABLO AVE        | R     | Reconstruct                  | \$ 897,408         | 2        | 3E        | 0.26    |             |               |          |                             |
| 2024        | 739285    | 70         | HILLEGASS AVE     | ASHBY AVE          | CITY LIMIT (WOOLSEY) | R     | Light Mtce                   | \$ 68,400          | 8        | 3E        | 0.16    | 83          | 7/28/2003     | A - AC   | RECONSTRUCT STRUCTURE (AC)  |
| 2024        | 736285    | 60         | HILLEGASS AVE     | DWIGHT WAY         | ASHBY AVE            | R     | Light Mtce                   | \$ 256,000         | 8        | 3E        | 0.61    | 83          | 5/31/2000     | A - AC   | RECONSTRUCT STRUCTURE (AC)  |
| 2024        | 213293    | 53         | HOPKINS ST        | MC GEE AVE         | CARLOTTA AVE         | C     | Heavy Rehab                  | \$ 149,680         | 5        | 2A, C     | 0.06    | 47          | 12/1/1989     |          | RECONSTRUCT STRUCTURE (AC)  |
| 2024        | 213293    | 55         | HOPKINS ST        | CARLOTTA AVE       | JOSEPHINE ST         | C     | Heavy Rehab                  | \$ 874,580         | 5        | 2A, C     | 0.35    | 60          | 12/1/1989     |          | MILL AND OVERLAY            |
| 2024        |           |            | 15% DISCRETIONARY |                    |                      |       |                              | \$ 1,091,295       |          |           |         |             |               |          |                             |
|             |           |            |                   |                    |                      |       |                              | \$ 6,993,964       |          |           | 2.74    |             |               |          |                             |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.

FISCAL YEAR 2020 TOTALS

| <b>Total Estimated Cost and Miles</b> |         | <b>\$ 6,265,814</b> | <b>3.67 miles</b> |             |
|---------------------------------------|---------|---------------------|-------------------|-------------|
|                                       | MILEAGE | District            | Miles             | Cost        |
| ARTERIALS                             | 0.32    | 1                   | 0.69              | \$1,685,991 |
| COLLECTORS                            | 1.77    | 2                   | 0.31              | \$1,328,400 |
| RESIDENTIALS                          | 1.58    | 3                   | 0.44              | \$764,300   |
|                                       | 3.67    | 4                   | 0.03              | \$0         |
|                                       |         | 5                   | 0.57              | \$960,667   |
|                                       |         | 6                   | 0.30              | \$526,456   |
|                                       |         | 7                   | 0.00              | \$0         |
|                                       |         | 8                   | 0.00              | \$0         |
| <hr/>                                 |         | Arterial/PRW        | 1.33              | \$1,000,000 |
|                                       |         |                     | 3.67              | \$6,265,814 |
|                                       |         |                     |                   | 6975303     |

FISCAL YEAR 2021 TOTALS

| <b>Total Estimated Cost and Miles</b> |         | <b>\$ 6,968,593</b> | <b>3.84 miles</b> |             |
|---------------------------------------|---------|---------------------|-------------------|-------------|
|                                       | MILEAGE | District            | Miles             | Cost        |
| ARTERIALS                             | 0.00    | 1                   | 0.18              | \$1,538,055 |
| COLLECTORS                            | 0.51    | 2                   | 0.71              | \$1,084,031 |
| RESIDENTIALS                          | 3.33    | 3                   | 0.26              | \$155,120   |
|                                       | 3.84    | 4                   | 0.39              | \$1,052,125 |
|                                       |         | 5                   | 0.00              | \$0         |
|                                       |         | 6                   | 1.54              | \$737,394   |
|                                       |         | 7                   | 0.76              | \$1,355,572 |
|                                       |         | 8                   | 0.00              | \$0         |
|                                       |         | 15%                 |                   | \$1,046,295 |
| <hr/>                                 |         |                     | 3.84              | \$6,968,592 |
|                                       |         |                     |                   | 6975303     |



FISCAL YEAR 2022 TOTALS

| <b>Total Estimated Cost and Miles</b> |         | <b>\$ 5,895,237</b> | <b>3.03 miles</b> |             |
|---------------------------------------|---------|---------------------|-------------------|-------------|
|                                       | MILEAGE | District            | Miles             | Cost        |
| ARTERIALS                             | 0.41    | 1                   | 0.00              | \$0         |
| COLLECTORS                            | 0.23    | 2                   | 0.50              | \$911,600   |
| RESIDENTIALS                          | 2.39    | 3                   | 0.80              | \$748,867   |
|                                       | 3.03    | 4                   | 0.23              | \$956,235   |
|                                       |         | 5                   | 0.00              | \$0         |
|                                       |         | 6                   | 0.00              | \$0         |
|                                       |         | 7                   | 1.09              | \$1,335,760 |
|                                       |         | 8                   | 0.00              | \$0         |
| <hr/>                                 |         | Arterial            | 0.41              | \$896,480   |
|                                       |         | 15%                 |                   | \$1,046,295 |
|                                       |         |                     | 3.03              | \$5,895,237 |
|                                       |         |                     |                   | 6975303     |

FISCAL YEAR 2023 TOTALS

| <b>Total Estimated Cost and Miles</b> |         | <b>\$ 5,711,469</b> | <b>2.83 miles</b> |             |
|---------------------------------------|---------|---------------------|-------------------|-------------|
|                                       | MILEAGE | District            | Miles             | Cost        |
| ARTERIALS                             | 0.04    | 1                   | 0.50              | \$626,949   |
| COLLECTORS                            | 0.62    | 2                   | 0.00              | \$0         |
| RESIDENTIALS                          | 2.17    | 3                   | 0.83              | \$1,150,792 |
|                                       | 2.83    | 4                   | 0.22              | \$637,614   |
|                                       |         | 5                   | 0.34              | \$602,817   |
|                                       |         | 6                   | 0.30              | \$470,167   |
|                                       |         | 7                   | 0.25              | \$454,080   |
|                                       |         | 8                   | 0.36              | \$600,000   |
|                                       |         | Arterial            | 0.04              | \$77,755    |
|                                       |         | 15%                 |                   | \$1,091,295 |
| <hr/>                                 |         |                     | 2.83              | \$5,711,469 |
|                                       |         |                     |                   | 7275303     |

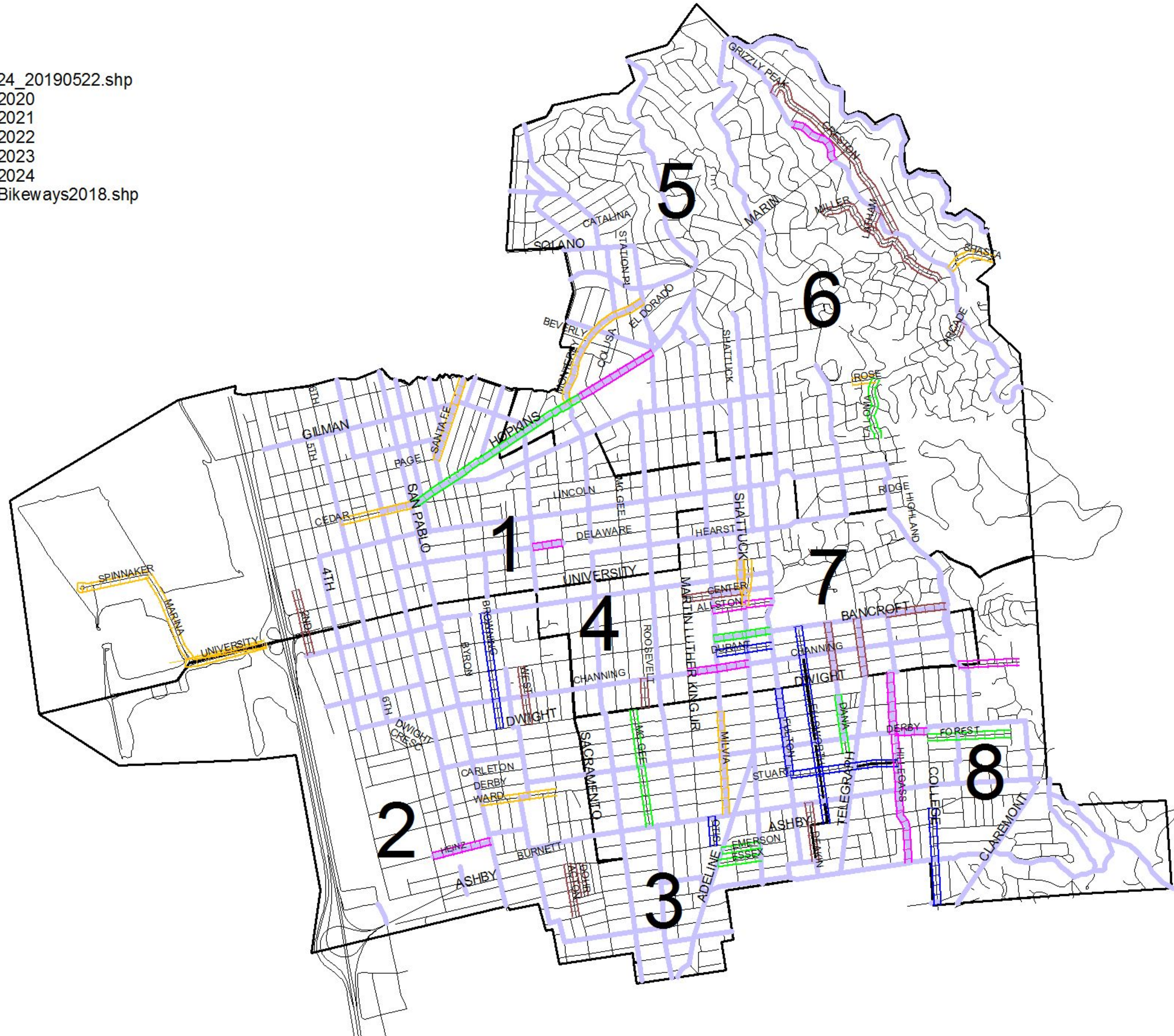
FISCAL YEAR 2024 TOTALS

| <b>Total Estimated Cost and Miles</b> |         | <b>\$ 6,993,964</b> | <b>2.74 miles</b> |             |
|---------------------------------------|---------|---------------------|-------------------|-------------|
|                                       | MILEAGE | District            | Miles             | Cost        |
| ARTERIALS                             | 0.00    | 1                   | 0.13              | \$78,175    |
| COLLECTORS                            | 0.81    | 2                   | 0.26              | \$897,408   |
| RESIDENTIALS                          | 1.93    | 3                   | 0.00              | \$0         |
|                                       | 2.74    | 4                   | 0.51              | \$1,303,396 |
|                                       |         | 5                   | 0.41              | \$1,024,260 |
|                                       |         | 6                   | 0.27              | \$843,578   |
|                                       |         | 7                   | 0.00              | \$0         |
|                                       |         | 8                   | 1.16              | \$1,755,852 |
|                                       |         | Arterial            | 0.00              | \$0         |
|                                       |         | 15%                 |                   | \$1,091,295 |
|                                       |         |                     | 2.74              | \$6,993,964 |
|                                       |         |                     |                   | 7275303     |

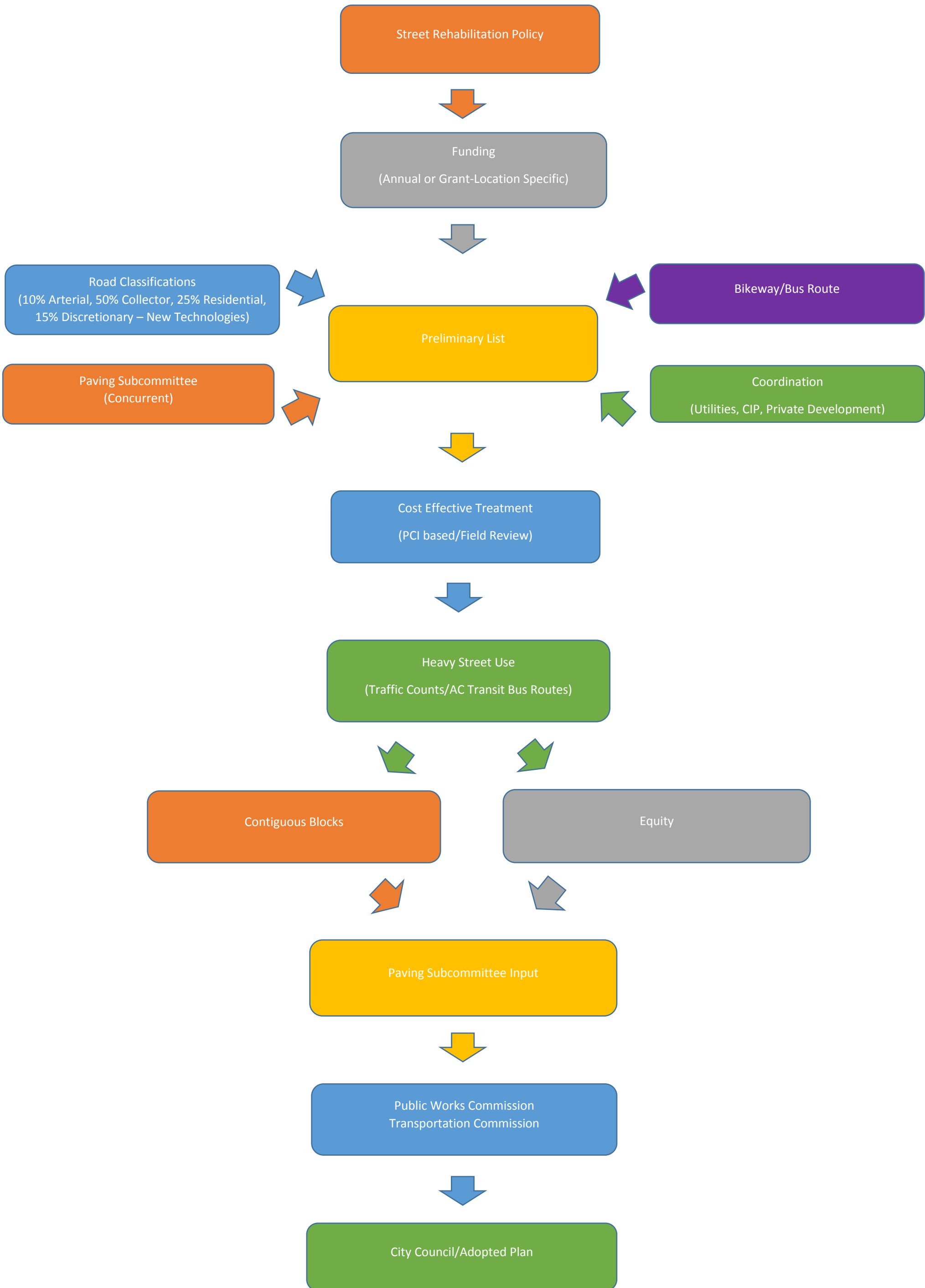
FISCAL YEAR 2020 to 2024 TOTALS

| Total Estimated Cost and Miles |         |      |        |        | \$ 31,835,077 | 16.11 miles |              |
|--------------------------------|---------|------|--------|--------|---------------|-------------|--------------|
|                                | MILEAGE | %    | % COST | % MILE | District      | Miles       | Cost         |
| ARTERIALS                      | 0.77    | 5%   | 12%    | 9%     | 1             | 1.50        | \$3,929,170  |
| COLLECTORS                     | 3.94    | 24%  | 13%    | 11%    | 2             | 1.78        | \$4,221,439  |
| RESIDENTIALS                   | 11.40   | 71%  | 9%     | 14%    | 3             | 2.33        | \$2,819,079  |
|                                | 16.11   | 100% | 12%    | 9%     | 4             | 1.38        | \$3,949,370  |
|                                |         |      | 8%     | 8%     | 5             | 1.32        | \$2,587,744  |
|                                |         |      | 8%     | 15%    | 6             | 2.41        | \$2,577,595  |
|                                |         |      | 10%    | 13%    | 7             | 2.10        | \$3,145,412  |
|                                |         |      | 7%     | 9%     | 8             | 1.52        | \$2,355,852  |
|                                |         |      | 6%     | 11%    | Arterial/PRW  | 1.78        | \$1,974,235  |
|                                |         |      | 13%    | 0%     | 15%           |             | \$4,275,180  |
|                                |         |      | 100%   | 100%   |               | 16.11       | \$31,835,076 |
|                                |         |      |        |        |               |             | \$35,476,515 |

- 5vr1924\_20190522.shp
- 2020
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- 2022
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5-Year Paving Plan Process Flow Diagram





Homeless Commission

ACTION CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Homeless Commission

Submitted by: Carole Marasovic, Chairperson, Homeless Commission

Subject: Utilize Substantial Portion of Cannabis Tax Proceeds to Fund Subsidies under 1000 Person Plan

RECOMMENDATION

That Council direct a substantial portion of the incoming cannabis tax proceeds to fund subsidies under the 1000 Person Plan.

SUMMARY

In November, 2019, the City of Berkeley will begin receiving revenue from cannabis tax proceeds.

As the numbers of homeless persons continue to grow in Berkeley and Measure P monies may not be sufficient, Council should consider allocating a substantial amount of the cannabis tax proceeds towards funding subsidies under the 1000 Person Plan.

FISCAL IMPACTS OF RECOMMENDATION

Cannabis tax monies would provide partial funding of the 1000 Person Plan subsidies.

CURRENT SITUATION AND ITS EFFECTS

The numbers of homeless persons continue to grow in Berkeley with no end in sight.

On April 30, 2019, Council heard the City of Berkeley Homeless Services Coordinator present the 1000 Person Plan proposing that over 570 subsidies be funded by the City over 5 years to house the growing homeless population.

The numbers of homeless persons, based on the Homeless Count, has increased in Alameda County by 43% from 2017 to 2019. Berkeley is waiting for the Berkeley-specific numbers to be released from the County. In the interim, it has been estimated that as many as 2,000 persons experience homelessness in Berkeley in a year.

In order to house people under the 1000 Person Plan, monies need to be allocated. The only perceived current source of possible revenue is Measure P monies which either may not be wholly granted for this purpose and/or may not be substantial enough for the 1000 Person Plan to begin fulfilling its purpose.

BACKGROUND

The Homeless Commission voted at its July 10, 2019 meeting as follows:

**Action:** M/S/C Mulligan/ Hirpara that the Homeless Commission recommends that a substantial amount of the proceeds from the cannabis tax be allocated towards funding subsidies under the 1000 Person Plan.

**Vote:** Ayes: Hill, Mulligan, Marasovic, Hirpara, Kealoha-Blake.  
Noes: None. *Abstain:* None. *Absent:* Behm-Steinberg.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects.

RATIONALE FOR RECOMMENDATION

Monies are needed to fund the over 570 subsidies recommended under the 1000 Person Plan. Measure P monies may not be sufficient and additional funding may be needed to fulfill the mission.

ALTERNATIVE ACTIONS CONSIDERED

The only alternative is to rely only on Measure P monies.

CITY MANAGER

The City Manager does not recommend that the City Council take action on this item at this point in time. This recommendation is based on the following:

- Measures O, U1, and P, which were passed in 2016 and 2018, provide significant resources to address homelessness. Measure O provides for the sale of bonds to increase the supply of affordable housing. City staff anticipates selling \$35 million in bonds towards the end of 2019 / early 2020 that will be used to fund the Berkeley Way Project and other affordable housing projects. Measures U1 and P are both general taxes that are deposited into the City's General Fund. As such, revenues from Measure U1 and P could be allocated to implement programs that address homelessness as discussed in the 1000 Person Plan. In addition to the new revenue streams that have been recently adopted by Berkeley voters, the State continues to allocate funding to address homelessness. For example, the \$4.0 million Homeless Emergency Aid Program (HEAP) allocation to Berkeley is being used to fund the STAIR Center, Dorothy Day House shelter, sanitation and trash services to encampments, and other City priorities. City staff will continue to track the various programs created by the state and will pursue opportunities as they arise.
- There are a number of commissions (i.e. Community Health, Cannabis, and Civic Arts Commission) that are preparing recommendations for City Council as to how cannabis revenues could be deployed to support education, arts and equity



programs. By not taking action at this time, City Council would be able to consider feedback from other commissions.

- The Health, Housing and Community Services Department and Planning and Development Department are working on a number of cannabis related initiatives that pertain to education and enforcement. As the programs take shape, it is likely that resources will be needed for implementation. Delaying action on this item will provide City Council with an opportunity to consider recommendations from city staff.

CONTACT PERSON

Kristen S. Lee, Housing & Community Services Manager, HHCS, (510) 981-5427.





Open Government Commission

ACTION CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Open Government Commission

Submitted by: Dean Metzger, Chair, Open Government Commission

Subject: Change to the Council Rules and Procedures  
Public access to changing status of a Consent Calendar Item

RECOMMENDATION

Adopt a Resolution changing and updating the “Council Rules and Procedures” to give the public a procedure for moving items on the consent calendar to the Action Calendar.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

Up until recently, it was possible for citizens at council meetings (four or more asking to do so) to move an item on the Consent calendar to Action, so that it could be discussed in public by Council, and so that the public knew that their commentary might have an effect on how Council considered the item. That ability has been removed. This is a direct exclusion of the public from participation. Though people can still speak on Consent items, public input is non-effective.

This proposal is designed to restore to the public a way to remove an item from Consent and place it on Action. If the public wants a Consent item to be addressed by Council, there must be a democratic way to do it.

BACKGROUND

At an Open Government Commission meeting in 2018 the Pro-Democracy Project presented several issues pertaining to how the City Council Rules and Procedures effect the democratic process in Berkeley. The OGC formed a subcommittee to investigate the issues and met for the first time in May of 2019. The subcommittee met again on June 6, 2019, took public comment and made several recommendations. The June 2019 meeting resulted in the attached report that was heard and discussed by the OGC on September 19, 2019.

ENVIRONMENTAL SUSTAINABILITY

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

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Not relevant for CEQA review

RATIONALE FOR RECOMMENDATION

This proposal emerges from a growing concern regarding procedures in Berkeley City Council meetings. What this suggests is that some rules of Council procedure serve to prevent real participation in political matters.

The principles from which this proposal derives are first, that policy is made through public participation, and second, that those who will be affected by a policy should be involved in articulating and deciding the policy that will affect them.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Open Government Commission  
Samuel Harvey, Deputy City Attorney, (510) 981-6998

Attachments:

- 1: Resolution
- 2: OGC Subcommittee report June 6, 2019

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

ADOPTING THE CHANGE TO THE COUNCIL RULES AND PROCEDURES  
AND REVISING RESOLUTION NO. 68,753-N.S.

WHEREAS, the City of Berkeley's "Council Rules and Procedures" are of utmost important for conducting Council meetings they must be implemented in a way that allows the maximum possible public input to decisions that are made on the behalf of the citizens of Berkeley; and

WHEREAS, the updated Council Rules and Procedures will allow the citizens of Berkeley to participate in crafting the ordinances and laws that govern them; and

WHEREAS, the Council Rules and Procedures are updated regularly.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley, the Council Rules and Procedures are adopted as follows:

IV. CONDUCT OF MEETING

B. Consent Calendar

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, councilmembers, 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.

It is the policy of the Council that councilmembers 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.

**Add the following to this section:**

**An item on the consent calendar shall be moved to the action calendar if five (5) or more speakers request that the item move to the action calendar. The Mayor may implement this as she or he sees fit. One implementation path is as follows: if a speaker requests that an item on the consent calendar move to action, then the Mayor will poll the audience to determine whether five (5) members of the public would like to pull the item, and, if so, the item shall be moved to action.**

BE IT FURTHER RESOLVED that Resolution No. XXXX-N.S. is hereby adopted.

## Open Government Commission Subcommittee Report

June 6, 2019

### Minutes

1. Call to Order 7:30 p.m.

Roll Call:

2. Roll Call taken - Metzger & Saver

3. Public Comment

None

4. Review of May 9, 2019 subcommittee meeting

Reviewed

5. Discussion and possible action on Council Consent Calendar issues

See following report.

6. Discussion and possible action on the inflexibility of the Council Agenda Order.

See following report

7. Discussion and possible action on Public Comment procedures

See following report

8. Next meeting date

9.

No date set

10. Adjournment

Motion to adjourn: Saver

Ayes: Metzger & Saver

## Subcommittee Report

The Pro-Democracy issues before the subcommittee:

1- City government procedures that essentially silence the people.

**1- The Loss of Access to Determine the Consent Calendar**

Proposal:

Council Rules of Procedure and Order – Adopted January 29, 2019

### IV. CONDUCT OF MEETING

B. Consent Calendar There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, councilmembers, 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.

It is the policy of the Council that councilmembers 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.

**Insert paragraph that reads as follows:**

An item on the consent calendar shall be moved to the action calendar if five (5) or more speakers request that the item move to the action calendar. The Mayor may implement this as she or he sees fit. One implementation path is as follows: if a speaker requests that an item on the consent calendar move to action, then the Mayor will poll the audience to determine whether five (5) members of the public would like to pull the item, and, if so, the item shall be moved to action.

Motion to send added language to the OGC: Metzger

Ayes: Metzger and Saver

2- **Speaking Time:**

**From the Councils Rules of Procedures and Order**  
**Page 17 – Item A**

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, 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.

**Add the following to this section:**

A member of the public will be given a minimum of 2 minutes to speak and up to a maximum of four (4) minutes, if given time from another speaker. If the number of speakers appears to be so large as to prevent essential city business from completion, then the item can be moved to a special meeting.

Motion to send added language to the OGC: Metzger

Ayes: Metzger and Saver

**3- The Inflexibility of the Agenda Order**

**From the Councils Rules of Procedures and Order**  
**pages 15 & 16 – Item E**

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, Public Comment)
2. Consent Calendar
3. Action Calendar
  - a) Appeals
  - b) Public Hearings
  - c) Continued Business
  - d) Old Business

- e) New Business
- f) Referred Items
- 4. Information Reports
- 5. Communications
- 6. Adjournment Action items may be reordered at the discretion of the Chair with the consent of Council.

The Agenda Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

**Add the following to this section:**

The City Clerk shall poll the public audience during the ceremonial and consent agenda to determine the number of persons at the meeting for action items. If the number exceeds twelve (12) for any one item, that item is moved to the first action item. If more than two items exceed 12, then the order for those items will be determined with the highest number going first.

Motion to send added language to the OGC: Metzger

Ayes: Metzger and Saver

**4- The "Public Comment" procedure reduces people "faces in the crowd."**

**From the Councils Rules of Procedures and Order**  
**page 17 – Item A**

**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, 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.

**Add the following to this section:**

The council shall discuss the item after it is introduced, with each Council member stating their current understanding and general thoughts on the item. After council discussion, public comment will be taken. The council will then debate the item, ask any questions of the speakers and make its decision on the matter.

Motion to send added language to the OGC: Metzger

Ayes: Metzger and Saver

## MEMO TO FILE

**Date/Time:** May 9, 2019

**Subject:** OPEN GOVERNMENT COMMISSION DEMOCRATIC PROJECT  
SUBCOMMITTEE MEETING

South Berkeley Senior Center  
2939 Ellis Street .  
Multi Purpose Room  
Secretary:

Special Meeting  
May 9, 2019  
7:30 p.m.

The Commission may act on any item on this agenda

1. Call to Order 7:30 p.m.
2. Roll Call. Dean Metzger, Brian Tsui, Daniel Saver, Gregory Harper
3. Public Comment.  
4 Members of the public present. Steve Martinot for ProDemocracy Project.
4. Chairman and Vice Chair Selection:
  - a. Gregory Harper elected chair, Dean Metzger elected vice chair.
  - b.
5. Committee recognized need to recruit additional members to replace commissioners who will depart in the coming weeks and months:
  - a. Tsui Graduation (Fulbright Ambassador);
  - c. Saver- Family leave (baby)
6. Discussion on organizing the subcommittee:
7. **Management of City Council Meetings**
  - a. Focus is to recommend items to implement governance by dialogue between elected officials and citizens. Discussions of subjects at council meetings is paramount.
  - b. Committee identified and discusses issues raised per the ProDemocracy Project handout.
8. **City Council Meetings and The Consent Calendar - Areas of Concern**
  - a. Very Complex issue
    - i. Limited access to place items on consent calendar
  - b. The Agenda Committee is key and sorely needs attention.
    - i. Oversight is needed.
    - ii. How are issues addressed and placed on the agenda.
    - iii. What is the process and how can citizens have it discussed
  - c. Desire to Maximize the number of speakers.
    - i. Concerns over items being pulled from the agenda or limiting the number of speakers and the time they area allotted.

9. ACTION ON THE CONSENT CALENDAR ISSUE
  - a. MOTION-Recommend to the city council the mayor or their designate request conduct an informal census/poll to determine the number of persons present for discussion of an item on the consent calendar. If four[4] or more persons are present the item will be moved from the consent to the action calendar.
  - b. VOTE- Unanimous approval by members
  - c. Restructure the Calendar.
    - i. If a substantial number of people are present for a subject the item should be moved to accommodate the crowd.
    - ii. Presently it is at the mayor's or presider's discretion. iii. The consensus is to make it mandatory
    - iii.
10. What will be the process to accomplish the above?
11. **Speaking Time Concerns**
  - a. Consensus is 2 Minutes is not enough
  - b. Tyranny of the majority
    - i. Take large number of minutes and yield it.
    - ii. Individual or couples are ignored
12. **Agenda Order**
  - a. The Calendar needs restructuring.
13. **Remaining Issues** Insufficient time to discuss:
  - a. Zoning
  - b. Ombudsman
14. Future meeting schedule
  - a. June 6, 2019 7:30 P.M. Place TBD
  - b. Adjournment: 9:30 P.M.

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information. SB 343 Disclaimer: Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the City Attorney's Office at 2180 Milvia St., Berkeley, California 94704

Page 2 of 2

## The ProDemocracy Project

For the-initiation of a ProDemocracy Movement that will return the people to policy-making status in city government

Three areas of political process that block people from policy-making.

- 1- City Council procedures
- 2- Neighborhood issues from which local autonomy is highly restricted
- 3- City policy-making from which those to be affected are effectively excluded

1- City government procedures that essentially silence the people.

1- The Loss of Access to Determine the Consent Calendar: Recently, the City Council eliminated the ability of the public, at council sessions, to pull items from the Consent Calendar. For issues or items that the council agrees should be given no time, discussion, or consideration, the public now has no ability to countermand that, or bring it as an issue to the floor. This is one way by which the Council silences the people, by truncating its ability to foster discussion and substance in Council proceedings.

People who come to Council should have the power to pull items off Consent. Council should not have monopoly control over the consent calendar. Instead, if people come to Council to speak on an issue, then they should not have the issue removed from their influence by a consensual council. In other words, the inverse principle should be true. What concerns people, for which they come to Council meetings, must be given respect and priority.

2- Speaking Time: Individuals lose the ability to speak if many show up. In Public Comment, speakers ordinarily have two minutes. But if more than ten desire to speak, each gets only one minute. Time is reduced so that an item doesn't take more time than others. If more than ten people desire to speak on an item, it means that issue is more important than others for which no one wishes to speak. So each speaker should have more than two minutes, and not less. Large public presence for an item would also mean that there are different perspectives on it. One minute is not enough to present a coherent and cohesive argument on a complex question. Reducing speaking time is a way of silencing the people. Allowing more than two minutes to each speaker does not imply that each will take the time allowed. More time should be allowed out of respect for people's desire to participate.

3- The Inflexibility of the Agenda Order: In general, items concerning the well-being of the people, or impositions on neighborhoods by business or corporate interests, and for which many people come to Council to express themselves, are left for late in the session. Business or administrative issues are generally considered first. This is an "anti-people" deferral of an issue. When an issue is set late in the session, many of those concerned in it will have gone home. It is a way of silencing them. The inverse principle should hold. If many people come to Council for an issue, it should be considered early in the meeting. The agenda order should respond to people's involvement. That for which there are the most people should go first. People present should have the power to move items earlier according to their involvement.

4- The "Public Comment" procedure reduces people "faces in the crowd."

In Council discussion, "public comment" comes first, which council manages to sit through, and then council members discuss the item. The public is thus speaking into a vacuum, addressing the issue in disarray, from a variety of unfocused perspectives, without engagement with councilmembers. This produces conceptual confusion and incoherence of idea.

The inverse principle, which should be put in practice, is that Council address the item first, for a specific time-span, speaking about why it exists and what it is designed to accomplish from their various perspectives. Then public comment could address the issue as presented in a more focused way. People could take issue with specific attitudes or stances by councilmembers. Ultimately, some form of dialogue needs to be facilitated between council and the public since policy-making depends on dialogue, and not simply on monologue. As long as the public is only allowed monologue, it is essentially excluded from the policy-making process, and thus silenced.

Council should replace the monologue character of public comment with dialogue through inversion of session phases.

5- A Structure of Flexibility of Format Needs to be Invented

In cases where many people show up to discuss an issue, a shift of format should be possible. To include the people in policy-making, an arena of dialogue and discussion between the public and the council should be possible. For important issues affecting the people and/or the neighborhoods, it is anti-democratic to restrict the people only to monologue (commentary), leaving dialogue to a hermetic Council. One could image a form of townhall meeting in which the dozens of people who come to council to speak on an issue (which isn't rare) would have the ability to enter into dialogue with councilmembers and with each other. Policy does not depend on people speaking to the air. It requires people speaking to each other and exchanging ideas and perspectives. If this occurred prior to council making a final determination on the item, it would be much more democratic. Make procedural format flexible enough to accommodate the people's participation:

In general

- Berkeley City Council has been structured against the public/people having a voice in policy-making. That means *Procedure* takes precedence over *People*.
- In each area, the *people* could be given *priorityover* procedure.



## **2- Ancillary structural ideas that would put policy making in the people's hands.**

### **A- neighborhood control over zoning (and thus their own neighborhoods)**

The zoning regulations of Berkeley are enforced by the Zoning Adjustment Board (ZAB) and controlled by City Council. The Zoning Ordinance works within the city's relationship to corporate finance and the real estate industry. In times of crisis, as in the present, they give only lip service to the specific needs of neighborhoods. Neither the ZAB nor the City Council are attuned to respond to neighborhood concerns about housing development. They hear and ignore, and thus essentially silence the neighborhoods.

- Both city and local zoning regulations (which are enacted by a neighborhood) become conditions to which industry and finance must conform. The people can do this locally by creating Zoning Overlays.
- A Neighborhood Zoning Overlay is a special set of zoning regulations and standards defining neighborhood conditions that are passed by a neighborhood in its own autonomous assembly (A Neighborhood Assembly).
- Zoning Overlays could control how housing development occurs in a neighborhood - corporate vs. non-profit, market rate vs. affordable, etc. For instance, require that any new development should be affordable to people who live in the vicinity of development.
- Neighborhood assemblies could extend their operations to other issues as well, such as stopping displacement of long-term tenants, or defining special community benefits (educational or health benefits).
- **Neighborhood assemblies would become the local policy making bodies for their neighborhood.**

### **B- an ombudsperson**

An ombudsperson is someone to whom one can go to make complaints about a city agency's unethical behavior, and establish a dialogue with that city agency about its comportment or malfeasance. An ombudsperson would act to bring disagreeing parties into dialogue, with the aim goal of undoing unethical city activities.

Such an office is sorely needed. One can't go to City Council since it is a form of silencing. Complaints to the City Clerk will only be addressed as violations of rules or regulations. Yet ethics is an essential element of democratic governance.

What an ombudsperson could do:

- 1- Receive ethics complaints about city staff, police, councilmembers, etc. from residents, and have the power to bring those complaints to council's attention.
- 2- Be an advocate or special conduit for residents or neighborhood groups in dealing with bureaucratic attitudes and procedures.
- 3- Introduce political and economic issues brought by residents into council agendas.
- 4- Assist constituents in finding and using the proper channels or procedures for obtaining city services, and assist in finding out about services.

3- Serious Anti-Democratic Procedures by the city government that have emerged recently, and which violate the fundamental principle of democracy.

*The Fundamental Principle of Democracy -Those who will be affected by a policy should be able to participate in making the policy that will affect them:*

A second crisis has emerged in California, and thus in Berkeley, the crisis of homelessness. It is ancillary to the housing crisis, but much more dire for those who now form part of the many communities of unhoused people. Federal courts say that the city must let people camp on public land if they cannot provide shelter, but the city has spent time and energy trying to figure out how to harass and torment the homeless, even against those federal conditions.

This has become particularly egregious with respect to those homeless people who live in RVs. Those people have partially housed themselves, and one would expect the city to applaud this. On the contrary, the city has been developing rules and regulations designed to torment and harass them.

The salient fact in all this is that none of the homeless people have ever been included in the process of arriving at rules and regulations concerning them as homeless. From on high, the City Council as an elite makes rules for people who become their victims.

The homeless are able to organize themselves. They have means of pressuring the city into providing primitive and basic services for them as human beings. The hesitancy and refusal to provide those services simply out of a sense of humanity or democracy becomes a mark on the face of Berkeley's government.

The simplest solution

The fundamental principle of democracy holds that the city should bring the homeless together, along with members of the communities in which the homeless find space for themselves, in assemblies of common interest, and have them develop rules and regulations in dialogue with the neighborhoods and with other homeless people.

Democracy is about human beings governing themselves .

The purpose of the ProDemocracy Project is to put policy-making into the hands of people who will be affected by those policies.

Contact us at: PO Box 11842, Berkeley. 510-845-8634 <http://berkeleynativesun.com/>  
[jpmcfadden925@yahoo.com](mailto:jpmcfadden925@yahoo.com) [martinot4@gmail.com](mailto:martinot4@gmail.com)



Open Government Commission

ACTION CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Open Government Commission

Submitted by: Dean Metzger, Chair, Open Government Commission

Subject: Change to the Council Rules and Procedures:  
Public Comment on Council Agenda Action Items

RECOMMENDATION

Adopt a Resolution changing and updating the “Council Rules and Procedures” to change the public comment section that would allow a more comprehensible discussion between the Council and the public.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

Public comment often takes place before councilmembers have discussed the agenda item up for consideration. That means people know little of the positions of the councilmembers on the item, and little of the motivation that brings it to Council’s attention. Thus, much of the public comment is reduced to abstract approaches to the issue, without informed knowledge. Even when the Mayor or sponsor introduces the item, he or she gives their own interpretation and background on it. The public has no awareness of how individual councilmembers consider the item. This leads to a certain randomness in the way the public attempts to participate in the discussion.

By changing the order of addressing an item this effect can be mitigated. Before public comment, have the council as a whole discuss it for a specified period of time, during which councilmembers can say something about how they see the item and its purpose. People can then address the item with greater knowledge, knowing how Council thinks about it. This will enhance the relevance of public commentary, and possibly lead to some dialogue between the public and the councilmembers.

The proposed resolution was adopted by the Open Government Commission (OGC) at its regular meeting of November 21, 2019.

**Action:** M/S/C (Metzger/Blome) to send recommended resolution to Council.

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang; Noes: none; Abstain: Smith; Absent: O'Donnell (excused).

#### BACKGROUND

At an Open Government Commission meeting in 2018 the Pro-Democracy Project presented several issues pertaining to how the City Council Rules and Procedures affect the democratic process in Berkeley. The OGC formed a subcommittee to investigate the issues and met for the first time in May of 2019. The subcommittee met again on June 6, 2019, took public comment and made several recommendations. The June 2019 meeting resulted in the attached report heard by the OGC on September 19, 2019.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Not relevant for CEQA review.

#### RATIONALE FOR RECOMMENDATION

This proposal emerges from a growing concern regarding procedures in Berkeley City Council meetings. What this suggests is that some rules of Council procedure serve to prevent real participation in political matters.

The principles from which this proposal derives are first, that policy is made through public participation, and second, that those who will be affected by a policy should be involved in articulating and deciding the policy that will affect them.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

#### CONTACT PERSON

Dean Metzger, Chair, Open Government Commission  
Samuel Harvey, Deputy City Attorney, (510) 981-6998

Attachments:

- 1: Resolution
- 2: OGC Subcommittee report June 6, 2019

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

ADOPTING THE UPDATED COUNCIL RULES AND PROCEDURES AND  
REVISING RESOLUTION NO. 68,753-N.S.

WHEREAS, the City of Berkeley's "Council Rules and Procedures" are of upmost important for conducting Council meetings they must be implemented in a way that allows the maximum possible public input to decisions that are made on the behalf of citizens of Berkeley; and

WHEREAS, the updated Council Rules and Procedures will allow the citizens of Berkeley to participate in crafting the ordinances and laws that govern them; and

WHEREAS, the Council Rules and Procedures are updated regularly.

NOWHEREFORE, BE IT RESOLVED by the Council of the City of Berkeley, the change of the Council Rules and Procedures concerning Public Comment are adopted as follows:

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.
- **As each Council Action Item is introduced, each Councilmember shall briefly discuss the item, with each Councilmember stating their current understanding and general thoughts on the item. After Council discussion, public comment will be taken. The Council will then debate the item, ask any questions of the speakers and make its decision on the item.**

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, 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.

BE IT FURTHER RESOLVED that Resolution No. **XXXX-N.S.** is hereby adopted.

## Open Government Commission Subcommittee Report

June 6, 2019

### Minutes

1. Call to Order 7:30 p.m.

Roll Call:

2. Roll Call taken - Metzger & Saver

3. Public Comment

None

4. Review of May 9, 2019 subcommittee meeting

Reviewed

5. Discussion and possible action on Council Consent Calendar issues

See following report.

6. Discussion and possible action on the inflexibility of the Council Agenda Order.

See following report

7. Discussion and possible action on Public Comment procedures

See following report

8. Next meeting date

9.

No date set

10. Adjournment

Motion to adjourn: Saver

Ayes: Metzger & Saver

## Subcommittee Report

The Pro-Democracy issues before the subcommittee:

1- City government procedures that essentially silence the people.

**1- The Loss of Access to Determine the Consent Calendar**

Proposal:

Council Rules of Procedure and Order – Adopted January 29, 2019

### IV. CONDUCT OF MEETING

B. Consent Calendar There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, councilmembers, 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.

It is the policy of the Council that councilmembers 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.

**Insert paragraph that reads as follows:**

An item on the consent calendar shall be moved to the action calendar if five (5) or more speakers request that the item move to the action calendar. The Mayor may implement this as she or he sees fit. One implementation path is as follows: if a speaker requests that an item on the consent calendar move to action, then the Mayor will poll the audience to determine whether five (5) members of the public would like to pull the item, and, if so, the item shall be moved to action.

Motion to send added language to the OGC: Metzger

Ayes: Metzger and Saver

2- **Speaking Time:**

**From the Councils Rules of Procedures and Order**  
**Page 17 – Item A**

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, 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.

**Add the following to this section:**

A member of the public will be given a minimum of 2 minutes to speak and up to a maximum of four (4) minutes, if given time from another speaker. If the number of speakers appears to be so large as to prevent essential city business from completion, then the item can be moved to a special meeting.

Motion to send added language to the OGC: Metzger

Ayes: Metzger and Saver

**3- The Inflexibility of the Agenda Order**

**From the Councils Rules of Procedures and Order**  
**pages 15 & 16 – Item E**

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, Public Comment)
2. Consent Calendar
3. Action Calendar
  - a) Appeals
  - b) Public Hearings
  - c) Continued Business
  - d) Old Business

- e) New Business
- f) Referred Items
- 4. Information Reports
- 5. Communications
- 6. Adjournment Action items may be reordered at the discretion of the Chair with the consent of Council.

The Agenda Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

**Add the following to this section:**

The City Clerk shall poll the public audience during the ceremonial and consent agenda to determine the number of persons at the meeting for action items. If the number exceeds twelve (12) for any one item, that item is moved to the first action item. If more than two items exceed 12, then the order for those items will be determined with the highest number going first.

Motion to send added language to the OGC: Metzger

Ayes: Metzger and Saver

**4- The "Public Comment" procedure reduces people "faces in the crowd."**

**From the Councils Rules of Procedures and Order**  
**page 17 – Item A**

**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, 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.

**Add the following to this section:**

The council shall discuss the item after it is introduced, with each Council member stating their current understanding and general thoughts on the item. After council discussion, public comment will be taken. The council will then debate the item, ask any questions of the speakers and make its decision on the matter.

Motion to send added language to the OGC: Metzger

Ayes: Metzger and Saver

## MEMO TO FILE

**Date/Time:** May 9, 2019

**Subject:** OPEN GOVERNMENT COMMISSION DEMOCRATIC PROJECT  
SUBCOMMITTEE MEETING

South Berkeley Senior Center  
2939 Ellis Street .  
Multi Purpose Room  
Secretary:

Special Meeting  
May 9, 2019  
7:30 p.m.

The Commission may act on any item on this agenda

1. Call to Order 7:30 p.m.
2. Roll Call. Dean Metzger, Brian Tsui, Daniel Saver, Gregory Harper
3. Public Comment.  
4 Members of the public present. Steve Martinot for ProDemocracy Project.
4. Chairman and Vice Chair Selection:
  - a. Gregory Harper elected chair, Dean Metzger elected vice chair.
  - b.
5. Committee recognized need to recruit additional members to replace commissioners who will depart in the coming weeks and months:
  - a. Tsui Graduation (Fulbright Ambassador);
  - c. Saver- Family leave (baby)
6. Discussion on organizing the subcommittee:
7. **Management of City Council Meetings**
  - a. Focus is to recommend items to implement governance by dialogue between elected officials and citizens. Discussions of subjects at council meetings is paramount.
  - b. Committee identified and discusses issues raised per the ProDemocracy Project handout.
8. **City Council Meetings and The Consent Calendar - Areas of Concern**
  - a. Very Complex issue
    - i. Limited access to place items on consent calendar
  - b. The Agenda Committee is key and sorely needs attention.
    - i. Oversight is needed.
    - ii. How are issues addressed and placed on the agenda.
    - iii. What is the process and how can citizens have it discussed
  - c. Desire to Maximize the number of speakers.
    - i. Concerns over items being pulled from the agenda or limiting the number of speakers and the time they area allotted.

9. ACTION ON THE CONSENT CALENDAR ISSUE
  - a. MOTION-Recommend to the city council the mayor or their designate request conduct an informal census/poll to determine the number of persons present for discussion of an item on the consent calendar. If four[4] or more persons are present the item will be moved from the consent to the action calendar.
  - b. VOTE- Unanimous approval by members
  - c. Restructure the Calendar.
    - i. If a substantial number of people are present for a subject the item should be moved to accommodate the crowd.
    - ii. Presently it is at the mayor's or presider's discretion. iii. The consensus is to make it mandatory
    - iii.
10. What will be the process to accomplish the above?
11. **Speaking Time Concerns**
  - a. Consensus is 2 Minutes is not enough
  - b. Tyranny of the majority
    - i. Take large number of minutes and yield it.
    - ii. Individual or couples are ignored
12. **Agenda Order**
  - a. The Calendar needs restructuring.
13. **Remaining Issues** Insufficient time to discuss:
  - a. Zoning
  - b. Ombudsman
14. Future meeting schedule
  - a. June 6, 2019 7:30 P.M. Place TBD
  - b. Adjournment: 9:30 P.M.

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information. SB 343 Disclaimer: Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the City Attorney's Office at 2180 Milvia St., Berkeley, California 94704

Page 2 of 2

## The ProDemocracy Project

For the-initiation of a ProDemocracy Movement that will return the people to policy-making status in city government

Three areas of political process that block people from policy-making.

- 1- City Council procedures
- 2- Neighborhood issues from which local autonomy is highly restricted
- 3- City policy-making from which those to be affected are effectively excluded

1- City government procedures that essentially silence the people.

1- The Loss of Access to Determine the Consent Calendar: Recently, the City Council eliminated the ability of the public, at council sessions, to pull items from the Consent Calendar. For issues or items that the council agrees should be given no time, discussion, or consideration, the public now has no ability to countermand that, or bring it as an issue to the floor. This is one way by which the Council silences the people, by truncating its ability to foster discussion and substance in Council proceedings.

People who come to Council should have the power to pull items off Consent. Council should not have monopoly control over the consent calendar. Instead, if people come to Council to speak on an issue, then they should not have the issue removed from their influence by a consensual council. In other words, the inverse principle should be true. What concerns people, for which they come to Council meetings, must be given respect and priority.

2- Speaking Time: Individuals lose the ability to speak if many show up. In Public Comment, speakers ordinarily have two minutes. But if more than ten desire to speak, each gets only one minute. Time is reduced so that an item doesn't take more time than others. If more than ten people desire to speak on an item, it means that issue is more important than others for which no one wishes to speak. So each speaker should have more than two minutes, and not less. Large public presence for an item would also mean that there are different perspectives on it. One minute is not enough to present a coherent and cohesive argument on a complex question. Reducing speaking time is a way of silencing the people. Allowing more than two minutes to each speaker does not imply that each will take the time allowed. More time should be allowed out of respect for people's desire to participate.

3- The Inflexibility of the Agenda Order: In general, items concerning the well-being of the people, or impositions on neighborhoods by business or corporate interests, and for which many people come to Council to express themselves, are left for late in the session. Business or administrative issues are generally considered first. This is an "anti-people" deferral of an issue. When an issue is set late in the session, many of those concerned in it will have gone home. It is a way of silencing them. The inverse principle should hold. If many people come to Council for an issue, it should be considered early in the meeting. The agenda order should respond to people's involvement. That for which there are the most people should go first. People present should have the power to move items earlier according to their involvement.

4- The "Public Comment" procedure reduces people "faces in the crowd."

In Council discussion, "public comment" comes first, which council manages to sit through, and then council members discuss the item. The public is thus speaking into a vacuum, addressing the issue in disarray, from a variety of unfocused perspectives, without engagement with councilmembers. This produces conceptual confusion and incoherence of idea.

The inverse principle, which should be put in practice, is that Council address the item first, for a specific time-span, speaking about why it exists and what it is designed to accomplish from their various perspectives. Then public comment could address the issue as presented in a more focused way. People could take issue with specific attitudes or stances by councilmembers. Ultimately, some form of dialogue needs to be facilitated between council and the public since policy-making depends on dialogue, and not simply on monologue. As long as the public is only allowed monologue, it is essentially excluded from the policy-making process, and thus silenced.

Council should replace the monologue character of public comment with dialogue through inversion of session phases.

5- A Structure of Flexibility of Format Needs to be Invented

In cases where many people show up to discuss an issue, a shift of format should be possible. To include the people in policy-making, an arena of dialogue and discussion between the public and the council should be possible. For important issues affecting the people and/or the neighborhoods, it is anti-democratic to restrict the people only to monologue (commentary), leaving dialogue to a hermetic Council. One could image a form of townhall meeting in which the dozens of people who come to council to speak on an issue (which isn't rare) would have the ability to enter into dialogue with councilmembers and with each other. Policy does not depend on people speaking to the air. It requires people speaking to each other and exchanging ideas and perspectives. If this occurred prior to council making a final determination on the item, it would be much more democratic. Make procedural format flexible enough to accommodate the people's participation:

In general

- Berkeley City Council has been structured against the public/people having a voice in policy-making. That means *Procedure* takes precedence over *People*.
- In each area, the *people* could be given *priority* over procedure.



## **2- Ancillary structural ideas that would put policy making in the people's hands.**

### **A- neighborhood control over zoning (and thus their own neighborhoods)**

The zoning regulations of Berkeley are enforced by the Zoning Adjustment Board (ZAB) and controlled by City Council. The Zoning Ordinance works within the city's relationship to corporate finance and the real estate industry. In times of crisis, as in the present, they give only lip service to the specific needs of neighborhoods. Neither the ZAB nor the City Council are attuned to respond to neighborhood concerns about housing development. They hear and ignore, and thus essentially silence the neighborhoods.

- Both city and local zoning regulations (which are enacted by a neighborhood) become conditions to which industry and finance must conform. The people can do this locally by creating Zoning Overlays.
- A Neighborhood Zoning Overlay is a special set of zoning regulations and standards defining neighborhood conditions that are passed by a neighborhood in its own autonomous assembly (A Neighborhood Assembly).
- Zoning Overlays could control how housing development occurs in a neighborhood - corporate vs. non-profit, market rate vs. affordable, etc. For instance, require that any new development should be affordable to people who live in the vicinity of development.
- Neighborhood assemblies could extend their operations to other issues as well, such as stopping displacement of long-term tenants, or defining special community benefits (educational or health benefits).
- **Neighborhood assemblies would become the local policy making bodies for their neighborhood.**

### **B- an ombudsperson**

An ombudsperson is someone to whom one can go to make complaints about a city agency's unethical behavior, and establish a dialogue with that city agency about its compartment or malfeasance. An ombudsperson would act to bring disagreeing parties into dialogue, with the aim goal of undoing unethical city activities.

Such an office is sorely needed. One can't go to City Council since it is a form of silencing. Complaints to the City Clerk will only be addressed as violations of rules or regulations. Yet ethics is an essential element of democratic governance.

What an ombudsperson could do:

- 1- Receive ethics complaints about city staff, police, councilmembers, etc. from residents, and have the power to bring those complaints to council's attention.
- 2- Be an advocate or special conduit for residents or neighborhood groups in dealing with bureaucratic attitudes and procedures.
- 3- Introduce political and economic issues brought by residents into council agendas.
- 4- Assist constituents in finding and using the proper channels or procedures for obtaining city services, and assist in finding out about services.

3- Serious Anti-Democratic Procedures by the city government that have emerged recently, and which violate the fundamental principle of democracy.

*The Fundamental Principle of Democracy -Those who will be affected by a policy should be able to participate in making the policy that will affect them:*

A second crisis has emerged in California, and thus in Berkeley, the crisis of homelessness. It is ancillary to the housing crisis, but much more dire for those who now form part of the many communities of unhoused people. Federal courts say that the city must let people camp on public land if they cannot provide shelter, but the city has spent time and energy trying to figure out how to harass and torment the homeless, even against those federal conditions.

This has become particularly egregious with respect to those homeless people who live in RVs. Those people have partially housed themselves, and one would expect the city to applaud this. On the contrary, the city has been developing rules and regulations designed to torment and harass them.

The salient fact in all this is that none of the homeless people have ever been included in the process of arriving at rules and regulations concerning them as homeless. From on high, the City Council as an elite makes rules for people who become their victims.

The homeless are able to organize themselves. They have means of pressuring the city into providing primitive and basic services for them as human beings. The hesitancy and refusal to provide those services simply out of a sense of humanity or democracy becomes a mark on the face of Berkeley's government.

The simplest solution

The fundamental principle of democracy holds that the city should bring the homeless together, along with members of the communities in which the homeless find space for themselves, in assemblies of common interest, and have them develop rules and regulations in dialogue with the neighborhoods and with other homeless people.

Democracy is about human beings governing themselves .

The purpose of the ProDemocracy Project is to put policy-making into the hands of people who will be affected by those policies.

Contact us at: PO Box 11842, Berkeley. 510-845-8634 <http://berkeleynativesun.com/>  
[jpmcfadden925@yahoo.com](mailto:jpmcfadden925@yahoo.com) [martinot4@gmail.com](mailto:martinot4@gmail.com)



Office of the City Manager

ACTION CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Sugar Sweetened Beverage Product Panel of Experts (SSBPPE)

Submitted by: Poki Namkung, Chairperson, SSBPPE Commission

Subject: Recommendation that the City Council pass a resolution regarding procurement, sales and serving of sugar-sweetened beverages.

RECOMMENDATION

The Sugar Sweetened Beverage Product Panel of Experts recommends that the Berkeley City Council adopt a Resolution that City of Berkeley departments and City food services contractors shall not:

- 1) Serve sugar-sweetened beverages at City meetings and events on City property;
- 2) Procure sugar-sweetened beverages with City funds; or,
- 3) Sell sugar-sweetened beverages on City property, including in vending machines.

FISCAL IMPACTS OF RECOMMENDATION

Cost of promulgating information, notifying City Departments and revising clauses in City contracts.

CURRENT SITUATION AND ITS EFFECTS

Currently, the City of Berkeley has no policy regarding either the procurement of sugar-sweetened beverages with City funds or the sales or distribution of sugar-sweetened beverages at City meetings and events or on City property.

Definitions: Sugar-sweetened beverages or SSBs refer to all beverages with added caloric sweeteners with a minimum of 2 calories per fluid ounce, as defined in Chapter 7.72 of the City of Berkeley Municipal Code.<sup>i</sup> SSBs include juices with added sweetener, sodas, energy drinks, sweetened teas and coffee drinks, and sport drinks. These drinks offer little or no nutritional value, but include massive quantities of added sugar. For instance, a single 20-ounce bottle of soda typically contains the equivalent of approximately 16 teaspoons of sugar.

In BMC Chapter 7.72, SSBs exclude 100% juice, diet drinks, waters, and milk drinks as well as medical drinks and baby formula.

## BACKGROUND

In November of 2014, the Berkeley voters passed Measure D with 76% of the vote, which requires both the collection of a 1 cent-per-ounce tax on the distribution of SSBs in the City of Berkeley and the convening of the Sugar Sweetened Beverage Products Panel of Experts (SSBPPE) to recommend investments to both reduce the consumption of SSBs as well as to address the health consequences of the consumption of SSBs including diabetes, dental caries, heart disease and obesity.ii

To accomplish these goals, the SSBPPE recommended that the City create the Healthy Berkeley program to reduce the consumption of sugar-sweetened beverages (“SSB”) in Berkeley and to address the effects of SSB consumption. The City Council unanimously adopted this recommendation on November 29, 2016 and awarded a \$1.5 million per year investment to be granted to community agencies and the Berkeley Unified School District garden and nutrition program. \$225,000, or 15%, of this funding is allocated to the City Public Health Division to administer and evaluate the Healthy Berkeley Program. See November 29, 2016, Council agenda items 33a and 33b.iii

The City of Berkeley requires that all Healthy Berkeley funded programs (including the school district) adopt an organizational policy curtailing the service, procurement and sale of SSBs. The purpose of these organizational policies is to change norms in our community about consuming sugary drinks and support the educational work of these programs.

We know from the public health campaigns to reduce tobacco use, that institutional policies that change norms have a powerful impact on behavior and are a vital tool to improving health in our communities. Education and media campaigns are not enough to change behaviors, especially when pervasive and persuasive marketing by corporations influence choices that people make, and when there is an addictive aspect to the behavior as is the case with both tobacco and sugar.iv

## ENVIRONMENTAL SUSTAINABILITY

None

## RATIONALE FOR RECOMMENDATION

In 2014, Berkeley voters overwhelmingly passed Measure D and since then the City of Berkeley has led the effort to reduce the consumption of sugary drinks and resulting health impacts and disparities, not only in Berkeley but also in the Bay Area and nationwide. Sales of sugary beverages have decreased and school and community groups have been funded to continue the effort to reduce sugary drink consumption and improve health. Now is an opportune time for the City to once again provide leadership for City employees and the community by enacting a healthy beverage policy for the City that restricts procurement of sugary drinks as well as the serving and sales of sugary drinks at City events. This policy would be responsive to the will of the voters, supportive of school and community efforts to improve Berkeley residents' health, and a model to other cities. This policy will align the City with Healthy Berkeley grantees who

have already adopted similar policies. The SSBPPE encourages the City to take this step to set an example and demonstrate its own commitment to the further reducing sugary drink consumption and improvement in community health.

ALTERNATIVE ACTIONS CONSIDERED

In January 2018, the SSSBPPE voted to recommend that the Berkeley City Council adopt an Ordinance amending the Administrative Code to direct the City of Berkeley departments and City food services contractors to refrain from: 1) Procuring sugar-sweetened beverages with City funds; 2) Selling sugar-sweetened beverages on City property, including in vending machines; and, 3) Serving sugar-sweetened beverages at City meetings and events on City property. On March 27, 2018, the City Council voted to refer the recommendation to the City Manager and request that the City Manager draft an ordinance for consideration by the City Council. In June 2018, the City Council ranked this ordinance around 32 among items to develop for the City. No further action was taken until May of 2019, when Council Member Harrison reached out to Holly Scheider, her appointee on the SSBPPE Commission, and suggested that the Commission put forward a Resolution in place of an Ordinance with the same content.

CITY MANAGER

See the City Manager report.

CONTACT PERSON

Dechen Tsering, SSBPPE Commission Secretary (510) 981-5394

Attachments:

1: Resolution

Exhibit A: Resolution establishing City policy directing City of Berkeley departments and contractors to refrain from procuring, serving or selling sugary drinks.

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

RESOLUTION ESTABLISHING CITY POLICY / AMENDING THE ADMINISTRATIVE CODE TO DIRECT CITY OF BERKELEY DEPARTMENTS AND CONTRACTORS TO REFRAIN FROM PROCURING, SERVING OR SELLING SUGARY DRINKS

WHEREAS, the City of Berkeley is known for its commitment to reducing inequities in diet and disease and in promoting access to healthy food and beverages.

WHEREAS, drinking just **one** serving of sugar-sweetened beverage per day poses a **30 percent or higher risk** of becoming diabetic.

WHEREAS, drinking just **one** serving of sugar-sweetened beverage per day poses a **30 percent or higher risk** of early death from cardiovascular disease.

WHEREAS, city employees deserve a healthy work environment, with an increased variety of healthier low-sugar alternative beverages such as flavored waters, plain or carbonated water, 100% juice, milk drinks, diet drinks, unsweetened or artificially sweetened iced teas and coffee drinks.

WHEREAS, it is recognized that city staff are free to bring and consume their own sugary beverages at work.

WHEREAS, other public institutions that have completely eliminated the sales of sugar sweetened beverages on their premises and have demonstrated that as a result, positive changes have been documented in the staff's metabolic disease indicators associated with lower risk of diabetes and heart disease

WHEREAS, giving City employees access to healthier beverages in the workplace will increase healthy beverage consumption and reduce the impact of diet-related disease, thus reducing the City's health care expenses.

WHEREAS, the City of Berkeley requires that *all* organizations receiving funding from Healthy Berkeley not serve or sell sugar sweetened beverages on their premises.

WHEREAS, the Berkeley Unified School District does not serve or sell soda to students of all ages and students on their premises and this contributes to positive adult role modeling regarding healthy beverage consumption.

WHEREAS, Chapter 7.72 of the City of Berkeley Municipal Code<sup>v</sup> has already defined sugar-sweetened beverages as all beverages with added caloric sweeteners with a minimum of 2 calories per fluid ounce, including juices with added sweetener, sodas, energy drinks, sweetened teas and coffee drinks, and sport drinks which offer little or no nutritional value, but include massive quantities of added sugar and in addition, Berkeley Municipal Code Chapter 7.72 also defines exemptions and thus excludes waters, 100% juice, milk drinks, diet drinks, as well as medical drinks and baby formula.

THEREFORE BE IT RESOLVED that the City of Berkeley and City food services contractors **shall not**:

- 1) Serve sugar-sweetened beverages at City meetings and events on City property,
- 2) Procure sugar-sweetened beverages with City funds; and,
- 3) Sell sugar-sweetened beverages on City property, including in vending machines.

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<sup>i</sup> B.M.C. 7388-NS § 7.72, 2014, City of Berkeley

<sup>ii</sup> B.M.C. 7388-NS § 7.72, 2014, City of Berkeley

<sup>iii</sup> Berkeley Nov. 29, 2016 agenda:

[https://www.cityofberkeley.info/Clerk/City\\_Council/2016/11\\_Nov/City\\_Council\\_11-29-2016\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2016/11_Nov/City_Council_11-29-2016_-_Regular_Meeting_Agenda.aspx) Language in the Nov. 29, 2016

Resolution, Agenda item 33a, pages 9 and 11, follows:

“BUSD will not sell or serve sugar-sweetened beverages (as defined by the SSB tax) at any BUSD schools or campuses.”

“Funded organizations must have in place or agree to adopt prior to being funded an organizational policy prohibiting serving SSBs at organization sponsored events or meetings.”

<sup>iv</sup> <https://www.theatlantic.com/health/archive/2014/01/the-sugar-addiction-taboo/282699/>

<sup>v</sup> B.M.C. 7388-NS § 7.72, 2014, City of Berkeley





Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow

RECOMMENDATION

1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow.
2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.

POLICY COMMITTEE RECOMMENDATION

On November 21, 2019, the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee adopted the following action: M/S/C (Robinson/Davila) to send the item, as amended, with a Positive Recommendation back to the City Council with the following amendments:

Amend the recommendation revised to read as follows:

1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow.
2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.

Amend the effective date to read as follows:

The effective date of this amendment shall be XXX, or the effective adoption date of the 2020 California Building Standards Code, whichever is sooner.

Vote: All Ayes.

## BACKGROUND

The California Building Standards Code, or Title 24 of the California Code of Regulations, specifies the standards for buildings and other structures in California. Title 24 is intended to protect public health, safety, and general welfare building occupants, and is updated at the state level and adopted by local jurisdictions every three years. Municipalities are permitted to make local amendments to the Building Standards Code<sup>1</sup> as deemed necessary for general welfare, as long as they are submitted to the California Building Standards Commission with the necessary findings. The ideal time to update local buildings codes is before the next code cycle. Berkeley will adopt the 2019 code on January 1, 2020.

Cooktops contribute to toxic indoor air quality. A 2013 Lawrence Berkeley National Laboratory (LBNL) study found that “60 percent of homes in the state that cook at least once a week with a gas stove” produce toxic levels of nitrogen dioxide, formaldehyde and carbon monoxide exceeding federal standards for outdoor air quality.<sup>2</sup> A prior LBNL study found that the “aggregate health consequences of poor indoor air quality...are as significant as those from all traffic accidents or infectious diseases in the United States.”<sup>3</sup> Even electric cooktops generate toxic particulate matter. Unfortunately, the Environmental Protection Agency does not currently regulate indoor air quality.

Researchers in the United States and Australia have begun to link the use of natural gas stoves with asthma attacks and associated hospitalizations.<sup>4</sup> Asthma and its relationship to natural gas and other forms of cooking present profound questions about equity.<sup>5</sup> Researchers from the University of California, Berkeley, and the University of California, San Francisco found that the highest asthma rates in Berkeley and Oakland

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<sup>1</sup> “Local Amendments to Building Standards—Ordinances,” California Building Standards Commission, <https://www.dgs.ca.gov/BSC/Codes/Local-Jurisdictions-Code-Ordinances>.

<sup>2</sup> “Pollution in the Home: Kitchens Can Produce Hazardous Levels of Indoor Pollutants,” Julie Chao, Lawrence Berkeley National Laboratory, July 23, 2013, <https://newscenter.lbl.gov/2013/07/23/kitchens-can-produce-hazardous-levels-of-indoor-pollutants/>.

<sup>3</sup> *Id.*

<sup>4</sup> Amy Mitchell-Whittington, “Cooking with gas, damp housing may cause childhood asthma: study,” Brisbane Times, April 15, 2018, <https://www.brisbanetimes.com.au/national/queensland/cooking-with-gas-damp-housing-may-cause-childhood-asthma-study-20180415-p4z9pz.html>; Nadia N. Hansel et al., “A Longitudinal Study of Indoor Nitrogen Dioxide Levels and Respiratory Symptoms in Inner-City Children with Asthma,” *Environmental Health Perspectives*, October 2008, <https://pdfs.semanticscholar.org/e099/2f996c97844af8fbcf86b4824fbb7b1cf092.pdf>.

<sup>5</sup> A 2017 California Public Health Department report found that asthma is 30% more prevalent for African Americans and 40% more prevalent for Asian Americans and Native Americans than whites. Gay/lesbian and bisexual men and women have 40-60% higher asthma prevalence than straight men and women. Hispanics and Asians born in the U.S. are more than twice as likely to have current or lifetime asthma as Hispanics and Asians born outside of the U.S. See California Department of Health, “Asthma Prevalence in California: A Surveillance Report,” January 2017, [https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/EHIB/CPE/CDPH%20Document%20Library/Asthma\\_Surveillance\\_in\\_CA\\_Report\\_2017.pdf](https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/EHIB/CPE/CDPH%20Document%20Library/Asthma_Surveillance_in_CA_Report_2017.pdf).

tracked areas that were redlined pursuant to racist housing policies.<sup>6</sup> This issue is compounded by state and regional efforts to boost home efficiency to trap air indoors.

The state currently requires certain types of kitchen exhaust ventilation systems in all new residential construction, but not necessarily range ventilation hoods. There is also no requirement for range ventilation hoods at time of sale. The City Planning Department is proposing amendments to the state mechanical code effective January 1, 2020 requiring range hoods in all dwelling units undergoing renovation. Ventilation systems are designed to remove combustion and other cooktop byproducts from the residential unit to preserve air quality.

In addition to the Planning Department amendments, this ordinance proposes requiring kitchen exhaust range hood ventilation systems in any multifamily residential or condominium units subject prior to execution of a contract for sale or close of escrow.

The transfer of property currently triggers various state and local building code requirements. For example, at time of sale the state health and safety code requires gas water heaters to be seismically braced, anchored, or strapped.<sup>7</sup> Other local ordinances related to environment, such as the BMC 19.81: the Building Energy Saving Ordinance, require energy efficiency reports prior to time of sale. The intention of Section 402.1.3 is to ensure that all buildings and units therein that are sold in Berkeley include exhaust ventilation systems, therefore enhancing air quality and public safety across the existing building stock.

#### FINANCIAL IMPLICATIONS

Staff time to submit ordinance to the Building Standards Commission and to draft findings resolution. In addition, building inspector staff time will be necessary to compliance with new provisions.

#### ENVIRONMENTAL SUSTAINABILITY

Mandating kitchen exhaust ventilation systems in residential units undergoing renovation and all units at sale will enhance indoor air quality.

#### CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

#### ATTACHMENTS

1: Ordinance

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<sup>6</sup> UC Berkeley Public Health, "Historically redlined communities face higher asthma rates" May 2019, <https://sph.berkeley.edu/historically-redlined-communities-face-higher-asthma-rates>.

<sup>7</sup> Health and Safety Code § 18031.7, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=18031.7.&lawCode=HSC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=18031.7.&lawCode=HSC)

AMENDING CHAPTER 19.32 OF THE BERKELEY MUNICIPAL CODE TO REQUIRE KITCHEN EXHAUST HOOD VENTILATION IN RESIDENTIAL AND CONDOMINIUM UNITS PRIOR TO EXECUTION OF A CONTRACT FOR SALE OR CLOSE OF ESCROW

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

Section 1. That Berkeley Municipal Code Section 19.32.040 is hereby amended to read as follows:

**19.32.040 Amendments to the California Mechanical Code**

**Chapter 4** of the 2019 California Mechanical Code is adopted in its entirety subject to the modifications thereto which are set forth below:

**402.1.2 Ventilation in Dwelling Units.** Requirements for ventilation air rate for single-family dwellings and residential dwelling units in multi-family buildings shall be in accordance with this section and ASHRAE 62.2. Each kitchen range shall be provided with a vented hood ducted to terminate outside the building, with a minimum air flow of 100 cfm and a maximum sound rating of 3 sones.

**Exception:** A vented range hood shall not be required in dwelling unit kitchens equipped with a local mechanical exhaust system installed in accordance with ASHRAE 62.2.

**402.1.3 Sale of Existing Buildings.**

The requirements of Section 402.1.2 shall apply prior to entering into a contract of sale, or prior to the close of escrow when an escrow agreement has been executed in connection with a sale as follows:

1. in any residential or condominium building or structure, applicable to all dwelling units therein; or
- 1.2. in an individual condominium unit.

For regulations governing wood burning appliances, see BMC 19.28.040.

Section 2. The effective date of this amendment shall be **XXX**, or the effective adoption date of the 2019 California Building Standards Code, whichever is sooner.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmembers Harrison, Davila, Mayor Arreguin, and Councilmember Robinson

Subject: Establishing an Outdoor Emergency Shelter

RECOMMENDATION

1. Refer to the City Manager to establish an outdoor emergency shelter in Berkeley. Such a shelter should consider the following amenities to be provided but not required:
  - A. Climate-controlled, wind-resistant durable tents with wooden pallets for support.
  - B. Seeking an agency to manage and oversee the emergency shelter.
  - C. Portable toilet service and handwashing service.
  - D. Shower and sanitation services
  - E. Garbage pickup and safe needle disposal.
2. Refer to the November budget process \$615,000 to be considered alongside other Measure P recommendations.
3. Temporarily waive BMC Article 9 Section 19.28.100 Section N106, to allow for the installation of tents and membrane structures that may be erected for longer than 180 days even if they do not meet all physical requirements.<sup>1</sup>
4. Refer to the City Manager protocol for selecting residents that mirror other shelter selection criteria and are less restrictive than HUD protocols.

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<sup>1</sup> For example, tents and membrane structures are required to sit at least four inches off the ground, have wooden or concrete floors, and be equipped with smoke alarms. Though all of these requirements are important to the health and safety of Berkeley residents, they are arduous requirements to meet. The purpose is to provide temporary accommodations.

**POLICY COMMITTEE RECOMMENDATION**

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action: M/S/C (Davila/Hahn) to send the item to Council with a positive recommendation and the following additional amendments made by the author:

1. Refer to the November budget process the costs of \$615,000 associated with establishing the outdoor emergency shelter to be considered with other Measure P Panel of Experts recommendations;
2. Referral to the City Manager to begin the process of establishing an outdoor emergency shelter in Berkeley. This includes seeking an agency to manage and oversee the outdoor emergency shelter including amenities for trash pick-up, toilets, handwashing stations, showers services, and needle receptacles, as well as provide basic service levels including security, housing support services, and outreach coordinators.
3. Additionally, the committee recommends but does not require, that staff establish protocols based on existing application processes for eligibility allocation and that the eligibility criteria be less restrictive than the HUD criteria.

Vote: Ayes – Davila, Hahn; Noes – None; Abstain – Kesarwani; Absent – None.

**BACKGROUND**

According to the Alameda County Point In Time count (see Attachment 1), there are 1108 homeless people living in Berkeley, 813 of whom are unsheltered. Of the unsheltered people, 251 individuals are sleeping in a tent and 231 are sleeping on a street, sidewalk, or in a park. Roughly 500 people in Berkeley are sleeping in tents or without shelter altogether, whether officially sanctioned or not. Under current policy, many of these encampments do not have any trash, sanitary services, good neighbor policy, or engagement with services, creating unsanitary and unsafe circumstances for both the residents of the encampments and surrounding neighbors.

Over the past several years, Berkeley has made significant investments in affordable housing and supportive services, such as approving the Berkeley Way<sup>2</sup> project that will permanently house 59 people, and the Pathways STAIR Center which has already housed over 100<sup>3</sup> in a year of existence. In total, we are able to shelter about 295 people (not including the 40 emergency shelter beds at Old City Hall), and about 100 of those shelter beds have been added since 2016. We have also expanded mental health and crisis services, are working to find a location for a safe RV parking site, and have provided other homeless services. Our long-term investments are working, but in the short term, people are sleeping in tents and outdoors without durable shelter, a potentially dangerous situation with autumn smoke and winter rains approaching. In addition to the elements, transportation-related deaths were the third leading cause of death among the homeless in Los Angeles County in 2018.<sup>4</sup> Living by highway onramps increases the likelihood of a deadly collision by many factors. Within the next year, we want to provide people with

<sup>2</sup> <https://bfhp.org/news/berkeley-way/>

<sup>3</sup> "Pathways STAIR Center: First Year Data Evaluation and Results-Based Accountability Dashboard", Item 41, September 24, 2019 Berkeley City Council meeting.

<sup>4</sup> <https://www.theguardian.com/us-news/2019/oct/30/homeless-deaths-los-angeles-county>

permanent housing. In the next month, we want to prevent anyone from dying of exposure.

Emergency outdoor shelters should be seen only as a temporary fix. Berkeley must continue to build permanently affordable housing and provide comprehensive services to lift people out of homelessness, prevent displacement and move into homes. However, despite our recent gains, we are still unable to serve all homeless people in Berkeley simultaneously, and there are still gaps in service. An emergency outdoor shelter with durable tents and sanitation services is a short term option that is safer and cleaner than the status quo of unsanctioned camping throughout the City. The intention of this item is to create a limited number of sanctioned encampments operated in an organized fashion. The emergency outdoor shelter has a 180 day suggested length of stay. The goal is that no individual will remain for an extended period of time as placement in an indoor navigation center or permanent housing are more appropriate mid- and long-term options.

The state of California has declared a shelter emergency<sup>5</sup> as has the City of Berkeley.<sup>6</sup> Berkeley's shelter beds are at capacity just about every night. The demand for beds is great – according to the Point in Time count, 98% of survey respondents said that they want to find permanent housing. At present, the need far outweighs the available beds, and it is time to look at other, temporary options.

Establishing a limited number of emergency outdoor shelters would represent a positive step for the housed Berkeley community as well. Lack of sanitation services, garbage collection, and potable water can spread infection and disease. Currently, rather than investing in resources to address these important issues, significant resources are being spent on enforcement, simply moving the issues elsewhere in Berkeley. The benefit of an emergency outdoor shelter is the ability to choose the most appropriate location, and provide appropriate services, rather than current disorder.

At the September 10, 2019 City Council meeting, unhoused people and their advocates attended with signs<sup>7</sup> that read “Where Do We Go?” There is currently a community of about 100 individuals living in tents or on the street in the area surrounding the I-80 freeway entrance on University Avenue. People live on a combination of City of Berkeley parkland and CalTrans-owned medians. CalTrans police chase residents onto City land, then City land pushes residents back onto CalTrans property, and there are no locations in this vicinity where any number of people can sleep safely. Various public agencies regularly threaten the residents of this property with permanent eviction. Sleeping in parks has long been prohibited by BMC 6.32.020.

A possible location is at 611-639 University Ave, beneath the bridge connecting Fourth St and the Waterfront. It is a City-owned<sup>8</sup> lot surrounded by light industry manufacturing

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<sup>5</sup> [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB932](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB932)

<sup>6</sup> “Extension of Housing Crisis Declaration.” Item 10, October 31, 2017, Berkeley City Council meeting.

<sup>7</sup> [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=627e4d8c-d4ce-11e9-b703-0050569183fa](http://berkeley.granicus.com/MediaPlayer.php?publish_id=627e4d8c-d4ce-11e9-b703-0050569183fa)

<sup>8</sup> Attachment 4

to the North, South, and East, and I-80 and Eastshore Highway to the West, so located outside of residential or commercial zones. There are currently about 15 tents set up in an alley between the lot in question and an industrial plant at 1930 Second St. The 611-639 University lot is mostly empty, with some room used to store old pipes, shipping containers, and other disused pieces of construction equipment.

Regardless of current use, the lot has room for about 15 tents from east to west (judging by the number of tents that are already along the north side of the lot) and, by estimate, room for about 5-8 tents from north to south. Arranged into a grid, there is the potential for up to 75-120 tents on this parcel of City-owned but under-utilized property.

Beyond simply being owned by the City of Berkeley, there are other amenities that make it a strong candidate for the location of an emergency outdoor shelter. It is surrounded on all sides by MULI (light industrial manufacturing), so the emergency outdoor shelter will not disturb residential or commercial neighbors.<sup>9</sup> Moreover, is not visible from I-80. The lot is adjacent to areas where unhoused people are currently living, thus transferring to this location would permit this community to stay together. There is a water main about 15 feet from the lot line (see attached pictures). The location is three blocks away from the Pathways STAIR Center, about a mile away from Berkeley Mental Health, and accessible via University Avenue and San Pablo Avenue bus routes.<sup>10</sup> The location fits the needs of our unhoused community, and is currently housing only old pipes. It is a smart location for a City-managed emergency shelter.

Other locations should be considered as appropriate. Ideal locations would be owned and/or managed by the City of Berkeley in non-residential zones and be accessible by public transit.

Several other cities have already<sup>11</sup> established similar emergency shelters in response to this housing and homelessness crisis. In February, the City of Modesto<sup>12</sup> established several hundred tents under a bridge, where about 300-400 people sleep every night.<sup>13</sup> The project, called the Modesto Outdoor Emergency Shelter (MOES), has proven extremely successful. On September 7, 2019, Gavin Newsom's Homeless and Supportive Housing Advisory Task Force met in Modesto to "observe best practices firsthand."<sup>14</sup> MOES provides portable bathrooms, showers, and handwashing stations,

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<sup>9</sup> The Homeless Shelter Crisis Resolution specifies that no planning, zoning, building, or other permit requirements shall be required to the extent that compliance would prevent, hinder, or delay the effects of the shelter crisis. Nonetheless, the site's classification as mixed use light industrial is an advantage,

<sup>10</sup> The proximity to public transportation is a strength of the location though it, like other homeless service providers, would be stronger with dedicated transportation as is called for in Item 33, "Budget Referral: Transportation to Support Mobility-Impaired Individuals Experiencing Homelessness" from the 11/12/19 Berkeley City Council Meeting.

<sup>11</sup> [https://www.vice.com/en\\_us/article/vb9we3/the-homelessness-crisis-is-getting-so-bad-that-cities-are-now-building-their-own-camps](https://www.vice.com/en_us/article/vb9we3/the-homelessness-crisis-is-getting-so-bad-that-cities-are-now-building-their-own-camps)

<sup>12</sup> <https://www.modbee.com/news/local/article226465300.html>

<sup>13</sup> [https://www.youtube.com/watch?v=J\\_gQ54kZXmA&t=65s](https://www.youtube.com/watch?v=J_gQ54kZXmA&t=65s)

<sup>14</sup> <https://www.modbee.com/news/local/article234754707.html>



nonprofits and agencies bring food, medical, mental health, and rehousing services, and the encampment is fenced and monitored by a security guard. An editorial in the Modesto Bee applauded MOES for “easing some suffering, however temporary.”<sup>15</sup> The Modesto Outdoor Emergency Shelter is in the process of closing because they are transitioning residents indoors into a newly constructed homeless shelter.<sup>16</sup> The MOES was always intended to be temporary until long-term accommodations could be constructed, and now that Modesto and Stanislaus County have indoor accommodations for the unhoused, the MOES is being shut down.

The Sacramento Mayor and City Council are also looking at using Modesto’s model.<sup>17</sup> Sacramento, like Berkeley, is in the process of building new shelters and affordable housing developments, but “as the city enters another month in crisis, other alternatives are coming to the fore.”<sup>18</sup> Berkeley previously considered outdoor emergency shelters. At the February 13, 2018 Council meeting, the Council referred to the Homeless Commission a series of questions about what an outdoor emergency shelter may look like, including how many residents, who provides facilities, how rules are enforced, etc. (see Attachment 9). In the nearly two years since this referral, homelessness has increased, as has the need for City-designated encampments.

Modesto, Sacramento, and Governor Newsom have all recently concluded that outdoor emergency shelters are an appropriate temporary addendum, and that MOES models best practices for outdoor emergency shelters. Berkeley has the opportunity to learn from Modesto and MOES, and establish a similar outdoor emergency shelter.

### **Durable Tents**

Working with suppliers to provide durable, waterproof tents for those unhoused people who require shelter would be a major step toward improving the health, safety and quality of life of Berkeley’s homeless population. Nearly one third of Berkeley’s homeless population currently lives in tents or makeshift shelters, a number that has doubled in the past two years.<sup>19</sup> Creating a space with durable tents would allow this sizeable part of the homeless community to shift away from temporary and potentially unsafe, unsanitary and weather-prone tents.

Health and safety standards call for wood or concrete floors to raise tents off the ground. Providing wooden pallets underneath tents fulfills this requirement at a low price. If feasible, collecting pallets should be a part of establishing the emergency shelter.

In addition, a portable solar powered system for charging phones, wheelchairs, or other electronics should be provided. Generators are also a possibility, but can be dangerous

<sup>15</sup> <https://www.modbee.com/opinion/editorials/article234558672.html>

<sup>16</sup> <https://www.abc10.com/article/news/local/modesto/stanislaus-county-prepares-to-close-outdoor-shelter/103-c4b2b17e-e048-4b31-8627-a88fbd8214c2>

<sup>17</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

<sup>18</sup> *Ibid.*

<sup>19</sup> 2019 HIRD Report

around so many people. High-quality solar generators are a one-time expense of about \$500-800 but will last for years and can provide power to many people.

Modesto established an encampment that now houses approximately 400 people in 290 10x10ft waterproof tents,<sup>20</sup> donated by the Reno-based company Qamp.<sup>21</sup> These tents include a heavy-duty steal frame, screen door, and an insulating heat-reflective roof.<sup>22</sup> These tents are 150D polyester, which has a 200% lifespan compared with average camping tents.<sup>23</sup> Partnering with a local company to acquire similarly-sized tents would increase security, community wellbeing and order at the new encampment. Additionally, a 10x10ft space grants homeless individuals a larger, constant and secure location to fit their belongings, exceeding the 9 square feet allocation permitted by the Sidewalk Ordinance.

Other durable tents include those made by ShiftPod,<sup>24</sup> and Sweetwater Bungalows<sup>25</sup> produces larger tents intended for entire families. The purpose of this item is not to specify a vendor, but to lay out basic criteria for safe tents, including but not limited to:

- Insulation
- Wind resistance
- Solid (easy to set up and take down, but with a durable frame)

Since original submission of this item, local fundraising efforts from the unhoused and advocates have been able to replace and weatherize tents for many individuals. If individuals choose to keep their own tents, the City may not need to provide tents for anyone upon initial set-up, though they should be offered to those in need.

### **Staffing**

A successful emergency shelter will require the City or a qualified non-profit providing services its residents or providing referrals to other qualified agencies. All services or referrals to services will be offered but not required. Such services include but are not limited to:

- Coordination of safety and security 24 hours a day
- Governance of the community, including arrangement of the tents
- Coordination of volunteerism and donations
- Supportive services (such as case management and integration with existing homeless services)
- Rehabilitative opportunities to support the transition out homelessness

<sup>20</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

<sup>21</sup> <https://qamp.com/products/qamp-tent?variant=35987893763>

<sup>22</sup> *Ibid.*

<sup>23</sup> <https://www.goodcampingtents.com/tent-fabrics/>

<sup>24</sup> <https://shiftpod.com/shiftpod/shelter>

<sup>25</sup> <https://www.sweetwaterbungalows.com/>

Modesto partnered with Turning Point Community Programs to manage all of these services.<sup>2627</sup> The city also invited other charitable organizations like the Salvation Army<sup>28</sup> to assist with shelter management and food services. Berkeley could similarly work with local organizations specialized in such projects or expand existing city government services to the new shelter.

Having a team to supervise the camp and provide case management, psychological services, and job search support for those who choose to utilize them would ensure that the homeless residents have a shot at keeping their stay in the emergency shelter to a minimum. This could be handled similarly to the Pathways project, or through a mechanism similar to that of Modesto's outsourcing of most service responsibilities to non-profit organizations. The Pathways Center is a "low barrier" shelter with two key rules: no onsite drug or alcohol consumption, and a zero tolerance policy for abuse and harassment. These same rules would be applicable, and even more important given the close proximity of residents. Engagement with services is encouraged but is not a requirement for staying in the emergency outdoor shelter, as a low-barrier emergency shelter.

The emergency shelter should be open 24 hours a day. Unhoused people want to know where they can go, and if they are removed every morning, that question remains unanswered. Many unhoused people do not utilize traditional shelters because they work nights and need to sleep when the shelter is closed. However, most shelters have limited hours because they provide extensive services, meals, and other amenities, and do not have the resources to maintain this level of service all day. If there is a direct tradeoff between hours of operation and the depth of service, this referral prioritizes hours of operation.

A safe and secure environment is vital to the success of the project. A designated, limited space that would not allow extending tents on to surrounding streets is preferred. Setting up a fence and hiring a security team, as was done in Modesto,<sup>29</sup> would be one way to achieve this goal, though the lot at 611 University already has a fence surrounding it. Just as in Modesto, the need for security would have to be balanced with limited restrictions on entry and exit. Regulating permitted activities and items brought into the camp would also help ensure improved safety for its residents. Mobility around the camp can be ensured by capping the amount or size of possessions at what residents can fit in their own tents. A ban on bonfires would drastically reduce the risk to health and life of residents.

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<sup>26</sup> <https://www.tpcp.org/programs/moes/>

<sup>27</sup> <https://www.abc10.com/article/news/local/modesto/modesto-homeless-community-to-leave-beard-brook-for-new-location/103-622123290>

<sup>28</sup> <http://www.stancounty.com/bos/agenda/2019/20190226/DIS01.pdf>

<sup>29</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

Staff should include one program and site manager to oversee the program, two outreach coordinators, and two housing navigators to assist the residents with finding permanent housing.

### **Toilets and Handwashing Stations**

The potential for disease in compact outdoor emergency shelters is significant, and decreases dramatically with adequate access to handwashing.<sup>30</sup> In 2017, three counties in California experienced an unprecedented hepatitis A outbreak that was primarily carried by the homeless population.<sup>31</sup> As part of the response, San Diego County implemented 160 new handwashing stations, which was highly influential in curbing the spread of the disease.<sup>32</sup> The Here/There encampment on Ashby and Adeline has a portable toilet and handwashing station that was donated by Friends of Adeline,<sup>33</sup> because proper sanitation for the homeless is beneficial to entire communities.

The City is making progress setting up public restrooms across the City, which is a positive development. However, restrooms spread throughout the City do not meet the needs of a single community. A highly concentrated group of people (as currently exists on CalTrans land) will have more intense restroom needs, and the City should establish restrooms to account for those needs.

There is a water pipe just northwest of the lot at 611-639 University (see Attachment 5) and while the toilet may be portable, there is the possibility to install a real handwashing station with running water, which would reduce the costs to refill a reservoir. Even if the City decides that both the toilet and handwashing station are to be portable, the proximity to potable water provides options.

### **Mobile Shower Services**

Berkeley has an ongoing partnership with Lava Mae, a mobile shower charity. Access to showers prevents disease and allows unhoused people to live in dignity. In addition to showers, Lava Mae and other organizations such as Dignity On Wheels also organize day-long “care villages” that provide dental care, haircuts, clothing, vaccinations, and other services. For several months Lava Mae has been operating at two pilot locations in near the STAIR Center and at the Progressive Baptist Church.<sup>34</sup> However, according to City staff, Lava Mae is relocating their South Berkeley location to West Oakland. The mobile shower program has been extremely successful and has improved quality of life for unhoused people in Berkeley. Rather than sending those services to Oakland, we

<sup>30</sup> <https://www.cdc.gov/handwashing/why-handwashing.html>

<sup>31</sup> <https://www.mercurynews.com/2017/10/02/california-scrambles-to-contain-deadly-hepatitis-a-outbreaks/>

<sup>32</sup> <https://www.sandiegocounty.gov/content/dam/sdc/cosd/SanDiegoHepatitisAOutbreak-2017-18-AfterActionReport.pdf>

<sup>33</sup> <https://www.berkeleyside.com/2017/07/18/homeless-camp-city-berkeley-want-bathroom>

<sup>34</sup> [file:///C:/Users/sbarnard/Downloads/2019-09-10%20Item%2066%20Referral%20Response%20Lava%20Mae%20Mobile%20\(1\).pdf](file:///C:/Users/sbarnard/Downloads/2019-09-10%20Item%2066%20Referral%20Response%20Lava%20Mae%20Mobile%20(1).pdf)

should expand them. Any sanctioned encampment will need some shower services for simple sanitary purposes, and by bringing them to Second and University, Berkeley can reinstate the previous practice of having mobile showers twice weekly, at two separate locations. Reinstating services at this location should not preclude finding other strategic locations for mobile shower services in Berkeley.

The City of Berkeley previously partnered with the Alameda County Mobile Healthcare for the Homeless<sup>35</sup> program which is on hiatus due to staffing shortages. The program brings primary care to homeless individuals free of charge. If the program resumes service in Berkeley, a partnership with them will help keep residents sanitary and healthy.

### **Trash Pickup**

On June 4, 2019 the Modesto City Council voted unanimously to perform garbage removal and disposable services for the Outdoor Emergency Shelter (see Attachment 2). Reliable garbage pickup is crucial to the success of any homeless services. Excessive garbage is highly detrimental to all City residents, as it is unsightly and can attract rodents and disease. Currently there is a rodent infestation at the encampments on University and Frontage Road negatively affecting quality of life for the residents and visitors to the Marina. To prevent this in the future, we need reliable garbage pickup. Housed Berkeleyans have their garbage removed and disposed of once a week. Unhoused people oscillate between having nothing, and having all of their belongings removed that do not fit in nine square feet, whether it is garbage or not.

As a part of regular refuse pickup, the City or coordinating agency should provide sharps containers or other forms of safe needle disposal. Approximately 8% of homeless adults in the United States have diabetes,<sup>36</sup> and there are many other diseases that require sharps to mediate, including arthritis, hepatitis, HIV/AIDS, blood clotting disorders, and others.<sup>37</sup> Regardless of why an individual may need a sharp, safe disposal is critical to prevent the spread of infection. Putting sharps in the garbage is insufficient and can harm zero waste employees.<sup>38</sup> Sharps boxes can be purchased at drugstores and are inexpensive, but are crucial to the health and safety of all involved.

There is enormous need for refuse services for the homeless population. Early reports on enforcement of the Sidewalk Ordinance indicate that thousands of pounds of refuse have already been removed, since implementation began six months ago. Many complaints regarding homelessness to Council offices and 311 are concerning garbage and illegal dumping. All residents of Berkeley deserve clean streets, and refuse removal will provide not only cleanliness and safety to homeless residents, but more harmony among the community at large as well.

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<sup>35</sup> <https://www.achch.org/mobile-health.html>

<sup>36</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4318300/>

<sup>37</sup> <https://www.fda.gov/medical-devices/consumer-products/safely-using-sharps-needles-and-syringes-home-work-and-travel>

<sup>38</sup> *Ibid.*

Initiating refuse service is a process typically initiated by the property owner<sup>39</sup> and performed by the Customer Service Division. Because 611-639 University is owned by the City of Berkeley, this item refers the initiation of refuse services to the City Manager.

#### REVIEW OF EXISTING PLANS AND POLICIES

The Strategic Plan includes several goals and priorities that are in line with an emergency outdoor shelter, including creating housing support services for our most vulnerable community members and fostering a resilient and connected City. The purpose of an emergency outdoor shelter is to provide basic shelter needs to the most vulnerable as a City, not relying on private development to do so.

The 1000 Person Plan is a comprehensive plan to permanently end homelessness. It costs between \$16 million and \$20 million, depending on the depth of housing subsidies. The emergency outdoor shelter is not intended to supersede the 1000 Person Plan, but complement its goals and efforts. Finding 2 in the 1000 Person Plan says that our system is serving a progressively smaller percentage of the literally homeless population every year, and the emergency outdoor shelter is a low-barrier way to serve more literally homeless people.

#### ALTERNATIVES CONSIDERED

At roughly \$615,000 yearly, this proposal costs less than any aspect of the 1000 Person Plan except for outreach. Concentrating where people living on the streets makes outreach simpler and more cost effective.

With a goal of a 180 day stay, this shelter should serve about 150 people annually. This is equivalent to about \$4,100 per person or about two months' rent at the market rate. Direct subsidies are possible alternative, but direct subsidies cannot serve as many people for as long as an emergency outdoor shelter. In addition, there is currently limited market rate housing to be had.

#### FINANCIAL IMPLICATIONS

The costs below could be considered most appropriate coming from Measure P funds allocated for Shelter and Temporary Accommodations or the General Fund, with the possibility of future funding from Homeless Housing, Assistance, and Prevention (HHAP) funds or other funds.

Please see Attachments 6 and 7 for a full breakdown on cost. Health, Housing, and Community Services provided a cost estimate, and we removed a number of line items to reflect the needs laid out in the item above. The emergency outdoor shelter is intended as an emergency measure, less service-intensive than a navigation center, and thus does not include a community tent and significantly cuts down on staff members. In addition, in April of this year staff elected not to fund community meals through our standard homeless services programming. Furthermore, in the interim, some of the line items in

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<sup>39</sup>

[https://www.cityofberkeley.info/Customer\\_Service/Home/Refuse\\_Start\\_Stop\\_or\\_Change\\_Service.aspx](https://www.cityofberkeley.info/Customer_Service/Home/Refuse_Start_Stop_or_Change_Service.aspx)

the staff memo are being funded through other sources. The Clean and Livable Commons Initiative was funded and includes money for Port A Potties and dumpsters. Other Measure P monies were already allocated for rapid rehousing, thus we did not include that in the budget for this emergency shelter in particular.

In addition, this measure would reduce enforcement costs. The City expends significant resources in both the City Manager's office and the police force by moving unhoused individuals from place to place. By providing a place where people can go, this staff time can be directed back towards neighborhood services and curbing criminal behavior.

#### ENVIRONMENTAL SUSTAINABILITY

Regular refuse removal will decrease littering and illegal dumping, in line with the City's Zero Waste goals.

#### CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

#### ATTACHMENTS

- 1: Summary of Point in Time Count, 2019.
- 2: Modesto City Ordinance 2019-254.
- 3: *City Officials Suddenly Support Homeless Tent Cities, Car Camps in Sacramento Neighborhoods*, Sacramento Bee, August 29, 2019.
- 4: Map of 2<sup>nd</sup> and University and surrounding areas.
- 5: Pictures of 2<sup>nd</sup> and University and surrounding areas.
- 6: Health, Housing, and Community Services Memo on potential costs
- 7: Edited HHCS Memo on Costs
- 8: BMC Article 9 Section 19.28.100 Section N106
- 9: Supplemental 3 to Item 38a, "First They Came For The Homeless Encampment" at February 13, 2018 Berkeley City Council Meeting.

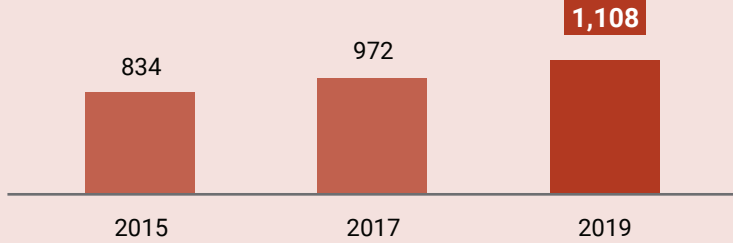
# City of Berkeley

## 2019 EveryOne Counts Homeless Point-in-Time Count & Survey

Every two years, during the last 10 days of January, communities across the country conduct comprehensive counts of people experiencing homelessness in order to measure the prevalence of homelessness in each local community.

The 2019 Alameda County EveryOne Home Point-in-Time Count was a community-wide effort conducted on January 30th, 2019. In the weeks following the street count, a survey was administered across Alameda County. In the city of Berkeley, 257 unsheltered and sheltered homeless individuals were surveyed in order to profile their experience and characteristics.

### Homeless Census Population



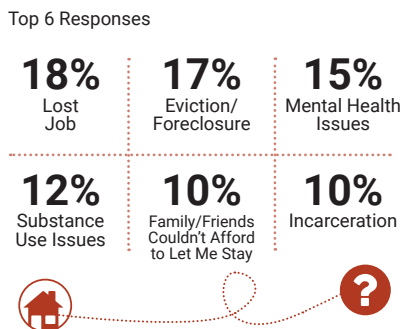
### Sheltered/ Unsheltered Population



### What Might Have Prevented Homelessness



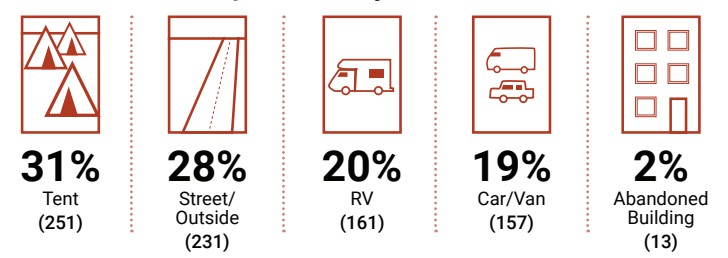
### Primary Causes of Homelessness



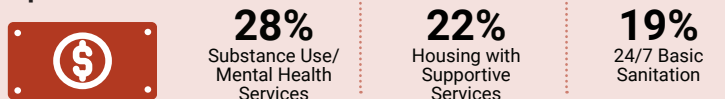
### Sheltered/Unsheltered Population by City

|            |                                |                |                                           |
|------------|--------------------------------|----------------|-------------------------------------------|
| Alameda    | 99 Sheltered, 132 Unsheltered  | Newark         | 30 Sheltered, 59 Unsheltered              |
| Albany     | 0 Sheltered, 35 Unsheltered    | Oakland        | 861 Sheltered, 3,210 Unsheltered          |
| Berkeley   | 295 Sheltered, 813 Unsheltered | Piedmont       | 0 Sheltered, 0 Unsheltered                |
| Dublin     | 0 Sheltered, 8 Unsheltered     | Pleasanton     | 0 Sheltered, 70 Unsheltered               |
| Emeryville | 0 Sheltered, 178 Unsheltered   | San Leandro    | 74 Sheltered, 344 Unsheltered             |
| Fremont    | 123 Sheltered, 485 Unsheltered | Unincorporated | 28 Sheltered, 321 Unsheltered             |
| Hayward    | 115 Sheltered, 372 Unsheltered | Union City     | 0 Sheltered, 106 Unsheltered              |
| Livermore  | 85 Sheltered, 179 Unsheltered  | <b>Total</b>   | <b>1,710 Sheltered, 6,312 Unsheltered</b> |

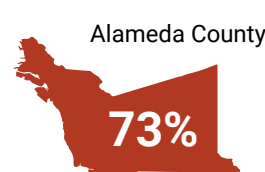
### Unsheltered Population by Location



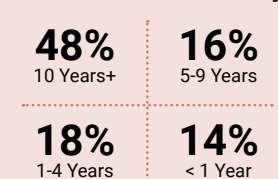
### How New Money Should Be Spent



### Residence Prior to Homelessness

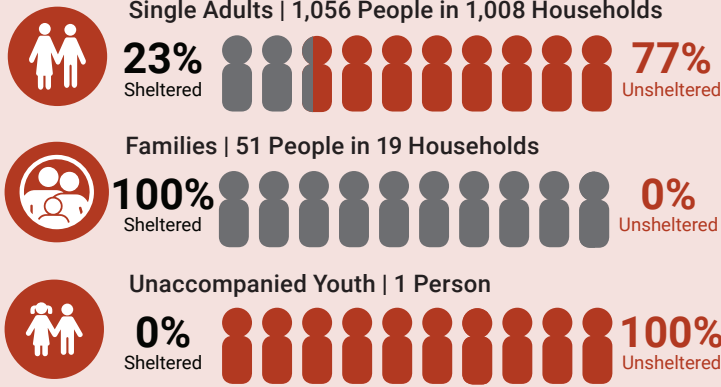


### Length of Time in Alameda County

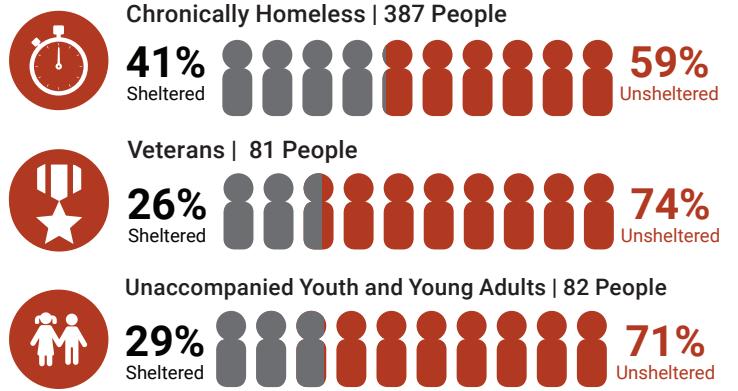




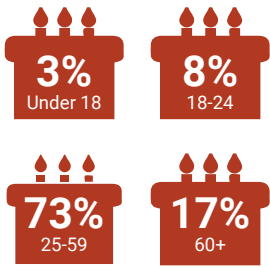
### Household Breakdown



### Subpopulations



### Age

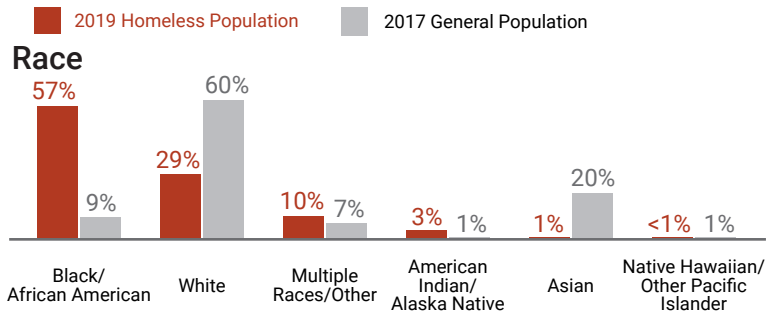


### LGBTQ+ Status

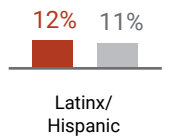
14% of survey respondents identified as LGBTQ+.



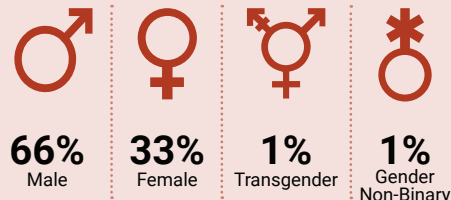
### Race and Ethnicity Compared to General Population



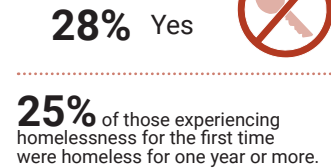
### Ethnicity



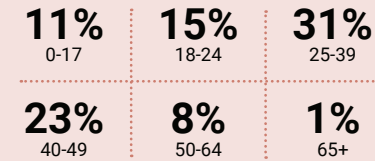
### Gender



### First Episode of Homelessness



### Age at First Episode of Homelessness



### Not Interested in Housing

2% of survey respondents said they were not interested in Independent, Affordable Rental Housing or Housing with Supportive Services.

### Health Conditions

Current health conditions reported by survey respondents.



### Disabling Conditions

41% of survey respondents reported having at least one disabling condition.



A disabling condition is defined by HUD as a developmental disability, HIV/AIDS, or a long-term physical or mental impairment that impacts a person's ability to live independently, but could be improved with stable housing.

**MODESTO CITY COUNCIL  
RESOLUTION NO. 2019-254**

**RESOLUTION APPROVING THE AGREEMENT WITH BERTOLOTTI  
MODESTO DISPOSAL INC., CERES, CA, TO PERFORM GARBAGE  
REMOVAL AND DISPOSAL SERVICES AT THE MODESTO OUTDOOR  
EMERGENCY SHELTER AND FOR HOMELESS ENCAMPMENT BLIGHT  
REMOVAL BY THE MODESTO POLICE DEPARTMENT BEAT HEALTH  
UNIT THROUGH MAY 31, 2021 FOR A TOTAL AMOUNT NOT TO EXCEED  
\$150,000; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE,  
TO EXECUTE THE AGREEMENT**

WHEREAS, in response to an emerging and concentrated homeless population precipitated by recent legal developments and case law the City permitted a temporary homeless encampment at Beard Brook Park, and

WHEREAS, the Modesto Police Department (MPD) established a blight abatement team to assist with on-going City efforts in city-wide cleanup and the temporary encampment at Beard Brook Park, and

WHEREAS, the City established a temporary outdoor shelter underneath the 9<sup>th</sup> Street Bridge known as the Modesto Outdoor Emergency Shelter (MOES) to accommodate the growing number of homeless individuals which Beard Brook Park could no longer sustain, and

WHEREAS, the maintenance and cleanup of both encampments required extensive use of garbage and disposal services which nearly depleted the city-wide blanket purchase order, and

WHEREAS, the Finance Purchasing Division issued an emergency purchase agreement, not to exceed \$50,000, with Bertolotti Disposal designated to cover MOES expenses through December 31, 2019, and

WHEREAS, funding for the emergency purchase agreement has been exhausted,  
and

WHEREAS, the City and Bertolotti desire to enter into a new purchase agreement to include garbage and disposal services for MOES and for MPD's Beat Health expenses for illegal homeless camps and dumping to capture all costs related to encampment cleanup, and

WHEREAS, the total amount for MOES garbage and disposal services through December 31, 2019 is \$105,000, and

WHEREAS, the total amount for MPD's Beat Health homeless encampment blight removal through May 31, 2021 is \$45,000, and

WHEREAS, the total amount of the agreement with Bertolotti for both MOES and homeless encampment blight removal by MPD's Beat Health Unit is \$150,000.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the agreement with Bertolotti Modesto Disposal Inc., Ceres, CA, to perform garbage removal and disposal services at the Modesto Outdoor Emergency Shelter and for MPD Beat Health homeless encampment blight removal by the Modesto Police Department Beat Health Unit through May 31, 2021 for a total amount not to exceed \$150,000.

BE IT FURTHER RESOLVED, that the City Manager or his designee is authorized to execute the Agreement, in a form approved by the City Attorney.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4<sup>th</sup> day of June, 2019, by Councilmember Kenoyer, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
ADAM U. LINDGREN, City Attorney

SECTIONS

# THE SACRAMENTO BEE

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As homeless men, women and children in Sacramento wait for three new large shelters to open, another model that local officials have repeatedly rejected over the years is now quickly gaining traction.

The “safe ground” model – essentially creating an area where homeless people can live safely in tent cities or in cars – has not been a part of Mayor Darrell Steinberg’s homeless plan. Steinberg has instead been pushing hard for large shelters with rehousing services. But as the city enters its fifth month without a city-run shelter, other alternatives are now coming to the fore.

Councilman Jeff Harris was previously opposed to the “safe ground” model, along with most of the council aside from Councilman Allen Warren. Now, Harris is proposing the city open a temporary homeless camp similar to one Modesto and Stanislaus County opened earlier this year.

### TOP ARTICLES



“To get from today until we stand up more shelter beds, which we desperately need, I suggest we take a look at the safe ground model,” Harris said.

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Harris and city staff earlier this month traveled to Modesto to check out that model. He liked what he saw.

The camp, officially called [the Modesto Outdoor Emergency Shelter](#), opened underneath a bridge in a regional park in February. It holds roughly 400 campers who sleep in about 290 white and blue 10-foot-by-10-foot tents donated by a Reno company called Qamp, said Doug Halcomb, the camp’s operations manager.

Local officials provide portable bathrooms and wash stations, and nonprofits provide at least one meal a day, Halcomb said. The camp is fenced in and has two full-time security guards to ensure safety. Providers come to offer medical, mental health and rehousing services to campers. Sacramento-based organization Turning Point handles the day-to-day operations, Halcomb said.

“When I came back from Modesto, I went to the River District and there were more than 150 camps on one city block,” Harris said during a meeting earlier this month. “People were sleeping on the street, defecating in the open. I mean, it’s a mess. This is our city. And this is my district. And that’s what I saw when I came home and I thought, why don’t we do it? Why don’t we try a safe ground model and try to control some of these issues?”





Tents have been assembled in preparation for the new homeless camp under the Ninth Street Bridge at Gateway Park in Modesto, Calif., Tuesday, Feb. 19, 2019. Andy Alfaro  
AALFARO@MODBEE.COM

Opening a “safe ground” for campers could also be cost effective; Harris estimates well under \$1 million. By comparison, the two 100-bed shelters the council approved Tuesday will cost [more than \\$20 million to open and operate for two years](#).

Harris suggested the tent city open next month and close in the spring, after a shelter under the W/X freeway opens. He has a few location ideas in his district – which includes the American River, East Sacramento, South Natomas and part of north Sacramento – but is not sure if they will work.

“It’s not a solution. It’s a way to get from here to there and mitigate the deep impacts on the street in the short term and create safety and hygiene,” Harris said.

Harris previously proposed a [shelter site on Cal Expo property](#), but Cal Expo has not yet approved it.

City Hall has long debated the tent city model. In 2016, a delegation of 20 Sacramento officials [toured tent facilities in Seattle](#), where a network of camps has existed for years. Some officials expressed support for the Seattle model, but the issue was soon dropped.

Councilman Rick Jennings, also struggling to find a site for a large shelter in his south Sacramento district, is pushing for the city to open “safe parking zones,” essentially a safe ground model for car camping.

Volunteers canvassing the county in January found [four times the number of vehicles](#) where people were living than they counted in 2015. Researchers estimate people were sleeping in at least 340 vehicles in the county. This included approximately 100 children. Most of the vehicles were in the city of Sacramento.

The City Council on Tuesday asked staff to come back with a plan for both models. Jennings said he hopes staff can come back with a plan, including costs and potential sites for safe parking zones, within 30 days. He wants to start with a pilot program for about six months. If it goes well, he wants to open more.

“We’re going to look at every possibility within our district, from businesses to nonprofit partners to community centers to parks,” Jennings said Wednesday. “We’re going to look and see if there’s an opportunity at every single one to put a pilot in place so we can get some results.”

Steinberg is supportive of both ideas, he told The Sacramento Bee Wednesday.

“I applaud my colleagues who are working to find creative solutions to our community’s greatest challenge,” Steinberg said in a statement. “Our goal is to get people under a roof with the help they need as quickly as possible. I support any efforts to make their plight even a little better as we aggressively help people get inside.”

Crystal Sanchez, a homeless activist who visited the Modesto site earlier this year, has been urging local officials to replicate the model here. She and other activists, including civil rights attorney Mark Merin, urged Sacramento County Board of Supervisors members to create a safe ground at the former San Juan Motel lot on Stockton Boulevard, where Sacramento Sheriff's deputies [cleared out dozens of campers earlier this year](#). They didn't go for it.

"Modesto is utilizing what is already in place to help their homeless population," Sanchez said. "It is a full-scaled organized community ... It is cost effective and involves every aspect of the community. The local government and the community grassroots have been doing what they do to help."

The Sacramento Regional Coalition to End Homelessness also supports the model as a temporary response until there is enough affordable housing.

"Safe ground means that people experiencing homelessness can camp without fear of harassment from law enforcement and can come and go without the fear that all their possessions have been taken or destroyed," Bob Erlenbusch of SRCEH said. "Equally important is that they can get a good night's sleep without fear of violence from predators who prey on vulnerable people."

James "Faygo" Clark, a local well-known homeless activist, said he is in favor of a safe ground model that rotates locations periodically.

"It would allow people a place to begin to stabilize and move forward," Clark said. "They would need private security, access to trauma-informed services, access to water, sanitation, and trash pickup to succeed. We should also work to ensure that such encampments give the unhoused a voice in their operation."

Warren, [who proposed safe ground sites](#) on his property years ago, said he still supports the model.

"I started on this three years ago and the council wasn't prepared at that time," Warren said. "They seem more willing now."

Merin and other activists [in January 2017 proposed a "safe ground" site](#) near Sacramento Army Depot off Florin Perkins Road.

Councilman Eric Guerra, who represents that area, opposed it, and so did his colleagues.

Now, Guerra, also struggling to find a site for a large shelter, appears to be supportive of a safe parking zone in his south Sacramento district.

Guerra Tuesday suggested staff contact the nonprofit Power Inn Alliance to see if any parking lots could be used in the industrial area for nighttime car camping. A representative for the Power Inn group was unavailable for comment.

#### RELATED STORIES FROM SACRAMENTO BEE

[SACRAMENTO-TIPPING-POINT](#)

#### [100 kids live in cars in Sacramento. So do hundreds of homeless adults. How can we help them?](#)

AUGUST 08, 2019 5:30 AM

[HOMELESS](#)

#### [Large homeless shelters to open in Meadowview, North Oak Park. See when and where](#)

AUGUST 28, 2019 6:21 AM

[LOCAL](#)

#### [Summer temperatures create health hazards for those at Modesto homeless encampment](#)

JUNE 25, 2019 3:58 PM

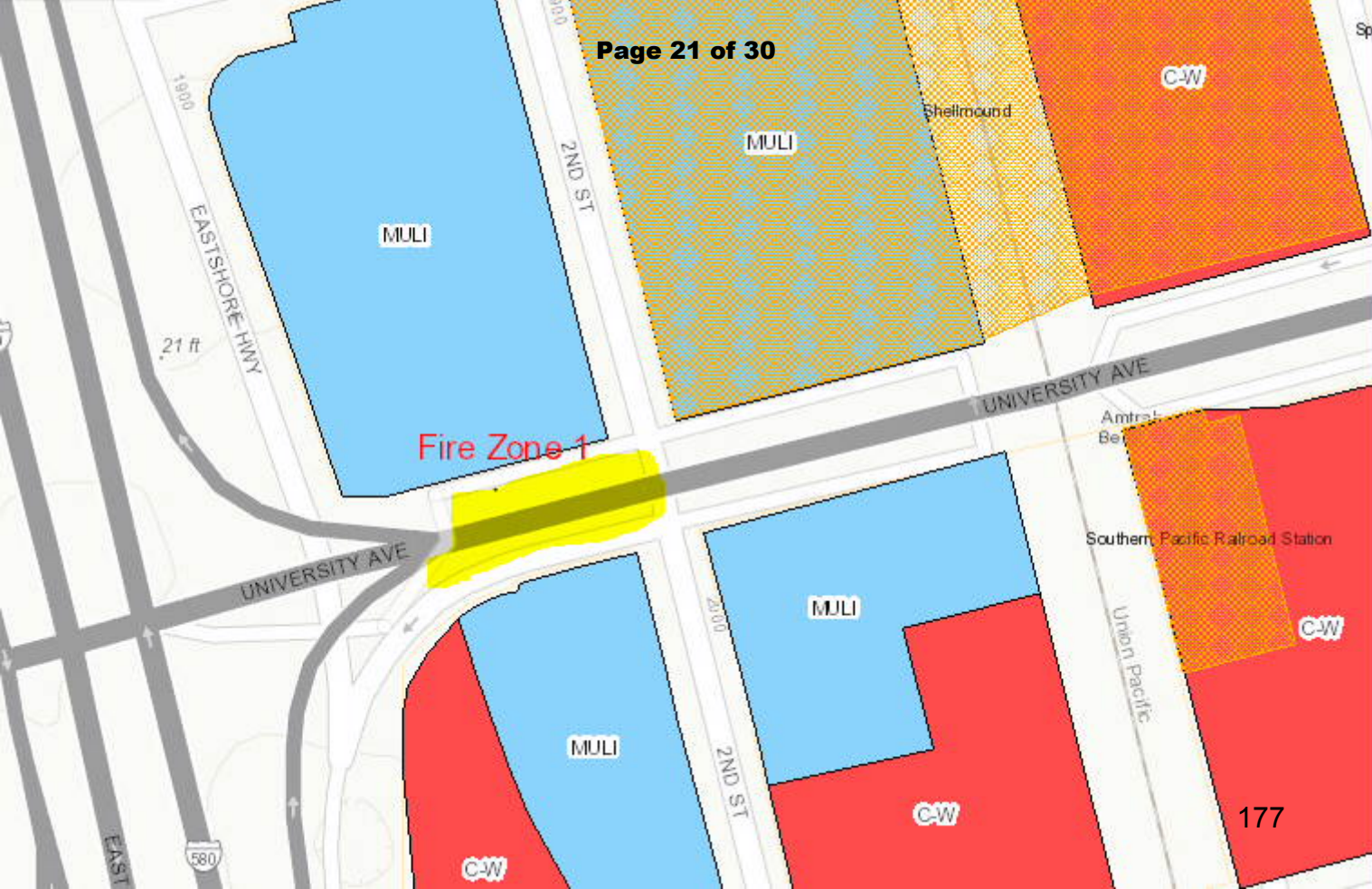
[LOCAL](#)

#### [Where will Modesto's homeless go when shelter opens and there's not enough room?](#)

MAY 17, 2019 5:39 PM

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|                     |     |
|---------------------|-----|
| # of People         | 50  |
| Intensive Services? | Yes |
| Self Governed?      | No  |

| MATERIALS (Start-up)         |                     |                  |                                                                                                                     |
|------------------------------|---------------------|------------------|---------------------------------------------------------------------------------------------------------------------|
| Item                         | Number/<br>Quantity | Cost             | Notes                                                                                                               |
| Tents                        | 50                  | \$22,000         | Assumes \$400 per unit Qamp tent, with none donated                                                                 |
| Pallets + Plywood            | 50                  | \$2,644          | Assumes 10'x10' wooden pallet foundation with plywood cover                                                         |
| Lighting                     | 6                   | \$6,600          | Purchased parking lot flood lamps for site lighting                                                                 |
| Generators                   | 2                   | \$12,000         | Power supply for site. Could be substituted for solar panels, though under-bridge site may complicate solar access. |
| Misc Supplies                |                     | \$10,000         | Toilet paper, linens and towels, cleaning supplies, tarps for rain, etc.                                            |
| Furniture/sleeping bags/etc. |                     | \$20,000         | Assumes every client provided a sleeping bag + sufficient for replacements; plus staff and common area furniture.   |
| Staff Shelter                | 1                   | \$4,400          | 16'x10' shed that can house staff + desks, supplies                                                                 |
| Community tent               | 1                   | \$200            | for common space, meals, etc                                                                                        |
| Communications               |                     | \$2,000          | Staff laptops, cell phones                                                                                          |
| Drinking Water               | 12775               | \$30,660         | Assumes 0.7 gallons per person per day in water consumption. No City water connection.                              |
| 10'x12' sheds for storage    | 4                   | \$2,800          | For storage of client belongings                                                                                    |
| <b>TOTAL</b>                 |                     | <b>\$113,304</b> |                                                                                                                     |

| OPERATIONS                                |                     |                    |                                                                                                                               |
|-------------------------------------------|---------------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Item                                      | Number/<br>Quantity | Cost               | Notes                                                                                                                         |
| Shower truck                              |                     | \$27,000           | Annual rental/365 days for a 24 ft, 6 stall shower trailer. Does not include water expense.                                   |
| Port-a-potties and handwashing (per each) | 4                   | \$52,000           | 1 toilet per 15 of each gender required per Berkeley Min Health and Safety Ordinance (2017). Assumes ADA with daily servicing |
| 20 yard dumpster and weekly service       |                     | \$39,840           | Berkeley Zero Waste annual fee for 20 yard dumpster with 1x/week trash collection                                             |
| Medical Waste/ sharps disposal            |                     | \$2,400            | Assumes monthly service with a qualified vendor                                                                               |
| Flex Funding/RRH                          | 100                 | \$600,000          | <i>Only applies if this is a service-intensive program</i>                                                                    |
| 1 meal/day                                | 18250               | \$109,500          | <i>Only applies if this is a service-intensive program</i>                                                                    |
| IT, facilities maintenance                |                     | \$10,000           | Budget for repairs and communications network maintenance                                                                     |
| Insurance                                 |                     | \$2,000            | Liability and property                                                                                                        |
| Indirects (@ .15)                         | 0.1                 | \$172,024          |                                                                                                                               |
| Generator operations                      |                     | \$72,000           | To power site/lighting plus shower trailer                                                                                    |
| <b>TOTAL</b>                              |                     | <b>\$1,086,764</b> |                                                                                                                               |

| STAFFING                 |     |                  |                                                               |
|--------------------------|-----|------------------|---------------------------------------------------------------|
| Position                 | FTE | Cost             | Notes                                                         |
| Program and Site Manager | 1   | \$75,000         | Oversees program and provides security                        |
| Program Coordinators     | 7   | \$350,000        | <i>Staffing level depends on program governance structure</i> |
| Housing Navigators       | 2   | \$120,000        | <i>Only applies if this is a service intensive program</i>    |
| Outreach Coordinators    | 2   | \$130,000        | Linked to encampment resolutions                              |
| Benefits (@30%)          | 0.3 | \$202,500        | Medical, dental, PTO                                          |
| <b>TOTAL</b>             |     | <b>\$877,500</b> |                                                               |

|                     |     |
|---------------------|-----|
| # of People         | 50  |
| Intensive Services? | Yes |
| Self Governed?      | No  |

| MATERIALS (Start-up)         |                     |                  |                                                                                                                     |
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| Pallets + Plywood            | 50                  | \$2,644          | Assumes 10'x10' wooden pallet foundation with plywood cover                                                         |
| Lighting                     | 6                   | \$6,600          | Purchased parking lot flood lamps for site lighting                                                                 |
| Generators                   | 2                   | \$12,000         | Power supply for site. Could be substituted for solar panels, though under-bridge site may complicate solar access. |
| Misc Supplies                |                     | \$10,000         | Toilet paper, linens and towels, cleaning supplies, tarps for rain, etc.                                            |
| Furniture/sleeping bags/etc. |                     | \$20,000         | Assumes every client provided a sleeping bag + sufficient for replacements; plus staff and common area furniture.   |
| Staff Shelter                | 1                   | \$4,400          | 16'x10' shed that can house staff + desks, supplies                                                                 |
| Community tent               | 1                   | \$200            | for common space, meals, etc                                                                                        |
| Communications               |                     | \$2,000          | Staff laptops, cell phones                                                                                          |
| Drinking Water               | 12775               | \$30,660         | Assumes 0.7 gallons per person per day in water consumption. No City water connection.                              |
| 10'x12' sheds for storage    | 4                   | \$2,800          | For storage of client belongings                                                                                    |
| <b>TOTAL</b>                 |                     | <b>\$113,304</b> |                                                                                                                     |

| OPERATIONS                                |                     |                    |                                                                                                                               |
|-------------------------------------------|---------------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Item                                      | Number/<br>Quantity | Cost               | Notes                                                                                                                         |
| Shower truck                              |                     | \$27,000           | Annual rental/365 days for a 24 ft, 6 stall shower trailer. Does not include water expense.                                   |
| Port-a-potties and handwashing (per each) | 4                   | \$52,000           | 1 toilet per 15 of each gender required per Berkeley Min Health and Safety Ordinance (2017). Assumes ADA with daily servicing |
| 20 yard dumpster and weekly service       |                     | \$39,840           | Berkeley Zero Waste annual fee for 20 yard dumpster with 1x/week trash collection                                             |
| Medical Waste/ sharps disposal            |                     | \$2,400            | Assumes monthly service with a qualified vendor                                                                               |
| Flex Funding/RRH                          | 100                 | \$600,000          | <i>Only applies if this is a service-intensive program</i>                                                                    |
| 1 meal/day                                | 18250               | \$109,500          | <i>Only applies if this is a service-intensive program</i>                                                                    |
| IT, facilities maintenance                |                     | \$10,000           | Budget for repairs and communications network maintenance                                                                     |
| Insurance                                 |                     | \$2,000            | Liability and property                                                                                                        |
| Indirects (@ .15)                         | 0.1                 | \$172,024          |                                                                                                                               |
| Generator operations                      |                     | \$72,000           | To power site/lighting plus shower trailer                                                                                    |
| <b>TOTAL</b>                              |                     | <b>\$1,086,764</b> |                                                                                                                               |

| STAFFING                 |     |                  |                                                               |
|--------------------------|-----|------------------|---------------------------------------------------------------|
| Position                 | FTE | Cost             | Notes                                                         |
| Program and Site Manager | 1   | \$75,000         | Oversees program and provides security                        |
| Program Coordinators     | 7   | \$350,000        | <i>Staffing level depends on program governance structure</i> |
| Housing Navigators       | 2   | \$120,000        | <i>Only applies if this is a service intensive program</i>    |
| Outreach Coordinators    | 2   | \$130,000        | Linked to encampment resolutions                              |
| Benefits (@30%)          | 0.3 | \$202,500        | Medical, dental, PTO                                          |
| <b>TOTAL</b>             |     | <b>\$877,500</b> |                                                               |

## Article 9. Emergency Housing

### 19.28.100 Emergency Housing and Emergency Housing Facilities.

HCD Appendix N of the 2016 [California Building Code](#) is adopted on an emergency basis and reproduced in its entirety subject to the modifications thereto which are set forth below:

#### APPENDIX N - EMERGENCY HOUSING

##### SECTION N106

##### TENTS AND MEMBRANE STRUCTURES

**N106.1 General.** Tents and membrane structures shall not be used to house occupants for more than 7 days unless such tents and membrane structures are maintained with tight wooden floors raised at least 4 inches (101.6 mm) above the ground level and are equipped with baseboards on all sides to a height of at least 6 inches (152.4 mm). Tents and membrane structures may be maintained with concrete slabs with the finished surface at least 4 inches (101.6 mm) above grade and equipped with curbs on all sides at least 6 inches (152.4 mm) high.

A tent or membrane structure shall not be considered a suitable sleeping place when it is found necessary to provide heating facilities in order to maintain a minimum temperature of 50 degrees Fahrenheit (10 degrees Celsius) within such tent or membrane structure during the period of occupancy.

Tents and membrane structures shall comply with Chapter 31 of the [California Fire Code](#) and shall not be erected for a period of more than 180 days within a 12 month period. Tents and membrane structures shall be limited to one level located at the level of Fire Department vehicle access road or lane. Tents and membrane structures complying with Chapter 31 of the [California Fire Code](#) shall not be subject to additional provisions of Sections N111 and N112 of this appendix.



Tents and membrane structures used for sleeping purposes shall be equipped with single station battery powered smoke alarms installed in accordance with Section 907.2.11 of the [California Fire Code](#).

## What would "Sanctioned Encampments" look like? A quick overview of some elements to consider

Chart reads from left to right only, not from top to bottom

|                                                                           |                                                                                                                                                    |                                      |                                                            |                                            |
|---------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|------------------------------------------------------------|--------------------------------------------|
| <b>LOCATION</b>                                                           | 100% Resident Discretion                                                                                                                           | City designated                      | One/Several locations                                      | Unlimited locations                        |
| <b>RESIDENTS</b><br><i>Who?</i>                                           | City/Agency Criteria                                                                                                                               | No Criteria                          | Resident Criteria                                          | Hybrid                                     |
| <b>RESIDENTS</b><br><i>How Many?</i>                                      | No limit per Encampment                                                                                                                            | City/Agency determined limit         | Resident-determined limit<br>(Who/how decided?)            | Variable/Stable                            |
| <b>RESIDENTS</b><br><i>Criteria?</i>                                      | Resident-Determined                                                                                                                                | City/Agency determined               | Hybrid                                                     | Protected Class requirements for criteria? |
| <b>RESIDENTS</b><br><i>Duration</i>                                       | Indefinite/Forever                                                                                                                                 | City/Agency specified – limited time | Resident specified – limited time                          |                                            |
| <b>Rules /Code of Conduct</b>                                             | Defined by residents                                                                                                                               | Defined by City/Agency               | Hybrid                                                     |                                            |
| <b>Governance</b>                                                         | Resident defined: any system desired, self-governing. What system?                                                                                 | City/Agency Defined                  | Jointly determined/different areas of governance for each? |                                            |
| <b>Enforcement of Rules</b>                                               | Residents                                                                                                                                          | City/Agency                          |                                                            |                                            |
| <b>Removal/exclusion of Individuals</b>                                   | Decision and Action by Residents                                                                                                                   | Decision and Action by City/Agency   | No removal or exclusion                                    |                                            |
| <b>Engagement with Services</b> <small>Housing</small>                    | Not Necessary                                                                                                                                      | Required                             | Voluntary                                                  | Who decides?                               |
| <b>Engagement with Services</b> <small>Other (health, jobs, etc.)</small> | Not necessary                                                                                                                                      | Required                             | Voluntary                                                  | Who decides?                               |
| <b>Facilities</b><br><i>Provision</i>                                     | Provided by community/Not for profits                                                                                                              | Provided by City                     | Hybrid/Mix                                                 |                                            |
| <b>Facilities</b><br><i>maintenance</i>                                   | Residents                                                                                                                                          | City/Agency                          | Not for Profit Org.                                        | Shared responsibilities                    |
| <b>First Amendment issues</b>                                             | "Protest" camp – if City affirmatively sanctions/provides space, does this become sanctioning of one type of speech?<br>Code Pink – type concerns? |                                      |                                                            |                                            |
| <b>Self-Governance</b>                                                    | What system?                                                                                                                                       | Who picks system?                    | Who ensures fairness?                                      | Recourse?                                  |
| <b>City/Agency</b>                                                        | Which agency?                                                                                                                                      | Scope of Responsibility?             | Funding?                                                   |                                            |

RECEIVED AT  
 COUNCIL MEETING OF:  
 FEB 13 2018  
 OFFICE OF THE CITY CLERK  
 CITY OF BERKELEY



Health, Life Enrichment, Equity,  
and Community Committee

ACTION CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Health, Life Enrichment, Equity, and Community Committee  
Subject: Recommendations Related to Code Enforcement and Receivership Actions

RECOMMENDATION

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee took action to send an item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.

CONTACT PERSON

Sophie Hahn, Councilmember, District 5, (510) 981-7150

Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Cheryl Davila, Councilmember, District 2, (510) 981-7120

Attachments:

- 1: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding (Housing Advisory Commission)
- 2: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants (Peace and Justice Commission)
- 3: Draft Plan for Public Meeting on Receivership (Councilmember Ben Bartlett)



Housing Advisory Commission

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Housing Advisory Commission

Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission

Subject: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

RECOMMENDATION

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

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

POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred this item to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;

- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time.

#### CURRENT SITUATION AND ITS EFFECTS

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

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

#### BACKGROUND

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

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

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

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

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

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

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

CITY MANAGER

See June 11, 2019 companion report.

CONTACT PERSON

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





Peace and Justice Commission

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: Igor Tregub, Chairperson, Housing Advisory Commission

Subject: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants

RECOMMENDATION

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

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

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

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

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

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

#### POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred this item to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.

#### FISCAL IMPACTS OF RECOMMENDATION

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

#### CURRENT SITUATION AND ITS EFFECTS

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

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

#### BACKGROUND

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

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

**Motion** by: Lippman

**Seconded** by: Bohn

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

**Noes:** None

**Abstain:** None

**Absent:** Han, Pancoast

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

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

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

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

#### ALTERNATIVE ACTIONS CONSIDERED

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

#### CITY MANAGER

See June 11, 2019 companion report.

#### CONTACT PERSON

Nina Goldman, Commission Secretary, 981-7000

#### Attachments:

1. Letter to Judge Brand

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

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

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

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

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

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

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

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

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

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

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

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

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

**Motion** by: Lippman

**Seconded** by: Bohn

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

**Noes:** None

**Abstain:** None

**Absent:** Han, Pancoast; and

; and

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

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

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

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

[Month] [Day], 2019

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

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

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

Dear Judge Brand:

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

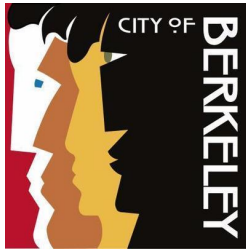
This case began when police accompanied by Berkeley Code Enforcement entered Mr. Powell's home during the investigation of an alleged drug crime by a family member. No criminal charges were levied. However, code violations originally estimated at between \$200,000 and \$300,000 have now ballooned to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

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

Thank you for your time and consideration.

Sincerely,

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



Councilmember Ben Bartlett

Attachment 3

City of Berkeley, District  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
PHONE: 510-981-7130  
EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

September 23rd, 2019

Draft Plan for Public Meeting on Receivership

Format of the Public Meeting:

1. Community Panel discussing their experience
2. Take Public Comments
3. Presentation from City Staff/ Departments
4. Councilmembers make comments
5. Take questions from Public
  - a. 5-10 questions at a time
6. City/Panel answers questions
7. Councilmembers make comments
8. A second round of questions if time permits

Goals for the meeting and what's to be presented:

- Understand how receivership works
- City of Berkeley's role in receivership
- Who ends up under receivership
  - Circumstances leading to receivership
- Opportunities/Challenges
  - Listening session: Hear from the community

**Potential invites**

**Departments:**

Planning/ Code-Enforcement Department  
City Manager/ City Attorney Office  
City Finance Department

**City Staff (from Community Input):**

Greg Daniel – Director of Code Enforcement  
Mark Adams – Berkeley City Inspector  
Alex Roshal – Official in Berkeley Housing Dept.  
Raquel Molina – Official in Berkeley Housing Dept.  
Shallon Allen – Official in Berkeley Finance Dept.  
Brent Nelson – Housing Dept. Inspector  
Zach Cowan – Berkeley City Attorney  
Savith Iyengar – Deputy City Attorney  
Laura McKinney – Deputy City Attorney  
Dee Williams-Ridley – Berkeley City Manager  
Farimah Brown – City Attorney

**Community members (from Community Input):**

Leonard Powell – Owner of the house  
Roland Powell – Mr. Powell's son  
Audrey Shields – Current Attorney for Mr. Powell  
Gerard Keena – Court-appointed receiver  
Nathaniel Marston – Attorney for Mr. Keena  
Steve Martinot – Writer, reporter on the affair, member of Friends of Adeline  
Willie Phillips – Community Organizer, Member of Friends of Adeline  
Eugene Turitz – Writer on the affair, Member of Friends of Adeline  
Mr. Willis and members of the Probate Court protest group  
Manuel Juarez – Attorney for Mr. Powell



POLICY COMMITTEE RECOMMENDATION

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.





Office of the Mayor

Jesse Arreguín  
Mayor

ACTION CALENDAR  
January 21, 2020

To: Members of the City Council  
 From: Mayor Jesse Arreguín  
 Subject: Confirm Council Action on Measure P Revenue Allocations for FY 2020-2021

RECOMMENDATION

Confirm the City Council's action taken on December 3, 2019 to allocate General Funds generated by the Measure P Transfer Tax increase for existing and new homeless programs and implementation for Fiscal Years 2020 and 2021. Detailed listing of approved expenditures is included in Attachment 1.

CURRENT SITUATION AND ITS EFFECTS

On December 3, 2019, the City Council approved the following expenditures:

Staff Positions:

|                                                                                         | FY 2019 | FY 2020   | FY 2021   |
|-----------------------------------------------------------------------------------------|---------|-----------|-----------|
| Finance: Accountant II                                                                  |         | \$149,258 | \$154,482 |
| HHCS: Community Services Specialist II (Filled)<br>Approved by Council on June 25, 2019 |         | \$172,592 | \$178,633 |
| HHCS: 50% Senior Management Analyst (Requested)                                         |         | \$96,237  | \$99,605  |

Non-Personnel Costs and Program Expenditures:

|                                                                                                                                                                           | FY 2019 | FY 2020     | FY 2021      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|-------------|--------------|
| Non-Personnel Costs/ Program Expenses                                                                                                                                     | \$0     | \$2,059,495 | \$11,362,327 |
| Fire: 5150 Response & Transport<br>Approved by Council on June 25, 2019.<br>Estimated 45% of homeless served (2019 PIT)<br>City will look for alternative funding sources | 0       | 1,200,000*  | 2,400,000*   |
| Coordinated Entry System<br>Fill funding gap in FY 21 due to cuts in county funding                                                                                       | 0       | 0           | 1,400,414*   |
| Safe RV Parking Program (On-Street Permits)                                                                                                                               | 0       | 100,000     | 100,000      |
| Dorothy Day House Emergency Shelter (Veterans Bldg)                                                                                                                       | 0       | 0           | 300,000      |
| Dorothy Day House Daytime Drop-In (Veterans Bldg)                                                                                                                         | 0       | 0           | 21,340       |
| Pathways STAIR Center (existing)                                                                                                                                          | 0       | 0           | 2,415,000    |

|                                                                                                                                                                                                                                                                                                                                                          |   |         |             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---------|-------------|
| Pathways STAIR Center Expansion (new)                                                                                                                                                                                                                                                                                                                    | 0 |         | 705,000     |
| Berkeley Daytime Drop-In Center Locker Program                                                                                                                                                                                                                                                                                                           | 0 | 0       | 50,000      |
| Lifelong Medical Care Street Medicine Program<br>Funding set aside, to be allocated following HHCS review and<br>AAO #2 approval                                                                                                                                                                                                                         | 0 | 251,829 | 454,239     |
| Youth Spirit Artworks Tiny Home Case Management<br>To fund 11 Berkeley youth. Youth must be engaged with<br>housing navigation services and YSA to report outcomes.                                                                                                                                                                                      | 0 | 39,000  | 78,000      |
| Downtown Berkeley Association - Homeless Outreach<br>Worker<br>Fund half-time of current outreach worker                                                                                                                                                                                                                                                 | 0 | 20,000  | 40,000      |
| Downtown Streets Team Expansion                                                                                                                                                                                                                                                                                                                          | 0 | 75,000  | 150,000     |
| Outdoor Shelter Program                                                                                                                                                                                                                                                                                                                                  | 0 | 307,000 | 615,000     |
| Permanent Housing Subsidies (begin July 2020) <b>based<br/>on revenues received over \$6 Million</b><br>Cap of \$2.5 Million, 15% set aside for homeless families.<br>POE understanding was that PSH subsidies were permanent so<br>the cost of this allocation would take priority for any future<br>Measure P revenues before any further allocations. | 0 | 0       | 2,500,000** |
| Training and Evaluation                                                                                                                                                                                                                                                                                                                                  | 0 | 66,666  | 133,334     |

\*Cost due to Alameda County policy change or funding cut

\*\*PSH subsidies will be allocated when revenues exceed \$6 Million

## BACKGROUND

At the November 2018 General Municipal Election, Berkeley voters approved Measure P, a 1% increase in the Real Property Transfer Tax for sales or transfers of properties valued over \$1.5 Million. The receipts generated by the increased Transfer Tax go into the General Fund for general municipal services. Potential revenue estimates included on the ballot ranged from \$6-8 Million annually. The measure also established the Homeless Services Panel of Experts, a new city commission comprised of persons with deep expertise in areas relevant to homelessness, including extensive professional or lived experience with homelessness. The Panel of Experts advise the City Council on the allocation of city funds for services to end or prevent homelessness and provide humane services and support. The measure passed with 72.37% of the vote.

### Homeless Services Panel of Experts Recommendations

Earlier this year, Council appointed the Homeless Services Panel of Experts. The Panel held its first meeting in May 2019. To guide its work, the Panel adopted a Statement of Purposes (included in Attachment 2). On September 4, 2019, the Panel adopted recommendations for initial investments from General Funds to increase and improve housing and services to address homelessness in Berkeley (Attachment 2).

To guide its work, the Panel reviewed all referrals made since Measure P's passage. This included the funding requests and referrals included in the January 2019 Measure P Informational report to Council as well as additional referrals, formal and informal. The Panel also considered information presented by City staff regarding current City of Berkeley investments, local and regional strategies, the 2019 Point-in-Time Count, and the 1,000 Person Plan.

The Panel categorized the referrals by areas of investment (permanent housing, shelter, etc.) and proposed percentages to each area, as well as prioritized specific programs within each subcategory. The recommendations regarding shelter and temporary accommodations included the potential to use funds to support sanctioned encampments if approved by a Council policy. The Panel encouraged the Council to give consideration to the establishment of a sanctioned encampment.

The Panel did not know the actual amount of revenue received in FY 2019, but assumed revenues of \$4 Million. They presented their allocation recommendations in order of priority and percentage keeping in mind the impact \$4 Million in revenues would have in each area. The Panels' priorities are expressed in the order of activities and they recommended that higher ranked activities be given higher priority for resources.

The Panel also adopted subpopulation priorities within the key investment areas of permanent housing subsidies, and flexible housing subsidies. These include establishing a \$500,000 set-aside for permanent housing subsidies for homeless families with children. This also included a recommended 20% set-aside for families and transition-age youth in flexible housing subsidies, using the McKinney-Vento (i.e. Berkeley Unified School District) definition of homelessness, though not limited to families with school-age children.

#### Prior Council Actions in FY 2019 on HEAP and Measure P

On March 12, 2019, the City Council approved a contract with Alameda County Housing and Community Development in the amount of \$4,032,711 in state HEAP funding. The Council adopted the following allocation plan which provided funding for programs until FY 2021:

- Partially fund second year (FY 20) of the Pathways STAIR navigation center: \$2,000,000;
- Partially fund two years (FY 20 and 21) of the Dorothy Day House Shelter at the Veterans Building: \$832,000;
- Partially fund two years of encampment servicing/trash removal: \$729,847. This allocation was reduced by \$50,000 to fund a RV outreach and flexible funding for RV campers;
- Fund two years (FY 20 and 21) of port-a-potty and sanitation efforts at existing and expanded locations: \$270,000;
- Capital and services costs for one year (FY 20) of the pilot homeless locker program including expansion at a second site: \$100,000;

- Administrative allowance at 2.5%: \$100,864.

On June 25, 2019, the City Council adopted the FY 2020-2021 Biennial Budget which included forward commitments of excess Transfer Tax and Excess Equity including \$1.2 Million in FY 2020 and \$2.4 Million in FY 2021 for Fire Department 5150 Response and Transport, and funding a Community Services Specialist II position in HHCS at \$172,592 in FY 2020 and \$178,633 in FY 2021. The funding for 5150 Transport and the new CSS II position in HHCS were approved from Measure P tax receipts.

#### December 3, 2019 Council Action on Measure P Allocations

On December 3, 2019, the City Council considered the recommendations of the Homeless Services Panel of Experts for General Fund allocations from Measure P tax receipts. In addition, Mayor Arreguin introduced a set of funding recommendations for Fiscal Years 2020 and 2021 in Supplemental Packet 2. The Mayor's supplemental included three spreadsheets: 1) a cover sheet for illustrative purposes to compare the Mayor's recommendations to those suggested by the Homeless Services Panel of Experts; 2) Scenarios A and B, which were derived from spreadsheets developed by the City Manager's Office illustrating assumed revenues and potential expenditures of General Fund revenues based on \$6 Million in tax receipts (Scenario A) and \$8 Million in tax receipts (Scenario B). The Mayor's recommended allocations were included in the Scenario A and B spreadsheets. The Council took the following action:

**Action:** 41 speakers. M/S/C (Hahn/Harrison) to adopt the Mayor's proposal in Supplemental Communications Packet #2 amended to reduce the Safe RV Parking allocation to \$100,000 in FY 2021 and remove the Lifelong Street Medicine allocation to the February AAO process.

**Vote:** Ayes – Davila, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Kesarwani, Droste; Abstain – Wengraf.

The adopted motion was to approve the line item allocations in Scenario A and B spreadsheets, with the modifications mentioned above.

Since the Council's action on December 3, 2019, questions have been raised about the Council's motion, specifically the governing documents outlining the allocation plan, timing of expenditures, and program requirements. This item seeks to answer those questions and reaffirm the Council's action taken on December 3, 2019 to approve Measure P funding allocations for FY 2020 and 2021.

#### Timeframe of expenditures

The expenditures approved by the Council majority were for an 18-month period - for the remainder of Fiscal Year 2020 which ends on June 30, 2020; and for Fiscal Year 2021 which ends on June 30, 2021. This was to ensure that there was sufficient funding to keep

existing and new programs in operation. Some services such as the Dorothy Day nightly shelter at 1931 Center Street, and the STAIR Center received funding through the state HEAP grant for FY 2020 and 2021. However, there was a funding gap projected by HHCS staff which needed to be filled, or the programs would end. In some cases, programs were for a limited period (e.g. Safe Parking Program, which is expected to operate for one year).

*“Mayors Submittal” Cover Sheet in December 3, 2019 Supplemental 2 Packet*

The cover sheet to the Supplemental Packet 2 submittal entitled “Mayors Submittal” was for information purposes and simply reflected the Mayor’s recommendations for expenses over an 18-month horizon beginning January 2020 through June 30, 2021 and reflected how his recommendations related to the proportional allocations proposed by the Panel of Experts (POE). Because the purpose of this document was to compare the Mayor’s proposed Measure P allocations to those categories recommended by the Panel of Experts, it did not include the allocations approved by Council on June 25, 2019 of \$1,200,000 for FY 2020, and \$2,400,000 in FY 2021 for 5150 Response and Transport. Also not included in this document are proposed staffing positions to implement new programs and funding to fill gaps in the Coordinated Entry System due to the loss of County grants. These costs however were reflected in the Scenario A and Scenario B spreadsheets. It is acknowledged that the Mayor’s recommendations were different from those of the POE and therefore the percentage of funds spent on specific program categories were different from those of the POE. That was the purpose of submitting the “Mayor’s Submittal” cover sheet, it was intended for illustrative comparison purposes and were not the specific line item allocations proposed for funding.

*Staff Estimates of Funding Needs for Existing Programs and Council Referrals*

Also attached is a document (Attachment 3) compiled by Health Housing and Community Services (HHCS) and City Manager staff which outlines existing programs and the costs needed to keep those services in operation, particularly after the one-time state HEAP funding is exhausted. This spreadsheet informed the Mayor’s recommended allocations and in some cases the Mayor rounded the amount upwards from the amounts staff estimated. It is not clear at this time how new State Homeless Assistance Program (HAP) grants will be allocated to local governments. This may result in additional funding to the City of Berkeley in FY 2020.

*Governing Documents and Actions Approved by Council on December 3, 2019*

Governing documents, that were approved by City Council on December 3, 2019, were spreadsheets Scenario A and B. These spreadsheet formats were provided by the City Manager’s office. They included line items for staff positions to implement Measure P programs in HHCS and Finance. They also included already approved allocations for Emergency Mental Health Transport, and funding for gaps in existing programs including the Coordinated Entry System (CES) which is estimated to receive a \$1.4 Million reduction in County funding due to the end of the County funded CES Pilot program. The Mayor’s

recommended funding for Council referrals and new programs were added to the expense rows, in the appropriate fiscal year, in order to illustrate the impact of the allocations for positions and programs over time. These spreadsheets were reviewed with the Deputy City Manager for accuracy prior to submittal in Supplemental Packet 2. Permanent Supportive Housing allocations were included in the Scenario B spreadsheet based on revenues over \$6 Million.

The “Mayors Submittal” and Scenario A and B spreadsheets were included in Supplemental 2 for transparency and also posted online on the Council agenda page the day prior to the Council meeting.

The motion ultimately adopted by the City Council, was to approve the Mayor’s proposal which included all three documents (the “Mayor’s Submittal” illustrative cover page, Scenario A, and Scenario B). The Council’s allocations were based on a baseline of \$6 Million, and any additional revenues over \$6 Million, up to a cap of \$2.5M with a 15% set aside for families, would be allocated to Permanent Housing Subsidies as illustrated in Scenario B. As noted, \$6 Million was a conservative estimate of assumed revenues in FY 2021. In fact, the financial estimates included in the text of Measure P were a range of \$6-8 Million. By approving Permanent Housing Subsidies, the Council was making a long-term commitment to ongoing funding for the maintenance of those subsidies. Going forward starting in FY 2022, funding for Permanent Housing Subsidies will need to be prioritized before allocating funding for other programs.

With the exception of new staff positions, funding for Mental Health transport, and Coordinated Entry, a considerable portion of funding was dedicated to programs currently funded by the one-time state HEAP grant. Some of these one-time HEAP funds were used to fund existing programs with the understanding that there would be a funding gap after FY 2020-2021. The allocations the Council approved on December 3, 2019 will fill funding gaps through FY 2020-2021 to keep programs in operation at their current funding levels.

During the debate at the December 3, 2019 City Council meeting, modifications were made to some of the Mayor’s recommendations. These changes included reducing funding for the Safe Recreational Vehicle parking program to one year, postponing the allocation to the proposed Lifelong Medical Care Street Medicine program (Attachment 4) to the 2nd Amendment to the Annual Appropriations Ordinance (estimated in March 2020) to allow City staff time to review and meet with Lifelong regarding their proposal and to develop a complete budget. In addition, the Council approved conditional funding for the Youth Spirit Artworks Tiny Home Case Management proposal with specific criteria for housing navigation and outcome reporting as outlined in Attachment 1.

In order to provide greater clarity, the Mayor has consolidated the information into one spreadsheet (Attachment 1) for Council to review and confirm the allocations presented.



FINANCIAL IMPLICATIONS

General Fund revenues in the amount of \$2,477,582 for FY 2020 and \$11,795,047 for FY 2021. Total \$14,272,629 over 18-month period.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1. Approved Expenditures of Measure P revenues for Fiscal Years 2020 and 2021
2. Homeless Service Panel of Experts “Recommendations for Allocation of FY19/20 Measure P Funds”
3. HHCS/City Manager Spreadsheet on Funding Needs for Existing Homeless Programs
4. Proposal from Lifelong Medical Care for Street Medicine Program

**Attachment 1: FY 2020 & 2021 GENERAL FUND ALLOCATIONS FROM MEASURE P  
TAX RECIEPTS  
As approved by Council on December 3, 2019**

|                                                                                                                                                                                                                                            | FY 2019<br>Actuals | FY 2020<br>Adopted | FY 2021<br>Adopted |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------|--------------------|
| Revenues                                                                                                                                                                                                                                   |                    |                    |                    |
| Beginning Fund Balance                                                                                                                                                                                                                     |                    | \$2,932,313        | \$6,454,731        |
| Revenues                                                                                                                                                                                                                                   | 2,932,313          | 6,000,000          | 6,180,000          |
| <b>Total Revenues and Balance of Funds</b>                                                                                                                                                                                                 | 2,932,313          | 8,932,313          | 12,634,731         |
| <b>LESS: Total Expenses</b>                                                                                                                                                                                                                | 0                  | 2,477,582          | 11,795,047         |
| <b>Personnel Costs - requested by City Manager</b>                                                                                                                                                                                         | 0                  | 418,087            | 432,720            |
| Finance: Accountant II                                                                                                                                                                                                                     |                    | 149,258            | 154,482            |
| HHCS: Community Services Specialist II (Filled)                                                                                                                                                                                            |                    | 172,592            | 178,633            |
| HHCS: 50% Senior Management Analyst (Requested)                                                                                                                                                                                            |                    | 96,237             | 99,605             |
| <b>Non-Personnel Costs/ Program Expenses</b>                                                                                                                                                                                               | 0                  | 2,059,495          | 11,362,327         |
| <b>Fire: 5150 Response &amp; Transport</b>                                                                                                                                                                                                 |                    |                    |                    |
| Approved by Council on June 25, 2019.<br>Estimated 45% of homeless served (2019 PIT)<br>City will look for alternative funding sources                                                                                                     | 0                  | 1,200,000          | 2,400,000          |
| Coordinated Entry System                                                                                                                                                                                                                   | 0                  | 0                  | 1,400,414          |
| Safe RV Parking Program (On-Street Permits)                                                                                                                                                                                                | 0                  | 100,000            | 100,000            |
| Dorothy Day House Emergency Shelter (Veterans Bldg)                                                                                                                                                                                        | 0                  | 0                  | 300,000            |
| Dorothy Day House Daytime Drop-In Program (Veterans Bldg)                                                                                                                                                                                  | 0                  | 0                  | 21,340             |
| Pathways STAIR Center (existing)                                                                                                                                                                                                           | 0                  | 0                  | 2,415,000          |
| Pathways STAIR Center Expansion (new)                                                                                                                                                                                                      | 0                  | 0                  | 705,000            |
| Berkeley Daytime Drop-In Center Locker Program                                                                                                                                                                                             | 0                  | 0                  | 50,000             |
| Lifelong Medical Care Street Medicine Program<br>Funding set aside, to be allocated following HHCS review and AAO #2 approval                                                                                                              | 0                  | 251,829            | 454,239            |
| <b>Youth Spirit Artworks Tiny Home Case Management</b>                                                                                                                                                                                     |                    |                    |                    |
| To fund 11 Berkeley youth. Youth must be engaged with housing navigation services and YSA to report outcomes.                                                                                                                              | 0                  | 39,000             | 78,000             |
| <b>Downtown Berkeley Association - Homeless Outreach Worker</b> Fund half-time of current outreach worker                                                                                                                                  | 0                  | 20,000             | 40,000             |
| <b>Downtown Streets Team Expansion</b>                                                                                                                                                                                                     | 0                  | 75,000             | 150,000            |
| <b>Outdoor Shelter Program</b>                                                                                                                                                                                                             | 0                  | 307,000            | 615,000            |
| <b>Permanent Housing Subsidies (begin July 2020) based on revenues over \$6 Million</b>                                                                                                                                                    |                    |                    |                    |
| Cap of \$2.5 Million, 15% set aside for homeless families.<br>POE understanding was that PSH subsidies were permanent so the cost of this allocation would take priority for any future Measure P revenues before any further allocations. | 0                  | 0                  | 2,500,000          |
| <b>Training and Evaluation</b>                                                                                                                                                                                                             |                    |                    |                    |
| Fiscal Year Surplus or Shortfall<br>(FY revenues less FY expenses)                                                                                                                                                                         | 2,932,313          | 3,522,418          | -5,615,047         |
| <b>Ending Fund Balance</b>                                                                                                                                                                                                                 | <b>\$2,932,313</b> | <b>\$6,454,731</b> | <b>\$839,684</b>   |

Revenues increase 3% per year beginning FY 2021/22  
 Expenses increase 3% per year beginning FY 2021/22  
 Cost due to Alameda County policy change or funding cut



Homeless Services Panel of Experts

**27a**

ACTION CALENDAR

December 3, 2019

*(Continued from November 19, 2019)*

To: Honorable Mayor and Members of the City Council  
 From: Homeless Services Panel of Experts  
 Submitted by: Katharine Gale, Chairperson  
 Subject: Recommendations for Allocation of FY19/20 Measure P Funds

RECOMMENDATION

Approve recommendations for the allocation of FY19/20 General Funds at least commensurate with resources accrued to date from the passage of Measure P. Refer to the City Manager to produce data regarding the percentage of those transported with County Emergency Mental Health Transport who are homeless, and other sources that could be used to cover this cost.

SUMMARY

The Homeless Services Panel of Experts recommends that the City allocate general funds to a variety of critical activities including permanent housing, shelter, supportive services and other program types to address the current crisis of homelessness in Berkeley. The recommended priority order, percentages, types of activities and subpopulation considerations are included as Attachment 1 to this report.

FISCAL IMPACTS OF RECOMMENDATION

Recommendations covered by this report allocate general fund resources for homeless housing and services in an undetermined amount to be at least commensurate with those raised to date under the transfer tax authorized under Measure P (minus those previously allocated by Council).

CURRENT SITUATION AND ITS EFFECTS

Homeless is increasing in the City of Berkeley and throughout the Bay Area. Between 2017 and 2019 homelessness in Berkeley at a point-in-time has risen by 13%, affecting more than 1,100 people on any given night. Recognizing the need for additional housing and services and for humane measures to address the impacts of homelessness, the Voters of Berkeley passed Measure P in November 2018 which collects a specified transfer tax with the intention to use these additional funds to address homelessness in the City of Berkeley.

Measure P established a Homeless Services Panel of Experts to advise the City Council. The Panel consists of nine members with a deep level of expertise in areas relevant to homelessness, including persons with extensive professional and/or lived experience with homelessness. The Panel began meeting in May 2019. Katharine Gale and Yesica Prado are the elected chair and vice-chair of the Panel.

Addressing homelessness is a Strategic Plan Priority Project, advancing the City's goal to create affordable housing and supportive services for our most vulnerable community members.

### Process

This report provides the Panel's first recommendations for initial investments from General Funds to increase and improve housing and services to address homelessness in Berkeley. In order to develop these recommendations, the Panel first adopted a Purpose Statement (attached). The Panel reviewed all of the referrals made to us since the Measure's passage in light of our adopted statement. This included the funding requests and referrals included in the January 2019 Measure P Informational report to Council as well as additional referrals, formal and informal, sent to the Panel since that time. We also considered information we were presented by City staff regarding current City of Berkeley investments, local and regional strategies, the 2019 Point-in-Time Count, and the 1,000 Person Plan.

A Mission and Budget Subcommittee of the Panel meet and categorized the referrals we received by areas of investment (permanent housing, shelter, etc.) and proposed initial percentages to each area, as well as a process to determine the final recommendations. The full Panel reviewed the investment areas, added additional activities/program types to the areas, prioritized the program types within each area, and made recommended adjustments to the percentages, resulting in the recommended allocations attached to this report. Our recommendation regarding shelter and temporary accommodations includes the potential to use funds to support sanctioned encampments if approved by a Council policy and we encourage the City to give consideration to this approach.

The Panel also adopted subpopulation priorities within the key investment areas of permanent housing subsidies, and flexible housing subsidies. These include establishing a \$500,000 set-aside for permanent housing subsidies for homeless families with children. This also includes a recommended 20% set-aside for families and transition-age youth in flexible housing subsidies, using the McKinney-Vento (i.e. Berkeley Unified School Districts) definition of homelessness, though not limited to families with school-age children.

As stated above, the actual amount of funding to be allocated has yet to be determined. The agreed upon order of priority and percentages is included as Attachment 1. The Panels' priorities within each area are expressed in the order of activities. We

recommend that higher ranked activities be given a greater priority for resources, but we recognize that some activities we have recommended may be funded using other resources at the City’s disposal. Activities left out of our table, such as Public Works street cleaning, and general street outreach, were not recommended for funding from Measure P at this time.

Objection to Full Funding for Emergency Mental Health Transport

The Panel notes that the amount available for us to allocate was reduced by nearly \$1.5 million in FY19/20 based on commitments recommended previously by the City Manager for City staff and for Mental Health Emergency Transport. We understand that FY19/20 funding is already committed but we wish to express our strong objection to the pre-allocation of \$2.4 million in FY20/21 Measure P-generated funding to fully cover these transportation costs. Measure P was passed by the voters of Berkeley to address the crisis of homelessness; while some people who experience homelessness may require emergency mental health transportation, this service is not limited to people who are homeless and was not budgeted with consideration that most people who will be transported will be people who are housed. In addition, this service does not result in greater housing or shelter for people who are homeless and we believe is not consistent with the purpose of Measure P. **We recommend the Council refer to the City Manager to produce information regarding the percentage of those transported who are homeless and other potential sources to cover this expense.** We hope to make recommendations for next year’s investments with consideration to this.

Next Steps

The HSPE recognizes that it was established not only to make recommendations about investment amounts but also to advise on methods and practices. A companion letter will be sent to Council to accompany this report with additional recommendations and considerations for how to ensure Berkeley’s programming is consistent with best practices.

Future work of the Panel will include developing an Action Plan for the coming year, and coordinating with Measure O to plan for future developments. Future work may include recommendations regarding establishing a goal of ending family homelessness or other City-wide goals.

BACKGROUND

Measure P was passed by the voters of Berkeley in 2018. The Homeless Services Panel of Experts began meeting in May of 2019. To guide our work, in August 2019 we have adopted a Statement of Purpose. This Statement is provided as Attachment 2 to this report and is a guide to the recommendations made in this Report.

At their September 4, 2019 regular meeting, the Homeless Services Panel of Experts took the following action regarding these recommendations:

**Action:** M/S/C Sutton/Trotz to adopt Budget A as amended:

- (i) Re-prioritize item #2 (Permanent Housing) as item #1 (and vice-versa), and within the Permanent Housing category:
  - a. Replace “permanent supportive housing” with “permanent housing”;
  - b. Strike the language under “Additional considerations”;
  - c. Add “establish a minimum set-aside of \$500,000 for homeless families in this category”; Note that Transition-Age Youth should be included in funding for adults.
- (ii) Remove the recommended dollar amounts in each funding category, replacing them with percentage allocations, and change the allocations to each category as follows:
  - a. #1 – Permanent Housing: 30%
  - b. #2--Shelter and Temporary Accommodations: 30%
  - c. #3--Immediate Street Conditions and Hygiene: 14%
  - d. #4--Supportive Services: 14%
  - e. #5--Short/Medium Term Housing Subsidies: 10%
  - f. #6--Infrastructure: 2%.
- (iii) Within Category #2 (Shelter and Temporary Accommodations),
  - a. Add “City should ensure there is a focus on families living on the street”;
  - b. Remove “Support sanctioned encampments” as a specific line-item, and instead add reference to sanctioned encampments as a possible modality in line-item #1 (Expand shelter capacity), with the language “if the City should adopt such a policy”;
  - c. Add language in the report to reflect that City should study the potential for sanctioned encampments as a form of shelter expansion and if it adopts such a policy these funds could be used to support that modality.
- (iv) Within Category #3 (Immediate Street Conditions and Hygiene):
  - a. Add “storage units” to the “lockers” item;
  - b. Add “including for encampments” to the “Toilets and Hygiene Stations” item.
- (v) Within Category #5 (Short/Medium Term Housing Subsidies), remove the language on additional considerations and replace with:
  - a. Establish a 20% set-aside for families and youth (including transition-aged youth).
  - b. Use the McKinney-Vento definition of “homelessness” as an eligibility criterion, without limiting to BUSD-enrolled households to ensure coverage of families with children under school age.

**Vote:** Ayes: Carrasco, cheema, Gale, Jordan, Metz, Patil, Prado, Sutton, Trotz.  
Noes: None. *Abstain:* None. *Absent:* None.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental costs or opportunities associated with these recommendations; the determination regarding how to invest in shelter expansion activities may require environmental consideration.

RATIONALE FOR RECOMMENDATION

The exact amount of funds that will be generated by Measure P are unknown at this time, and additional State and local funds may become available to the City to cover similar cost areas to address homelessness as those recommended by the Panel. Thus, the Panel is recommending key categories for investment, relative priorities expressed as percentages, and priorities within each of these areas. City staff and Council are encouraged to use these recommendations to determine the specific investments within each area.

ALTERNATIVE ACTIONS CONSIDERED

The HSPE considered various options for allocating resources to families and Transition Age Youth (TAY) including allocating resources based on each population's percentages in the Point in Time (PIT) count, establishing a specific priority for unsheltered families, and adopting a significant percentage of housing resources for families. The HSPE ultimately adopted and recommends a specific set-aside in the first allocation of at least \$500,000 of funding for permanent housing for families and a 20% percent set-aside in flexible subsidies for families and transition age youth.

CITY MANAGER

See Companion Report.

CONTACT PERSON

Peter Radu, Homeless Services Coordinator and Secretary to the Homeless Services Panel of Experts, HHCS, (510) 981-5435.

Attachments:

- 1: Recommendations for First Year Measure P Allocations - By Category and Activity
- 2: Homeless Services Panel of Experts Statement of Purpose

**ATTACHMENT 1:  
Recommendations for General Fund Allocations Associated with Measure P - By  
Category and Activity**

Because the total amount of funding available is unknown, recommendations are based on a percentage of funding to each category. Within investment areas, activities are listed in the order they were prioritized and we generally recommend higher priority be given to these activities over those that are listed further down in higher priority categories. Additional considerations and recommendations include subpopulation priorities and service types considered within each activity.

| Investment Area and Sub-Category Activities listed in Priority Order                                                                                             | Percent | Additional Considerations/ Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>1. PERMANENT HOUSING</b></p> <p>Permanent Housing Subsidies and Services</p>                                                                               | 30%     | Establish a minimum set-aside of \$500,000 for homeless families in this category. Transition-age youth should be included in funding for Adults.                                                                                                                                                                                                                                                                                                                                                    |
| <p><b>2. SHELTER &amp; TEMPORARY ACCOMMODATIONS</b></p> <p>1. Expand Shelter Capacity</p> <p>2. Invest in improving existing shelter capacity</p>                | 30%     | <p>1. Adding new sheltering capacity may include the development of dedicated RV parking, use of tiny houses, or other means to increase shelter capacity. If the City should adopt a policy approving sanctioned encampments then this use would also be included. City should ensure there is a focus on meeting needs of any families living on the street.</p> <p>2. Increase services and housing connections in existing shelters so that they are able to function as Navigation Centers.</p> |
| <p><b>3. IMMEDIATE STREET CONDITIONS &amp; HYGIENE</b></p> <p>1. Toilets and Hygiene Stations, including for encampments</p> <p>2. Lockers and Storage Units</p> | 14%     | Note: These funds were not recommended for general clean-up and other Public Works functions and should be spent on activities that directly benefit homeless people.                                                                                                                                                                                                                                                                                                                                |



| Investment Area and Sub-Category Activities listed in Priority Order                                                                                                                                        | Percent     | Additional Considerations/ Recommendations                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>4. SUPPORTIVE SERVICES</b></p> <ul style="list-style-type: none"> <li>1. Health Care services</li> <li>2. Employment and Income Development Activities</li> <li>3. Substance Use Treatment</li> </ul> | 14%         | <ul style="list-style-type: none"> <li>1. Health care services dedicated to people experiencing homelessness which may include street medicine.</li> <li>2. Activities may include job development and support as well as benefits advocacy and other services to improve incomes.</li> <li>3. Substance use treatment services dedicated for persons who are experiencing homelessness.</li> </ul> |
| <p><b>5. FLEXIBLE HOUSING SUBSIDIES</b></p> <p>Flexible housing subsidies may include prevention, diversion and/or rapid resolution support.</p>                                                            | 10%         | Establish a 20% set-aside for homeless families and transition-age youth, using the McKinney-Vento definition of homelessness.                                                                                                                                                                                                                                                                      |
| <p><b>6. INFRASTRUCTURE</b></p> <ul style="list-style-type: none"> <li>1. Training ~80%</li> <li>2. Evaluation ~20%</li> </ul>                                                                              | 2%          | <ul style="list-style-type: none"> <li>1. Use resources in this category for training for Berkeley community-based organizations working with people who are homeless.</li> <li>2. Use resources in this category to ensure that the experiences of service users are captured and considered in performance evaluation.</li> </ul>                                                                 |
| <b>TOTAL</b>                                                                                                                                                                                                | <b>100%</b> |                                                                                                                                                                                                                                                                                                                                                                                                     |

**ATTACHMENT 2:  
Homeless Services Panel of Experts Mission/Purpose Statement  
(adopted August 14, 2019)**

The Voters of Berkeley passed Measure P to generate additional General Funds to use to address the crisis of homelessness. The Homeless Services Panel of Experts created by the Measure was established to “make recommendations on how and to what extent the City should establish and/or fund programs to end or prevent homelessness in Berkeley and provide humane services and support.”

We understand the current crisis of homelessness requires investments in prevention, health services and permanent housing which we know to be the solution to homelessness, as well as in shelters, supports and other temporary measures that get people immediately out of the elements. We will seek to strike a balance between these needs in our recommendations.

We will consider currently unmet needs, gaps and opportunities, best practices and currently available data on outcomes. We will make recommendations for increased local investment, including program types, target populations and geographic areas as appropriate. We will seek to consider the best use of these investments in the context of other available Federal, State and local funding. In general, we will not make recommendations on the specific agencies to receive funding, nor run our own proposal process, recognizing this as a role for staff and the Council. We will request updates on the performance of Measure P investments and the homeless service system overall, including the experience of service users, and use this information to inform future recommendations and provide oversight.

We recognize that homelessness is a regional issue and requires a regional approach, including recognizing that people from Berkeley may live in other places and remain connected to Berkeley services.

To ensure Measure P funding recommendations further efforts to create more housing for people experiencing homelessness in Berkeley, we will coordinate with the Measure O panel to ensure that very low cost housing is connected to services and operating support so that it can successfully targeted to people who are homeless.

We will meet as needed to fulfill this Mission, and to make recommendations to the City Council at least annually.

|                                   | Annual Cost  | FY2020 Funding | FY2021 Funding | FY21 Budget Gap | Funding Exhausted By... |
|-----------------------------------|--------------|----------------|----------------|-----------------|-------------------------|
| <b>Dorothy Day House</b>          |              |                |                |                 |                         |
| Emergency Shelter @ Vet's         | \$ 565,963   | \$ 565,963     | \$ 266,037     | \$ 299,926      | 12/31/2020              |
| Daytime Drop-In services          | \$ 181,777   | \$ 177,437     | \$ 160,437     | \$ 21,340       | 6/30/2020               |
| <b>Total Cost:</b>                | \$ 747,740   | \$ 743,400     | \$ 426,474     | \$ 321,266      | \$ 88,208               |
| <b>Pathways STAIR Center</b>      |              |                |                |                 |                         |
| Operations                        | \$ 688,086   | \$ 688,086     | \$ -           | \$ 688,086      |                         |
| Staffing                          | \$ 1,096,212 | \$ 1,096,212   | \$ -           | \$ 1,096,212    |                         |
| Flexible Housing Funds            | \$ 630,000   | \$ 630,000     | \$ -           | \$ 630,000      |                         |
| Subtotal Cost:                    | \$ 2,414,298 | \$ 2,414,298   | \$ -           | \$ 2,414,298    | 6/30/2020               |
| Aditonal Trailer Operations       | \$ 145,000   | n/a            | \$ -           | \$ 145,000      |                         |
| Additional Trailer Staffing       | \$ 238,000   | n/a            | \$ -           | \$ 238,000      |                         |
| Aditonal Trailer Flexible Housing | \$ 322,000   | n/a            | \$ -           | \$ 322,000      |                         |
| Subtotal Cost:                    | \$ 705,000   |                | \$ -           | \$ 705,000      |                         |
| <b>Total Cost:</b>                | \$ 3,119,298 |                | \$ -           | \$ 3,119,298    |                         |
| <b>Coordinated Entry System</b>   |              |                |                |                 |                         |
| City of Berkeley general fund     | \$ 1,285,452 | \$ 1,285,452   | \$ 1,285,452   | \$ -            |                         |
| Alameda County WPC                | \$ 1,400,414 | \$ 1,400,414   | \$ -           | \$ 1,400,414    |                         |
|                                   | \$ 2,685,866 | \$ 2,685,866   | \$ 1,285,452   | \$ 1,400,414    |                         |
| <b>BDIC Locker Program</b>        | \$ 50,000    | \$ 50,000      | \$ -           | \$ 50,000       | one year from launch    |
| <b>Encampment debris removal</b>  | \$ 339,924   | \$ 339,924     | \$ 339,923     | \$ -            | 6/30/2021               |
| <b>Toilets and Handwashing</b>    | \$ 135,000   | \$ 135,000     | \$ 135,000     | \$ -            | 6/30/2021               |
| <b>TOTALS</b>                     | \$ 6,847,751 | \$ 6,662,766   | \$ 2,186,849   | \$ 4,660,902    |                         |

HEAP funding  
AC WPCare funding

To: Mayor Jesse Arreguin  
Council Member Rashi Kesarwani  
Homeless Services Panel of Experts Chair Katherine Gale  
Deputy City Manager Paul Buddenhagen  
Director Steve Grolnic-McClurg

From: Marty Lynch, Chief Executive Officer, LifeLong Medical Care

Date: September 2, 2019

**Request:** LifeLong Medical Care and City of Berkeley partner to establish an integrated primary care health model that provides intensive outreach and street medicine, case management, behavioral health services, including substance use services, physical health care and linkages to oral health.

**BACKGROUND:**

LifeLong Medical Care has 20 years of experience working in partnership with the City of Berkeley to serve people who are homeless and/or reside in supportive housing. Serving Berkeley’s chronic homeless population requires a multifaceted approach that combines housing with services such as intensive outreach, case management, behavioral health services, including substance use services, physical health care and oral health.

According to the 2019 Alameda County Everyone Home Point in Time Count, Berkeley’s homeless census increased 14%, from 972 in 2017 to 1108 in 2019. While the detailed Berkeley report has yet to be publicly released, the following health conditions noted in the 2017 PIT most likely continue to “affect housing stability or employment”.

- 43% reported psychiatric or emotional conditions
- 28% reported chronic health problems
- 28% reported Post Traumatic Stress Disorder
- 25% reported physical disability
- 24% reported drug or alcohol abuse
- 10% reported Traumatic Brain Injury
- 9% reported AIDS/HIV related

Across Alameda County in 2019, 49% of those surveyed reported “money issues” as the top cause of their homelessness. After money issues, the following **three conditions were listed as primary causes of homelessness** by those surveyed:

- substance use - reported by 19% of those surveyed
- mental health issues - reported by 17% of those surveyed
- physical health - reported by 15% of those surveyed

The County of Alameda, in response to similar data in Oakland, partnered with LifeLong to offer primary and behavioral health services tailored to the needs of people who are homeless and/or experiencing serious mental illness. For the past 4 years LifeLong has operated the Lifelong Trust Health Center in collaboration with Alameda County to provide integrated primary care services for adults who are homeless in Oakland.

Trust offers a behavioral health enriched primary care model with drop in access to medical, mental health and wellness services, as well as a safe space where people can take a shower, get a bag lunch, choose clothing from the clothes closet, and some days even get a haircut. In addition, the clinic is able to provide a stable health home that enables patients to establish a medical record to support social security applications, thereby increasing income, a key contributor to improved health.

Currently, the Trust clinic has approximately 1000 active patients, with average daily visits of 30. The majority have significant physical health needs and mental health and/or substance use disorders. In addition to a physician, psychiatry, and social services, Trust Health Center patients also have access to a Registered Nurse (RN), Health Homes Case Managers, a housing Coordinator, Medication Assisted Treatment (MAT) for opiate and alcohol use disorders, acupuncture and five Health and Wellness Coaches.

Most recently, to extend care beyond the clinic itself, LifeLong piloted a Trust Clinic Street Medicine program to bring medical care to people at the needle exchange site in downtown Oakland. In July LifeLong was awarded two Street Medicine contracts with Alameda County to expand this pilot in downtown Oakland and to launch services in East Oakland. The Street Medicine teams include a primary care provider (PCP), case manager, social worker and RN. The PCP provides care to approximately two people per hour. Most individuals already receive or qualify for MediCal and the medical visit is billed at the Federally Qualified Health Center (FQHC) rate. Other team members are funded by the county contract, which funding from Mental Health Services Act and Health Homes. While building trusting relationships, patients seen by the street medicine team are encouraged to come to the Trust clinic site, or another LifeLong clinic, but can also receive follow-up care on the streets.

**RECOMMENDATION:**

LifeLong recommends a partnership with the City of Berkeley to bring an array of services modeled on the LifeLong Trust Health Center in Oakland to better serve the homeless population in Berkeley. This program would provide primary care and specialty behavioral health services designed to serve Berkeley and Albany-based individuals who are experiencing homelessness and/or are serious mental illness. In partnership with the City of Berkeley Public Health and Mental Health Departments, we propose to establish a LifeLong Trust-Berkeley Program that will launch in two phases: Phase 1) Street Medicine and Phase 2) establish a “brick-and-mortar” health center with drop-in access and hours tailored to Berkeley’s needs.

**Phase 1: Street Medicine**

LifeLong, in partnership with Berkeley Mental Health, will launch a full time street medicine team based out of an existing LifeLong Health Center. The team will be led by a primary care provider working side by side with a licensed clinical social worker and a community health worker. The street medicine team will prioritize services to sites/individuals identified by the city and will have regularly scheduled times when they visit encampments.

The team will provide outreach and engagement services, attend to basic needs (e.g. hygiene, overdose prevention kits), provide direct medical assessment and care, prescribing and medication management, support linkages to social services and respite care, and promote housing readiness. The social worker and case manager will provide follow up counseling and case management for the highest risk people

served. Medical services will be provided in a compact van specially equipped for that purpose and easily able to park at encampments. Follow up care will be provided either at a LifeLong clinic or on the streets. It's estimated that one full time street medicine team can provide medical care to 60 individuals per month with both new and follow up visits, and can manage a caseload mix of 250 light touch and 30 in depth case management clients in a year.

*Budget for Phase 1 Street Medicine:*

Year 1: \$503,657 (includes a one-time expense of a Street Medicine Van)

Year 2: \$404,819

Year 3: \$406,464

A detailed line item budget is attached.

**Phase 2: LifeLong Trust - Berkeley Health Center**

The second phase will be the development of a brick-and-mortar LifeLong Trust-Berkeley. This clinic will be specifically designed to meet the unique needs of individuals who are, or have recently been, homeless and/or are experiencing serious mental illness. Key features will include drop in appointments, highly integrated behavioral health, medical and wellness services, showers, and access to food and clothing resources. Staff will be deeply trained in trauma informed practices and will offer a highly flexible care model. The strong link with the street medicine team will allow for outreach and follow up outside the walls of the clinic.

*Proposed Services Offered:*

- Primary Medical Care
- Mental Health Services
- Medication Assisted Treatment/Substance Use Disorder Services
- Intensive case management
- Housing assistance
- Referrals to dental, specialty care
- Benefits eligibility
- Linkage to Street Medicine

*Budget considerations:*

A specific budget for the proposed clinic is not included at this time. LifeLong recommends that it works with the BMH and the office of the City Manager to plan for this site to assure that the clinic location, hours, and staffing meet the needs of the current homeless population. We estimate that a clinic operating 4 - 5 half days per week would cost approximately \$1 million per year and that approximately two thirds (\$660k) would be funded by FQHC building and \$340k in city funding would be required. Additionally, LifeLong and the City should explore benefits and capacity for co-location of city mental health and LifeLong primary care staff.

## Phase 1:

LifeLong Medical Care –COB Homeless Health Care  
Street Medicine -Berkeley Team  
Proposed Budget 2020-2022

| Budget Item                                                                            | Year 1 Program Expense | Year 2 Program Expense | Year 3 Program Expense |
|----------------------------------------------------------------------------------------|------------------------|------------------------|------------------------|
| <b>Personnel Expenses</b>                                                              |                        |                        |                        |
| .10 Program Manager                                                                    | \$ 9,248               | \$ 9,525               | \$ 9,811               |
| 1.0 Nurse Practitioner or Physician Assistant                                          | \$ 130,000             | \$ 133,900             | \$ 137,917             |
| 1.0 Social Worker (ASW/MFTi)                                                           | \$ 70,720              | \$ 72,842              | \$ 75,027              |
| 1.0 CHOW                                                                               | \$ 53,400              | \$ 55,002              | \$ 56,652              |
| .05 LCSW                                                                               | \$ 4,160               | \$ 4,285               | \$ 4,413               |
| .02 Medical Director                                                                   | \$ 4,337               | \$ 4,467               | \$ 4,601               |
| Employee Benefits @.28                                                                 | \$ 76,122              | \$ 78,406              | \$ 80,758              |
| <b>Salary, Wages, &amp; Benefits Subtotal</b>                                          | \$ 338,739             | \$ 348,901             | \$ 359,368             |
| <b>Operating Expenses</b>                                                              |                        |                        |                        |
| Office Supplies                                                                        | \$ 5,000               | \$ 1,500               | \$ 1,000               |
| Utilities                                                                              | \$ 2,000               | \$ 2,000               | \$ 2,000               |
| Communications                                                                         | \$ 4,500               | \$ 4,500               | \$ 4,500               |
| Transportation & Travel                                                                | \$ 4,000               | \$ 5,000               | \$ 5,000               |
| Training                                                                               | \$ 6,000               | \$ 5,000               | \$ 3,000               |
| Rents and Leases                                                                       | \$ 9,600               | \$ 9,600               | \$ 9,600               |
| Client Supportive Expenditures                                                         | \$ 5,000               | \$ 7,000               | \$ 6,178               |
| Van (one time only)                                                                    | \$ 100,000             | 0                      | 0                      |
| Other: Medical Supplies                                                                | \$ 5,000               | \$ 3,500               | \$ 4,000               |
| <b>Operating Expenses Subtotal</b>                                                     | \$ 41,100              | \$ 38,100              | \$ 35,278              |
| <b>Indirect Expenses (Not to exceed 10.00% of total budget)</b>                        | \$ 31,818              | \$ 31,818              | \$ 31,818              |
| <b>Program Total</b>                                                                   | \$ 411,657             | \$ 418,819             | \$ 426,464             |
| <b>Less Third Party Billing/Additional Revenue (Please specify, e.g. Health Homes)</b> | \$ 8,000               | \$ 14,000              | \$ 20,000              |
| <b>Total Budget Request</b>                                                            | \$ 503,657             | \$ 404,819             | \$ 406,464             |







Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Budget Referral to Conduct an Equal Pay Audit

RECOMMENDATION

1. Refer to the June 2020 Budget Process \$20,000 to pay for an Equal Pay Audit for City of Berkeley employees. The audit would include pay band analyses and analyses of job segregation and glass ceilings.
2. Issue an RFP to complete the Equal Pay Audit

BACKGROUND

In January 2016, the Commission on the Status of Women (COSOW) formed an equal pay subcommittee in response to a referral from Councilmember Worthington. A year later in April 2017, COSOW made a three-part recommendation to the City Council that included a gender pay audit for city employees.

In the May 2017 Re-weighted Range Voting (RRV) process, the City Council voted to make an equal pay audit the second highest priority<sup>1</sup>. Two years later, COSOW brought the item back to Council with the recommendation that it be performed by an outside vendor, Dr. Martha Burk, because it remained incomplete despite high prioritization. Dr. Burk conducted a similar audit in New Mexico and gave a presentation on it to the Berkeley COSOW. The City Council approved funding for this presentation at the July 9, 2019 meeting<sup>2</sup>.

The Council expressed interest in the audit but did not approve the request, because the request was made outside the regular budgeting process and no RFP was completed. This referral intends to complete the work that was already approved and prioritized.

The audit intends to examine pay equity among City of Berkeley employees by looking at three different metrics: job segregation, pay band analyses and glass ceilings. Job segregation is a count of the number of male and female employees in each department. Pay band analyses examine the grouping of employees within a certain salary range in a

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<sup>1</sup> Item 1, May 30, 2017 Berkeley City Council Special Meeting, "2017 City Council Referral Prioritization Process Using Re-Weighted Range Voting (RRV)".

<sup>2</sup> Item 9, July 9, 2019 Berkeley City Council Meeting, "Gender Pay Equity Salary Negotiation Workshop".

given department, irrespective of job titles. A glass ceiling analysis determines whether men or women are concentrated in lower-paying jobs.

This audit is meant to be a preliminary examination that will indicate whether a more thorough examination is needed (including a comparison of different classifications in different departments).

The final report will include:

1. The number of pay bands examined
2. Number of pay bands segregated by gender
3. Bands containing both genders
4. Bands with no gender wage gap
5. Bands with a gap that favors women
6. Bands with a gap that favors men

#### FISCAL IMPLICATIONS

The audit will require \$20,000 for surveilling and processing data from the different departments.

#### RATIONALE FOR RECOMMENDATION

The gender pay gap runs contrary to the values of the City of Berkeley and our Strategic Plan goal of championing social justice. This audit will inform the City whether further action is required to close any gender pay gap among City employees.

After a recommendation has been approved by Council and prioritized highly, its timely completion builds trust in local government.

#### ENVIRONMENTAL SUSTAINABILITY

No impact.

#### CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

**SOPHIE HAHN**

Berkeley City Council, District 5  
 2180 Milvia Street, 5th Floor  
 Berkeley, CA 94704  
 (510) 981-7150  
 shahn@cityofberkeley.info

CONSENT CALENDAR

January 21, 2020

To: Honorable Members of the City Council  
 From: Councilmember Sophie Hahn  
 Subject: Small Business Listening Sessions

RECOMMENDATION

Refer to the City Council's Land Use, Housing & Economic Development policy committee to establish regular Small Business/Enterprise Listening Sessions.

BACKGROUND

Berkeley has over 40 community Boards and Commissions, but none dedicated to addressing the needs of small businesses, not for profits and other small and local enterprises. At the same time, these entities are regulated and taxed by the City and depend on the Office of Economic Development (OED) and the Planning Department, among others, for technical assistance and support.

The recent establishment of City Council-level policy committees, including the Land Use, Housing & Economic Development (LUHED) committee, provides a new and welcome opportunity for Berkeley's small enterprises to connect with the City, to share their perspectives, and to comment on policies and programs affecting small businesses. This item formalizes that opportunity by establishing regular Small Business/Enterprise Listening Sessions at the Council's LUHED committee.

Berkeley's unique character is owed in large part to the presence of small businesses and not for profits (including arts organizations). These enterprises contribute significantly to our economic and cultural vitality, but face significant challenges due to increasing costs, space constraints and, in the case of small businesses, growing competition from online stores and chain retailers.

The OED, Chamber of Commerce, and other business organizations in Berkeley host well-attended networking events, seminars and listening sessions for small businesses and not for profits, and work with them one-on-one. Through participation at these events, conversations with the Director of Economic Development and Chamber and Business Improvement District leaders, and following email and online conversations, it is clear that Berkeley's small enterprises are eager to communicate with the Council and Mayor on a wide variety of topics.

This item requests that the LUHED committee establish a recurring agenda item, approximately once per quarter, to give small business owners and not for profits a focused opportunity to address and engage with the Council. Listening sessions could be focused on one or several topics, with additional time allocated for general comments. Committee members, the OED, business associations, business/not for profit leaders and members of the public could recommend topics, which might include exploring the costs of doing business, challenges in finding affordable and appropriate space, and permitting challenges. Timing, frequency and topics of listening sessions should be determined by the LUHED committee, but it is recommended that sessions and topics be announced as far in advance as possible, to allow staff and community partners to undertake broad outreach.

#### ENVIRONMENTAL SUSTAINABILITY

This item supports the Berkeley General Plan goal to protect local and regional environmental quality, as small, local businesses help to sustain vibrant, compact, walkable town centers, which in turn are essential to reducing sprawl, automobile use, habitat loss, and air and water pollution.

#### FISCAL IMPACTS

Supporting small and local businesses/enterprises in Berkeley provides significant community and economic benefits. Committee meetings are already noticed, organized and staffed by the City. The only possible additional cost of implementing this item is minimal time for Economic Development staff to do outreach.

#### CONTACT INFORMATION

Councilmember Sophie Hahn, Council District 5, (510) 981-7150



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Susan Wengraf  
Subject: Resolution Reaffirming the City of Berkeley's Commitment to Roe v. Wade

RECOMMENDATION

Adopt a Resolution reaffirming the City of Berkeley's commitment to Roe v. Wade and honoring the 47<sup>th</sup> anniversary of its passage.

FINANCIAL IMPLICATIONS

None

BACKGROUND

On January 22, 1973, the U.S. Supreme Court announced its decision in Roe v. Wade, a challenge to a Texas statute that made it a crime to perform an abortion unless a woman's life was at stake. The case had been filed by "Jane Roe," an unmarried woman who wanted to safely and legally end her pregnancy. Siding with Roe, the court struck down the Texas law. In a ruling, the court recognized for the first time that the constitutional right to privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy" (Roe v. Wade, 1973).

Roe has come to be known as the case that legalized abortion nationwide. At the time the decision was handed down, nearly all states outlawed abortion. Roe rendered these laws unconstitutional, making abortion services safer and more accessible to women throughout the country.

The Guttmacher Institute, a global leader in advancing sexual and reproductive health and rights, claimed in its December 2019 Policy Analysis report that U.S. State Policy Trends in 2019 brought "A wave of Abortion Bans."<sup>1</sup> The authors also reported that some states are fighting back with policies that protect abortion rights, expand access to contraceptive services and to sex education. This is a new strategy states are taking on to combat regulatory restrictions on abortion and narrow the gap between abortion restrictions enacted vs. protections enacted. Berkeley's steadfast commitment to a woman's right to reproductive health choices continues to be critically important.

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<sup>1</sup> [Guttmacher Institute Dec 2019 Policy Analysis Nash,E; Mohammed,L; Cappello,O; Naide,S](#)

This past summer a Catholic mission attempted to narrow insurance coverage of abortion in California. Thankfully, a state appeals court threw the case out, ruling that abortion must be covered by health plans sold in California.<sup>2</sup> Attacks on abortion rights in other parts of the country, however, are sticking. In 2019, 25 new abortion bans were enacted in 12 states, primarily in the South and Midwest. 58 new abortion restrictions potentially resulting in clinic closures and lost access to abortions were also enacted.<sup>3</sup> The state of Missouri, for example, had five abortion providers in 2011, but just one in 2019 due to abortion restrictions. The provider, Planned Parenthood, is currently in battle with the state for their renewed license. In May Missouri's Governor, Republican Mike Parson, signed a bill banning abortions on or beyond the eighth week of pregnancy without exceptions in cases of rape or incest.<sup>45</sup>

January 22, 2020 will be the 47<sup>th</sup> anniversary of the decision that effectively legalized abortion in the United States. The City has traditionally marked the anniversary with a proclamation recognizing the anniversary. The City continually passes resolutions denouncing the fraudulent media campaigns against Planned Parenthood and has expressed continued support for access to all reproductive healthcare services and all reproductive healthcare providers. The City also adopted a resolution against proposed funding cuts to the Title X Family Planning program, the only federal program dedicated solely to providing low income women and men with comprehensive family planning and related preventive health services.

ENVIRONMENTAL SUSTAINABILITY

N/A

CONTACT PERSON

Councilmember Susan Wengraf, Council District 6, 510-981-7160

Attachments:

1: Resolution

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<sup>2</sup> [LA Times Aug 22, 2019 Hiltzik,M](#)

<sup>3</sup> [Guttmacher Institute Dec 2019 Policy Analysis Nash,E; Mohammed,L; Cappello,O; Naide,S](#)

<sup>4</sup> [CBS News Oct 28, 2019 Chuck,E](#)

<sup>5</sup> [The Nation's Health APHA Sept 2019 Krisberg,K](#)

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

REAFFIRMING THE CITY OF BERKELEY'S COMMITMENT TO ROE V. WADE

WHEREAS, January 21, 2020 marks the 47<sup>th</sup> anniversary of the historic Supreme Court decision, Roe v. Wade, which legalized abortion and recognized women's freedom of reproductive choice as essential to the lives, rights, health and equality of women; and

WHEREAS, Prior to 1973, the year when Roe v. Wade was enacted, women faced significant obstacles to safe reproductive health services, resulting in widespread loss of life and serious illness; and

WHEREAS, In 2019, 25 new abortion bans were enacted in 12 states. 58 new abortion restrictions, potentially resulting in clinic closures and lost access to abortions, were also enacted.

WHEREAS, The right to safe, legal and accessible abortion continues to be undermined by various federal initiatives, threatening the health and safety of women's lives, including the most marginalized women: low-income women, women of color, refugee and immigrant women.

WHEREAS, Throughout the Bay Area, hundreds of health care workers have devoted their careers to ensuring that the women of the Bay Area have access to safe and legal reproductive health services, while often putting their own safety at great risk due to harassment and violent opposition; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF BERKELEY that we RECOGNIZE AND CELEBRATE THE 47<sup>th</sup> ANNIVERSARY OF ROE V. WADE and praise the perilous and self-sacrificing work of the healthcare providers who face threats and violence for providing safe and legal health services to women throughout the Bay Area.

NOW FURTHER BE IT RESOLVED that the City of Berkeley re-affirms its commitment to the human rights afforded to all women under Roe v. Wade, regardless of socioeconomic, ethnic, racial, cultural or religious background, age or sexual orientation and to opposing any laws or regulations that pose a threat to abortion, reproductive rights, sexual freedom and/or self-determination.







Office of the City Manager

INFORMATION CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Animal Care Commission  
 Submitted by: Dr. Diane Sequoia, Chairperson, Animal Care Commission  
 Subject: Animal Care Commission FY 2019/2020 Work Plan

INTRODUCTION

In a general meeting of the Animal Care Commission (ACC) on November 20, 2019 the Commission adopted a work plan for Fiscal Year 2019/2020.

CURRENT SITUATION AND ITS EFFECTS

The ACC Work Plan for FY 2019/2020 is as follows:

Advocacy

A. Homeless people and their pets - Continue to support efforts to ensure that pets are not separate from their companions. Make available food and other supplies that will enable all people in need to keep their pets with them, particularly in times of stress.

B. Pet Friendly Housing - Bring to the attention of Berkeley's City Council Members, the city's administrators and landlords the need for pet-friendly housing. Examples of other cities efforts to ensure adequate pet-friendly housing should be obtained and forwarded to the relevant groups.

C. In Berkeley we share our living space with a number of other animal species: Turkeys, Coyotes, Skunks, Opossums, Raccoons, and perhaps a mountain lion, or two. It is important that we keep the human population aware of the presents of these animals and how best to deal with their presence among us through education.

D. Support adequate funding for Animal Services staffing and programs.

The ACC will work with other commissions, including Parks & Waterfront Commission, the Public Works Commission, and non-profit organizations involved in these issues in Berkeley.

## BACKGROUND

The ACC meets six (6) times per year with the mission of overseeing the treatment of animals in all shelters established within Berkeley. The ACC advises the council on the care, treatment and control of animals.

In its November 20, 2019 regular meeting, the ACC passed a motion to adopt a Fiscal Year 2019/2020 Work Plan.

### Motion IV: Elbasani/Stevens

*In regards to changing the calendar year 2019 Animal Care Commission (ACC) Work Plan to a Fiscal Year 2019/2020 Work Plan, retain items:*

*A. (Homeless people and their pets - Continue to support efforts to ensure that pets are not separate from their companions. Make available food and other supplies that will enable all people in need to keep their pets with them, particularly in times of stress.)*

*B. (Pet Friendly Housing - Bring to the attention of Berkeley's City Council Members, the city's administrators and landlords the need for pet-friendly housing. Examples of other cities efforts to ensure adequate pet-friendly housing should be obtained and forwarded to the relevant groups.)*

*C. (In Berkeley we share our living space with a number of other animal species: Turkeys, Coyotes, Skunks, Opossums, Raccoons, and perhaps a mountain lion, or two. It is important that we keep the human population aware of the presents of these animals and how best to deal with their presence among us.)  
and add an additional item D. Support adequate funding for Animal Services staffing and programs.*

*Aye: Hatch, Stevens, Elbasani, Sequioa, Heath*

*Naye: none*

*Motion Passed*

## ENVIRONMENTAL SUSTAINABILITY

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

## POSSIBLE FUTURE ACTION

The ACC will research ways to assist homeless pet owners to secure housing. The ACC will also research and implement practical means to increase pet-friendly housing in Berkeley.

## FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no identifiable fiscal impacts as a result of the FY 2019/2020 Work Plan.

## CONTACT PERSON

Amelia Funghi, Manager, Animal Services, 981-6603

| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                                                                 |
|-------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scheduled Dates                                                               |                                                                                                                                                                 |
| Jan. 14                                                                       | <ol style="list-style-type: none"> <li>1. Vision 2050</li> <li>2. Civic Center Visioning</li> </ol>                                                             |
| Feb. 4                                                                        | <ol style="list-style-type: none"> <li>1. Discussion of Community Poll (Ballot Measures)</li> <li>2. Adeline Corridor Plan</li> </ol>                           |
| March 17                                                                      | <ol style="list-style-type: none"> <li>1. Undergrounding Task Force</li> <li>2. CIP Update (PRW and Public Works)</li> <li>3. Measure T1 Update</li> </ol>      |
| May 5                                                                         | <ol style="list-style-type: none"> <li>1. Budget Update</li> <li>2. Crime Report</li> </ol>                                                                     |
| June 23                                                                       | <ol style="list-style-type: none"> <li>1. Climate Action Plan/Resiliency Update</li> <li>2. Digital Strategic Plan/FUND\$ Replacement/Website Update</li> </ol> |
| July 21                                                                       | <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>                                                                                                |
| Sept. 29                                                                      | <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>                                                                                                |
| Oct. 20                                                                       | <ol style="list-style-type: none"> <li>1. Update: Berkeley's 2020 Vision</li> <li>2. BMASP/Berkeley Pier-WETA Ferry</li> </ol>                                  |

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

| Unscheduled Presentations (City Manager)                                                                      |
|---------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Update: goBerkeley (RPP)</li> <li>2. Systems Realignment</li> </ol> |

|    | <b>City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <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> Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.</p> <p><b>From: Councilmember Worthington</b></p> <p><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.</p> <p><b>Financial Implications:</b> Minimal</p> <p>Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p> |
| 2. | <p><b>36. Referral Response: Issue a Request for Information to Explore Grant Writing Services from Specialized Municipal Grant-Writing Firms, and Report Back to Council</b> (<i>Referred from the October 15, 2019 agenda</i>)</p> <p><b>From: City Manager</b></p> <p>Contact: Henry Oyekanmi, Finance, 981-7300</p> <p><i>Note: Will be considered in FY 2021 Budget Process</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 3. | <p><b>28. Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention</b> (<i>Referred from the November 12, 2019 agenda</i>)</p> <p><b>From: Mayor Arreguin and Councilmembers Harrison, Droste, and Hahn</b></p> <p><b>Recommendation:</b> 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.</p> <p>First Reading Vote: All Ayes.</p> <p><b>Financial Implications:</b> Staff time</p> <p>Contact: Jesse Arreguin, Mayor, (510) 981-7100</p>                                                                                                                                                                                                                                                                    |

| CITY CLERK DEPARTMENT                                             |                      |                       |                                         |                   |
|-------------------------------------------------------------------|----------------------|-----------------------|-----------------------------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS                  |                      |                       |                                         |                   |
| BEFORE THE CITY COUNCIL                                           |                      |                       |                                         |                   |
| Address                                                           | Board/<br>Commission | Appeal Period<br>Ends | Determination<br>on Appeal<br>Submitted | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                                  |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
| <b>Public Hearings Scheduled</b>                                  |                      |                       |                                         |                   |
| 2422 Fifth St (construct mixed-use building)                      | ZAB                  |                       |                                         | 2/25/2020         |
| 1581 Le Roy Ave (convert vacant elementary school property)       | ZAB                  |                       |                                         | 3/10/2020         |
| 1581 Le Roy Ave (convert vacant elementary school property)       | LPC                  |                       |                                         | 3/10/2020         |
| 0 Euclid Ave - Berryman Reservoir (denial of 4G telecom facility) | ZAB                  |                       |                                         | TBD               |
|                                                                   |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
| <b>Remanded to ZAB or LPC</b>                                     |                      |                       |                                         |                   |
| 1155-73 Hearst Ave (develop two parcels)                          | ZAB                  |                       |                                         |                   |
| 90-Day Deadline: May 19, 2019                                     |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
| <b>Notes</b>                                                      |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |
|                                                                   |                      |                       |                                         |                   |

12/18/2019





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
December 10, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings

#### RECOMMENDATION

Adopt a Resolution Prohibiting the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings. The Brown Act prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration.

In order to ensure the full attention of the Council to the public and each other, the use of cell phones with access to email, text-messaging, instant messaging, and social media should be prohibited during all City Council meetings. The use of digital technologies outside of the provided City tablets, upon which Agenda Items and notes can be stored, is distracting, disrespectful, and jeopardizing to democratic process.

The Council Rules of Procedure and Order should be amended to include a moratorium on the use of cell phones by Councilmembers on the dais during open and closed session council meetings.

#### FISCAL IMPACTS OF RECOMMENDATION

None.

#### ENVIRONMENTAL SUSTAINABILITY

None.

#### BACKGROUND

After serving three consecutive years on Berkeley City Council, it has become clear that the cell phones are being overused in City Council meetings, including in Closed Sessions. As elected officials and public servants, Berkeley City Councilmembers should be fully attentive in meetings, focused on the issues being raised by constituents and fellow Councilmembers. Especially when residents are giving public comment and only allowed to speak for 2 minutes, it is imperative that City Councilmembers utilize active listening strategies and show utmost respect to those we represent. Currently, members of the public have expressed feeling ignored or neglected by Berkeley City Council members who appear to be preoccupied with their technology and personal communication devices during Public Comment sessions.

In addition to being rude, texting during the meetings creates additional channels for lobbyists to influence Councilmembers votes and results in a lack of transparency. Additionally, if 3 or more Councilmembers of speaking to each other on text threads about a legislative topic this is in violation of the Brown Act. Thus, the use of cellular telephones on the dais communicates disregard for the general public, the deprioritization of our constituency's concerns, disengagement in ethical democracy, and ought to be banned.

CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

ATTACHMENT: 1: Resolution

REFERENCES:

1. <https://www.pe.com/2014/04/13/city-councils-officials8217-texting-during-meetings-sparks-debate/>

2. [http://local.anaheim.net/docs\\_agend/questys\\_pub/6575/6605/6606/6897/6913/Resolution6913.pdf](http://local.anaheim.net/docs_agend/questys_pub/6575/6605/6606/6897/6913/Resolution6913.pdf)



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

RESOLUTION OF THE COUNCIL OF THE CITY OF BERKELEY PROHIBITING THE USE OF CELL PHONES, EMAIL, TEXTING, INSTANT MESSAGING AND SOCIAL MEDIA BY ELECTED CITY COUNCILMEMBERS DURING OFFICIAL CITY MEETINGS

WHEREAS, the City of Berkeley Council Rules of Procedure and Orders *Section I.D.* page 4, specifies the Duties of Councilmembers and code of Decorum, stating “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... nor disturb any other member while that member is speaking...”; and

WHEREAS, the use of cellular telephones and digital communications including text-messaging, emailing, perusing social media, or non-pertinent websites is distracting, and a threat to decorum; and

WHEREAS, members of the public have expressed feeling ignored or neglected by Berkeley City Council members who appear to be preoccupied with their technology and personal communication devices during Public Comment sessions; and

WHEREAS, the use of cell phones during the council meeting opens additional channels to influence Councilmembers immediately during a vote, leading to a lack of transparency; and

WHEREAS the Brown Act, California Government Code section 6200 *et seq.*, prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration; and

WHEREAS a text message thread could include participation of many Berkeley City Councilmembers addressing topics of legislation, in violation of the Brown Act; and

WHEREAS, other City Councils in the State of California, including, Palm Springs, Santa Rosa<sup>1</sup>, and Anaheim<sup>2</sup>, have banned the use of text-messaging, instant messaging, and/or emailing during their Council meetings;

Now, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the use of cell phones during City Council meetings be prohibited for Berkeley City Councilmember; and

BE IT FURTHER RESOLVED that while communications regarding Council items should be strictly prohibited by cell phones, personal communications between family members and/or care-givers can be taken outside in the case of emergencies; and

BE IT RESOLVED in order to acknowledge differences in learning styles and our of support tactile learners, note-taking can continue to be facilitated both with a pen and paper and/or on the tablets provided by the City; and

THEREFORE BE IT FINALLY RESOLVED that the Council Rules of Procedure and Order be amended to include a moratorium on the use of cell phones by Councilmembers on the dais during open and closed session council meetings.





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
December 10, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Updating Berkeley Telecom Ordinances and BMC codes

#### RECOMMENDATION

Direct the City Manager to adopt a resolution to include the attached sample language and contained hyperlinked references to update the City's Telecom Ordinances and BMC codes.

#### BACKGROUND

For several months now, the community has been concerned about the potential installation of 5G technology and small cells throughout the city. The technology has not been thoroughly tested concerning radiation.

Some City of Berkeley communities bear the brunt of health-related impacts caused by industrial and other activities. The California Environmental Protection Agency has identified various census tracts within the City as disadvantaged communities disproportionately burdened by and vulnerable to multiple sources of pollution.

It is important now more than ever, to update the City's Telecom Ordinances to protect the health and safety of our residents that cover the following areas:

**1. FCC CLAUSE:** Include a clause voiding relevant sections of the ordinance, or requiring modification, in the event of a regulatory change or overturning of the FCC Order. (see report by Next Century Cities) **Laws, permits, and re-certifications need to be CONDITIONAL**, so that they may be revoked or modified if out of compliance or if/when federal law is modified. (Fairfax, Sonoma City) Also include a **SEVERABILITY** clause.

#### **2. PERMITS**

2.a. **Conditional Use Permits:** Maintain that each wireless facility requires a Conditional Use Permit (Planning Dept, ZAB, or Public Works) followed by an encroachment permit

2.b. **Significant Gap in coverage:** Require that a significant gap in coverage be proven by applicant before approval of a wireless antenna and confirmed by an independent engineer.\* (Calabasas, Old Palos Verdes)

**Least Intrusive Methods:** Require the least intrusive methods to fill any gaps for small cells and other wireless facilities. A justification study which includes the rationale for selecting the proposed use; a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option. (Old Palos Verdes) An independent\* engineer shall confirm, or not.

2.c. **Radio-frequency Data Report:** Require a thorough radio-frequency (RF) data report as part of the permit submittal for consultants. For all applications, require both an RF Compliance Report signed by a registered, independent professional engineer, and a supporting RF Data Request Form. (Calabasas, Palos Verdes, Suisun City, Sonoma City) The independent\* engineer will be hired by the City of Berkeley and billed to the applicant.

2.d. **Mock-up, Construction Drawings, Site Survey, Photo Simulations:** Require full-size mock-up of proposed Small Cell Facilities (SCF) and other pertinent information in order to adequately consider potential impacts. (Larkspur, Calabasas, Palos Verdes. Also see Boulder, CO Report) Require **Balloon Tests**. (Town of Hempstead NY 2013)

2.e. **Public notification:** Telecom related Planning Commission, Public Works, and Zoning Adjustment Board hearings shall be publicized in the most widely read local newspapers and local online news sources\* and on the City website no less than 30 days prior to the hearing or meeting. No less than 30 days prior, a U.S. 1st class mail shall be sent to all addresses within 3,000 feet of the proposed facilities. The outside of the envelope shall be printed with "Urgent Notice of Public Hearing." Due to the "shot clock", City requires applicants to hold a publicly noticed meeting two weeks prior to submitting an application within the affected neighborhood. Applicants mail all affected residents and businesses date, time, and location of hearings at least two weeks prior. The applicant pays associated costs including mailings and meeting location rent.

**Community Meeting:** Applicant is required to [publicize in local newspapers and local online news sources\* and] hold a community meeting at least two weeks prior to the hearing on the use permit. (San Anselmo, Palos Verdes) Applicants shall mail all affected residents and businesses date, time, and location of hearings at least two weeks prior, 1st class etc. [as in 2.e].

2.f. **Notification:** Notify property owners, residents, tenants, business owners, and workers within 3000 feet of a proposed wireless installation within one week of application submittal and again within one week of permit approval. 1st class etc. [as in 2.e].

2.g. **Independent Expert\*** The City shall retain an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall address any or all of the following: xxxx (Old Palos Verdes) Paid by applicant (San Anselmo)

2.h. **Trees:** No facility shall be permitted to be installed in the drip line of any tree in the right-of-way. (Old Palos Verdes, 15' in Los Altos) (See Berkeley's Heritage Tree ordinance.)

2.i. **Transfer of Permit:** The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by section 12.18.080(B)(5). (Palos Verdes)

2.j. **General Liability Insurance:** To protect the City, the permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of commercial general liability insurance, with minimum limits of two million dollars for each occurrence and four million dollars in the aggregate, that fully protects the City from claims and suits for bodily injury and property damage. The insurance must name the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with 30 days prior written notice to the city, except for cancellation due to nonpayment of premium.... (Old Palos Verdes, Fairfax, Newark. San Anselmo has an indemnification clause.)

2.k. **Attorneys' Fees:** The Permittee is required to pay any/all costs of legal action. (Suisun City)

2.l. **Speculative Equipment:** Pre-approving wireless equipment or other alleged improvements that the applicant does not presently intend to install, but may wish to install at an undetermined future time, does not serve the public interest. The City shall not pre-approve telecom equipment or wireless facilities. (Fairfax, Old Palos Verdes, Sebastopol)

2.m. **Citizens may appeal** decisions made. (San Anselmo)

**3. ACCESS Americans with Disabilities Act (ADA):** All facilities shall be in compliance with the ADA. (New Palos Verdes, Fairfax, Sebastopol, Mill Valley, Sonoma City, Suisun City) Electromagnetic Sensitivity (EMS) is a disabling characteristic, recognized by the Federal Access Board since 2002. The main treatment for this condition is avoidance of exposure to wireless radiation. Under the 1990 Americans with Disabilities Act, people who suffer from exposure to Electromagnetic Fields (EMF) are part of a protected disabled class under Title 42 U.S. Code § 12101 et seq. (Heed Berkeley's pioneering disability rights laws and Berkeley's Precautionary Principle ordinance NO. 6,911-N.S "to promote the health, safety, and general welfare of the community.")

#### **4. SETBACKS:**

4.a. **Prohibited Zones** for Small Cells: Prohibits small cell telecommunication facilities in residential zones and multi-family zoning districts (Calabasas, Mill Valley, Los Altos, Sonoma City)

4.b. **Preferred or Disfavored Locations:** In addition to residential areas, designate areas where cell towers are disfavored and not permitted, i.e. near schools, residential areas, city buildings, sensitive habitats, on ridge lines, public parks, Historic Overlay Districts, in open spaces or where they are favored i.e. commercial zoning areas, industrial zoning areas. (Calabasas, Sebastopol, Boulder Report)

4.c. **Disfavored Location:** Small cell installations are not permitted in close proximity to residences, particularly near sleeping and living areas. Viable and defensible setbacks will vary based on zoning. (ART ordinance) 1500 foot minimum setback from residences that are not in residential districts!

4.d. **1500 Foot Setback from other small cell** installations: Locate small cell installations no less than 1500 feet away from the Permittee or any Lessee's nearest other small cell installation. (Calabasas, Petaluma, Fairfax, Mill Valley, Suisun City, Palos Verdes, Sebastopol San Ramon, Sonoma City,-Boulder Report)

4.e. **1500 Foot Minimum Setback** from any educational facility, child/elder/healthcare facility, or park. (ART Ordinance) The California Supreme Court ruled on April 4, 2019 that San Francisco may regulate based on "negative health consequences, or safety concerns that may come from telecommunication deployment." (Sebastopol forbids potential threat to public health, migratory birds, or endangered species, also in combination with other facilities. Refer to Berkeley's Precautionary Principle Ordinance)

4.f. **500 Foot Minimum Setback from any business/workplace** (Petaluma, Suisun City)

#### **5. LOCATION PREFERENCE:**

5.a. **Order of preference:** The order of preference for the location of small cell installations in the City, from most preferred to least preferred, is: (1) Industrial zone (2) Commercial zone (3) Mixed commercial and residential zone (4) Residential zone (ART Ordinance, New Palos Verdes) [Residential zone ban]

5.b. **Fall Zone:** The proposed small cell installation shall have an adequate fall zone to minimize the possibility of damage or injury resulting from pole collapse or failure, ice fall or debris fall, and to avoid or minimize all other impacts upon adjoining property

5.c. **Private Property:** If a facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, or cable conduit) will be located on or in the property of someone other than the owner of the facility, the applicant shall provide a duly executed and notarized authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property. (Palos Verdes) [Many Berkeleyans do not want wireless antennas allowed on private property. If a permit is considered for private property, not just the property owners but all those who spend time or own/rent property within 1500 feet must be notified immediately of how they may weigh in, and be informed of the decision immediately with possibility of appeal if a permit is granted.]

5.d. **Endangerment, interference:** No person shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

## 6. **TESTING:**

6.a. **Random Testing for RF Compliance:** The City shall employ a qualified, independent \* RF engineer to conduct an annual random and unannounced test of the Permittee's small cell **and other** wireless installations located within the City to certify their compliance with all Federal Communications Commission (FCC) RF emission limits. The reasonable cost of such tests shall be paid by the Permittee. (Fairfax, (ART, Old Berkeley. Suisun City requires annual inspections and testing.)

6.b. **RF/EMF Testing:** Berkeley's current law states that the City Manager "may" require independent testing of telecom equipment. Change "may" to "shall" and delete the word "Manager" so that, if s/he does not find time to hire an independent expert, other City staff or a Council Committee may do so. The law needs to require independent testing of all equipment, unannounced in advance, twice annually, with permittees required to reimburse the City for costs and to pay a deposit in advance. Dates, addresses, and results of testing shall be posted on the City website and published in local media. \*\* [Montgomery County Maryland studied RF radiation levels from small cells and found that FCC exposure levels were exceeded within 11 feet.]

6.c. **Violation of Compliance Notification:** In the event that such independent tests reveal that any small cell installation(s) owned or operated by Permittee or its Lessees, singularly or in the aggregate, is emitting RF radiation in excess of FCC exposure standards as they pertain to the general public, the City shall notify the Permittee and all residents living within 1500 feet of the installation(s) of the violation(s), and the Permittee shall have 48 hours to bring the installation(s) into compliance. Failure to bring the installation(s) into compliance shall result in the forfeiture of all or part of the Compliance Bond, and the City shall have the right to require the removal of such installation(s), as the City in its sole discretion may determine is in the public interest. (ART)

6.d. **Non-acceptance of Applications:** Where such annual recertification has not been properly or timely submitted, or equipment no longer in use has not been removed within the required 30-day period, no further applications for wireless installations will be accepted by the City until such time as the annual re-certification has been submitted and all fees and fines paid. (ART)

7. **RIGHT TO KNOW:** The City shall inform the affected public via website, local news publications \*\*, and US 1st class mail (with topic prominently announced in red on outside of envelope) of Master Licensing Agreement between the City and telecom, Design Standards for Small Cells or other wireless equipment, other telecom agreements, and notification within 2 business days of receiving permit applications, calendaring related hearings/meetings, and approving permits. Notice shall include location and date of expected installations, description of the appeals process, and dates of installations. A map featuring all telecom equipment shall be on the City website and available to residents who request it at 2180 Milvia St. Applicants/Permittees, who are profiting from using Berkeley's public right of way, will reimburse City for the reasonable cost of mailings, Town Halls, and staff to handle telecom applications, public notification, inspections, recertifications, etc.

## 8. **RECERTIFICATION:**

8.a. **Annual Recertification:** Each year, commencing on the first anniversary of the issuance of the permit, the Permittee shall submit to the City an affidavit which shall list all active small cell

wireless installations it owns within the City by location, certifying that (1) each active small cell installation is covered by liability insurance in the amount of \$2,000,000 per installation, naming the City as an additional insured; and (2) each active installation has been inspected for safety and found to be in sound working condition and in compliance with all federal safety regulations concerning RF exposure limits. (ART) Any installation that is out of compliance will be promptly removed; the permit for that installation will be terminated, with all associated expenses paid by the applicant.

8.b. **Recertification Fees:** Recertification fees will be calculated each year by the City. They will be based on the anticipated costs of City for meeting the compliance requirements put in place by this ordinance. The total costs will be divided by the number of permits and assigned to the permit-holders as part of the recertification process

8.c. **Noise Restrictions** (Sonoma City): Each wireless telecommunications facility shall be operated in such a manner so as not to cause any disruption to the community's peaceful enjoyment of the city.

o Non-polluting backup generators shall only be operated during periods of power outages, and shall not be tested on weekends, holidays, or between the hours of 5:00 p.m. and 9:00 a.m.

o At no time shall any facility be permitted to exceed 45 DBA and the noise levels specified in Municipal Code XXX. (Los Altos)

· 8.d. **Noise Complaints:** If a nearby property owner registers a noise complaint, the City shall forward the same to the permittee. Said complaint shall be reviewed and evaluated by the applicant. The permittee shall have 10 business days to file a written response regarding the complaint which shall include any applicable remedial measures. If the City determines the complaint is valid and the applicant has not taken steps to minimize the noise, the City may hire a consultant to study, examine and evaluate the noise complaint and the permittee shall pay the fee. The matter shall be reviewed by City staff. If sound proofing or other sound attenuation measures are required to bring the project into compliance with the Code, the City may impose conditions on the project to achieve said objective. (Old Palos Verdes, Calabasas)

9.a. **AESTHETICS and UNDERGROUNDING:** At every site where transmitting antennas are to be placed, all ancillary equipment shall be placed in an underground chamber beneath the street constructed by the Permittee. (Calabasas, Mill Valley, Petaluma) The chamber shall include battery power sufficient to provide a minimum of 72 hours of electricity to the ancillary equipment. \*\*\*

· Permittee is responsible for placing on the pole two signs with blinking lights, with design approved by City, each in the opposite direction, to inform people walking on the sidewalk, what is installed on the pole. Should a sign be damaged, Permittee shall replace it within 5 business days. (Town of Hempstead NY required a 4 foot warning sign on each pole.)

9.b. **Aesthetic Requirements:** According to the Baller Stokes & Lide law firm, some of the aesthetic considerations that local governments may consider include: \*\*\*\*

o Size of antennas, equipment boxes, and cabling;  
o Painting of attachments to match mounting structures;  
o Consistency with the character of historic neighborhoods;  
o Aesthetic standards for residential neighborhoods, including "any minimum setback from dwellings, parks, or playgrounds and minimum setback from dwellings, parks, or playgrounds; maximum structure heights; or limitations on the use of small, decorative structures as mounting locations." (Boulder Report)

**"Independent"** means: The RF engineering company has never provided services to a telecom corporation, and the company's employee who tests exposure levels has also never provided services to a telecom corporation.

**Right to Know** - Publish on City website, in online local news: Berkeley Daily Planet, Berkeleyside, and local newspapers: Berkeley Voice, Berkeley Times (2019. Update as needed)

**\*\*\* Undergrounding** - A single shielded multi-wire cable from the underground chamber shall be used to transmit radiation to the antennae for the purpose of transmitting data. If the pole is of hollow metal, the cable shall be inside the pole; if the pole is solid wood, the cable can be attached to the pole. Installation shall include its own analogue electricity meter and Permittee shall pay the electrical utility a monthly charge for the amount of electricity used.

Except during construction, or essential maintenance, automobiles and trucks, of an allowed weight, shall be allowed to park at the site of the underground chamber. If maintenance is required within the underground chamber the Permittees shall place a notice on the parked car or truck, to be moved within 24 hours. If no vehicle is parked on top of the underground chamber the Permitted shall place a No Parking sign for up to 24 hours.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

It is imperative to protect the most vulnerable and all our citizens from these hazards. .

CONTACT PERSON

Cheryl Davila,  
Councilmember, District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

ATTACHMENTS:

1. Resolution

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY SUPPORTING AMENDMENTS TO THE CITY'S TELECOM ORDINANCES

WHEREAS, communities in the City of Berkeley are disadvantaged and disproportionately bear the brunt of health-related impacts caused by industrial and other activities. The California Environmental Protection Agency has identified various census tracts within the City of Richmond as disadvantaged communities disproportionately burdened by and vulnerable to multiple sources of pollution

Now, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley support amendments to the City Telecom Ordinances to protect the health and safety of our residents.



BE IT FURTHER RESOLVED, the City Council directed the City Attorney to prepare any draft ordinances using the attached sample language and hyperlink references to update the City's Telecom Ordinances:

**1. FCC CLAUSE:** Include a clause voiding relevant sections of the ordinance, or requiring modification, in the event of a regulatory change or overturning of the FCC Order. (see report by Next Century Cities) **Laws, permits, and re-certifications need to be CONDITIONAL**, so that they may be revoked or modified if out of compliance or if/when federal law is modified. (Fairfax, Sonoma City) Also include a **SEVERABILITY** clause.

## **2. PERMITS**

**2.a. Conditional Use Permits:** Maintain that each wireless facility requires a Conditional Use Permit (Planning Dept, ZAB, or Public Works) followed by an encroachment permit

**2.b. Significant Gap in coverage:** Require that a significant gap in coverage be proven by applicant before approval of a wireless antenna and confirmed by an independent engineer.\* (Calabasas, Old Palos Verdes)

**Least Intrusive Methods:** Require the least intrusive methods to fill any gaps for small cells and other wireless facilities. A justification study which includes the rationale for selecting the proposed use; a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option. (Old Palos Verdes) An independent\* engineer shall confirm, or not.

**2.c. Radio-frequency Data Report:** Require a thorough radio-frequency (RF) data report as part of the permit submittal for consultants. For all applications, require both an RF Compliance Report signed by a registered, independent professional engineer, and a supporting RF Data Request Form. (Calabasas, Palos Verdes, Suisun City, Sonoma City) The independent\* engineer will be hired by the City of Berkeley and billed to the applicant.

**2.d. Mock-up, Construction Drawings, Site Survey, Photo Simulations:** Require full-size mock-up of proposed Small Cell Facilities (SCF) and other pertinent information in order to adequately consider potential impacts. (Larkspur, Calabasas, Palos Verdes. Also see Boulder, CO Report) Require **Balloon Tests**. (Town of Hempstead NY 2013)

**2.e. Public notification:** Telecom related Planning Commission, Public Works, and Zoning Adjustment Board hearings shall be publicized in the most widely read local newspapers and local online news sources\* and on the City website no less than 30 days prior to the hearing or meeting. No less than 30 days prior, a U.S. 1st class mail shall be sent to all addresses within 3,000 feet of the proposed facilities. The outside of the envelope shall be printed with "Urgent Notice of Public Hearing." Due to the "shot clock", City requires applicants to hold a publicly noticed meeting two weeks prior to submitting an application within the affected neighborhood. Applicants mail all affected residents and businesses date, time, and location of hearings at least two weeks prior. The applicant pays associated costs including mailings and meeting location rent.

**Community Meeting:** Applicant is required to [publicize in local newspapers and local online news sources\* and] hold a community meeting at least two weeks prior to the hearing on the use permit. (San Anselmo, Palos Verdes) Applicants shall mail all affected residents and businesses date, time, and location of hearings at least two weeks prior, 1st class etc. [as in 2.e].

**2.f. Notification:** Notify property owners, residents, tenants, business owners, and workers within 3000 feet of a proposed wireless installation within one week of application submittal and again within one week of permit approval. 1st class etc. [as in 2.e].

**2.g. Independent Expert\*** The City shall retain an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall address any or all of the following: xxxx (Old Palos Verdes) Paid by applicant (San Anselmo)

2.h. **Trees:** No facility shall be permitted to be installed in the drip line of any tree in the right-of-way. (Old Palos Verdes, 15' in Los Altos) (See Berkeley's Heritage Tree ordinance.)

2.i. **Transfer of Permit:** The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by section 12.18.080(B)(5). (Palos Verdes)

2.j. **General Liability Insurance:** To protect the City, the permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of commercial general liability insurance, with minimum limits of two million dollars for each occurrence and four million dollars in the aggregate, that fully protects the City from claims and suits for bodily injury and property damage. The insurance must name the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with 30 days prior written notice to the city, except for cancellation due to nonpayment of premium.... (Old Palos Verdes, Fairfax, Newark. San Anselmo has an indemnification clause.)

2.k. **Attorneys' Fees:** The Permittee is required to pay any/all costs of legal action. (Suisun City)

2.l. **Speculative Equipment:** Pre-approving wireless equipment or other alleged improvements that the applicant does not presently intend to install, but may wish to install at an undetermined future time, does not serve the public interest. The City shall not pre-approve telecom equipment or wireless facilities. (Fairfax, Old Palos Verdes, Sebastopol)

2.m. **Citizens may appeal** decisions made. (San Anselmo)

**3. ACCESS Americans with Disabilities Act (ADA):** All facilities shall be in compliance with the ADA. (New Palos Verdes, Fairfax, Sebastopol, Mill Valley, Sonoma City, Suisun City) Electromagnetic Sensitivity (EMS) is a disabling characteristic, recognized by the Federal Access Board since 2002. The main treatment for this condition is avoidance of exposure to wireless radiation. Under the 1990 Americans with Disabilities Act, people who suffer from exposure to Electromagnetic Fields (EMF) are part of a protected disabled class under Title 42 U.S. Code § 12101 et seq. (Heed Berkeley's pioneering disability rights laws and Berkeley's Precautionary Principle ordinance NO. 6,911-N.S "to promote the health, safety, and general welfare of the community.")

#### **4. SETBACKS:**

4.a. **Prohibited Zones** for Small Cells: Prohibits small cell telecommunication facilities in residential zones and multi-family zoning districts (Calabasas, Mill Valley, Los Altos, Sonoma City, Elk Grove Ca)

4.b. **Preferred or Disfavored Locations:** In addition to residential areas, designate areas where cell towers are disfavored and not permitted, i.e. near schools, residential areas, city buildings, sensitive habitats, on ridge lines, public parks, Historic Overlay Districts, in open spaces or where they are favored i.e. commercial zoning areas, industrial zoning areas. (Calabasas, Sebastopol, Boulder Report)

4.c. **Disfavored Location:** Small cell installations are not permitted in close proximity to residences, particularly near sleeping and living areas. Viable and defensible setbacks will vary based on zoning. (ART ordinance) 1500 foot minimum setback from residences that are not in residential districts!

4.d. **1500 Foot Setback from other small cell** installations: Locate small cell installations no less than 1500 feet away from the Permittee or any Lessee's nearest other small cell installation. (Calabasas, Petaluma, Fairfax, Mill Valley, Suisun City, Palos Verdes, Sebastopol San Ramon, Sonoma City, -Boulder Report)

4.e. **1500 Foot Minimum Setback** from any educational facility, child/elder/healthcare facility, or park. (ART Ordinance) The California Supreme Court ruled on April 4, 2019 that San

Francisco may regulate based on "negative health consequences, or safety concerns that may come from telecommunication deployment." (Sebastopol forbids potential threat to public health, migratory birds, or endangered species, also in combination with other facilities. Refer to Berkeley's Precautionary Principle Ordinance)

4.f. **500 Foot Minimum Setback from any business/workplace** (Petaluma, Suisun City)

## **5. LOCATION PREFERENCE:**

5.a. **Order of preference:** The order of preference for the location of small cell installations in the City, from most preferred to least preferred, is: (1) Industrial zone (2) Commercial zone (3) Mixed commercial and residential zone (4) Residential zone (ART Ordinance, New Palos Verdes) [Residential zone ban]

5.b. **Fall Zone:** The proposed small cell installation shall have an adequate fall zone to minimize the possibility of damage or injury resulting from pole collapse or failure, ice fall or debris fall, and to avoid or minimize all other impacts upon adjoining property

5.c. **Private Property:** If a facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, or cable conduit) will be located on or in the property of someone other than the owner of the facility, the applicant shall provide a duly executed and notarized authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property. (Palos Verdes) [Many Berkeleyans do not want wireless antennas allowed on private property. If a permit is considered for private property, not just the property owners but all those who spend time or own/rent property within 1500 feet must be notified immediately of how they may weigh in, and be informed of the decision immediately with possibility of appeal if a permit is granted.]

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the forfeiture of all or part of the Compliance Bond, and the City shall have the right to require the removal of such installation(s), as the City in its sole discretion may determine is in the public interest. (ART)

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- o Size of antennas, equipment boxes, and cabling;
- o Painting of attachments to match mounting structures;
- o Consistency with the character of historic neighborhoods;
- o Aesthetic standards for residential neighborhoods, including “any minimum setback from dwellings, parks, or playgrounds and minimum setback from dwellings, parks, or playgrounds; maximum structure heights; or limitations on the use of small, decorative structures as mounting locations.” (Boulder Report)

“**Independent**” means: The RF engineering company has never provided services to a telecom corporation, and the company’s employee who tests exposure levels has also never provided services to a telecom corporation.

**Right to Know** - Publish on City website, in online local news: Berkeley Daily Planet, Berkeleyside, and local newspapers: Berkeley Voice, Berkeley Times (2019. Update as needed)

\*\*\* **Undergrounding** - A single shielded multi-wire cable from the underground chamber shall be used to transmit radiation to the antennae for the purpose of transmitting data. If the pole is of hollow metal, the cable shall be inside the pole; if the pole is solid wood, the cable can be attached to the pole. Installation shall include its own analogue electricity meter and Permittee shall pay the electrical utility a monthly charge for the amount of electricity used.

Except during construction, or essential maintenance, automobiles and trucks, of an allowed weight, shall be allowed to park at the site of the underground chamber. If maintenance is required within the underground chamber the Permittees shall place a notice on the parked car or truck, to be moved within 24 hours. If no vehicle is parked on top of the underground chamber the Permitted shall place a No Parking sign for up to 24 hours.

\*\*\*\* WiRED deleted four of the points that were either not approved or not understood.

Various cities' wireless facilities ordinances are hyperlinked in the Key Points.

Scroll down ~20 pages to find them: <https://mdsafetech.org/cell-tower-and-city-ordinances/>

N.B. **More cities than those listed have adopted these points.**





CONSENT CALENDAR  
December 10, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Rigel Robinson and Sophie Hahn  
Subject: Referral: Compulsory Composting and Edible Food Recovery

### RECOMMENDATION

Refer to the Zero Waste Commission to develop a plan, in consultation with the public and key stakeholders, to achieve timely compliance with Senate Bill 1383 (Lara, 2016) including:

1. An ordinance making composting compulsory for all businesses and residences in the City of Berkeley. The Commission should also consider the inclusion of compulsory recycling.
2. An edible food recovery program for all Tier 1 and 2 commercial edible food generators.

### CURRENT SITUATION

Recycling and composting in Berkeley is currently governed by the 2012 Alameda County mandatory recycling ordinance, of which the City of Berkeley is a covered jurisdiction. Under the ordinance, all businesses must have recycling service and businesses that generate 20 or more gallons of organics must have composting service. All multi-family properties (5+ units) are required to provide composting and recycling service. Businesses and property owners are also required to inform their tenants, employees, and contractors of proper composting and recycling technique at least once a year, and provide tenants with additional reminders during move-in and move-out.<sup>1</sup>

The ordinance is enforced through surprise routine inspections. If a business or multi-family property is issued two official violation notices, they may receive an administrative citation. While citations and fines are issued for non-compliance, multi-family property owners and managers are not liable for tenants who improperly sort their waste.<sup>2</sup>

### BACKGROUND

In 2009, San Francisco successfully implemented compulsory composting for all businesses and residences, allowing them to achieve an 80 percent landfill diversion rate in 2012 that remains the highest in the country.<sup>3</sup> This successful policy laid the

<sup>1</sup> <http://www.recyclingrulesac.org/ordinance-overview/>

<sup>2</sup> <http://www.recyclingrulesac.org/my-recycling-rules/>

<sup>3</sup> <https://www.epa.gov/transforming-waste-tool/zero-waste-case-study-san-francisco>

groundwork for the State of California and other cities across the nation to follow suit and introduce legislation to increase composting rates.

California Senate Bill 1383 was introduced by Senator Ricardo Lara and signed into law by Governor Jerry Brown in 2016. The legislation establishes a target of a 50 percent reduction in statewide organic waste disposal by 2020 and a 75 percent reduction by 2025, in addition to a 20 percent increase in edible food recovery by 2025.<sup>4</sup> SB 1383 imposes two main requirements onto local jurisdictions: the provision of organic waste collection services to all residents and businesses, and the development of an edible food recovery program for all Tier 1 and 2 commercial edible food generators.<sup>5</sup>

As defined in SB 1383, Tier 1 commercial edible food generators are 1) supermarkets, 2) grocery stores with a total facility size equal to or greater than 7,500 square feet, 3) food service distributors, and 4) wholesale food markets. Tier 2 commercial edible food generators are 1) restaurants with 250 or more seats or a total facility size equal to or greater than 5,000 square feet, 2) hotels with an onsite food facility and 200 or more rooms, 3) health facilities with an onsite food facility and 100 or more beds, 4) large venues, 5) large events, 6) state agencies with a cafeteria with 250 or more seats or total cafeteria size equal to or greater than 5,000 square feet, and 7) local education agency facilities with an onsite food facility.<sup>6</sup>

California's climate change initiatives are primarily governed by AB 32 (2006), Executive Order B-30-15 (2015), and Executive Order S-3-05 (2005), which establish targets for reducing greenhouse gas emissions. The state's current goals are to reduce emissions to 1990 levels by 2020, 40 percent below 1990 levels by 2030, and 80 percent below 1990 levels by 2050.<sup>7</sup>

Improving landfill diversion rates is an important part of the solution. Organic waste that is improperly disposed of produces methane, a greenhouse gas which has 28 to 36 times the Global Warming Potential (GWP) of carbon dioxide over a 100-year period.<sup>8</sup> By diverting organic waste from the landfill, SB 1383 will reduce at least 4 million metric tons of statewide greenhouse gas emissions annually by 2030.

CalRecycle conducted an informal rulemaking process for SB 1383 from February 2017 to December 2018, and is expected to conclude the year-long formal rulemaking process by the end of 2019.<sup>9</sup> The City of Berkeley's Zero Waste Department submitted two rounds of formal comments on the draft regulations in July and October 2019.

Pursuant to the new regulations, local jurisdictions must have their composting and edible food recovery programs in place by January 1, 2022, when CalRecycle is authorized to begin enforcement actions. The enforcement mechanism is similar to the

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<sup>4</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1383](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1383)

<sup>5</sup> <https://www.calrecycle.ca.gov/organics/slcp/education>

<sup>6</sup> [http://ncrarecycles.org/wp-content/uploads/2018/10/SB1383\\_Final-May-Draft-Edible-Regs-Only.pdf](http://ncrarecycles.org/wp-content/uploads/2018/10/SB1383_Final-May-Draft-Edible-Regs-Only.pdf)

<sup>7</sup> <https://ww3.arb.ca.gov/cc/cc.htm>

<sup>8</sup> <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>

<sup>9</sup> <https://www.calrecycle.ca.gov/laws/rulemaking/slcp>



enforcement of other solid waste and recycling regulations, in which cities and counties can be issued a violation and be subject to enforcement for failure to comply with any individual aspect of the regulation. CalRecycle has discretion to determine the level of penalty necessary to remedy a violation.

In order to achieve compliance with state law by 2022, it is imperative that the City of Berkeley begin planning as soon as possible. According to CalRecycle's SB 1383 guide for local governments, City Councils and Boards of Supervisors across California must "adopt an ordinance or similarly enforceable mechanism that is consistent with these regulatory requirements prior to 2022...planning in 2019 will be critical to meet the deadline."

Implementing the compulsory composting component of SB 1383 will require the City to adopt an ordinance that builds on the existing Alameda County ordinance, adding composting requirements for residences with 1-4 units and businesses that generate fewer than 20 gallons of organic waste. The edible food recovery program component necessitates work to ensure that our existing food recovery organizations have enough capacity to meet statewide goals, including the consideration of providing additional funding for this purpose.

With the opening of a new warehouse in September 2019, Berkeley Food Network is working to establish a food sourcing and distribution hub which will include a food recovery program that reduces the amount of edible food sent to landfill. As BFN is already a valuable partner to the City and is in the process of forming partnerships with food recovery organizations, the Commission should explore ways the City can partner with them to meet SB 1383 requirements and further support them in their work.<sup>10</sup>

#### FINANCIAL IMPLICATIONS

Staff time and an undetermined amount of funding, contingent on the Commission's recommendations, to bring the City into compliance with state law.

#### ENVIRONMENTAL SUSTAINABILITY

This proposal aligns with the City of Berkeley's Climate Action Plan, which calls for a reduction in greenhouse gas emissions by 80 percent below 2000 levels by 2050. As a means to achieve this goal, Chapter 5 of the Plan recommends measures to "enhance recycling, composting, and source reduction services for residential and non-residential buildings."<sup>11</sup>

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

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<sup>10</sup> <https://berkeleyfoodnetwork.org/about/our-work/>

<sup>11</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/BCAP%20Exec%20Summary4.9.09.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/BCAP%20Exec%20Summary4.9.09.pdf)

Attachments:

1: CalRecycle Education and Outreach Resources: An Overview of SB 1383's Organic Waste Reduction Requirements

2: San Francisco Mandatory Recycling and Composting Ordinance

[https://sfenvironment.org/sites/default/files/policy/sfe\\_zw\\_sf\\_mandatory\\_recycling\\_composting\\_ord\\_100-09.pdf](https://sfenvironment.org/sites/default/files/policy/sfe_zw_sf_mandatory_recycling_composting_ord_100-09.pdf)

3: Recycling Rules Alameda County

<http://www.recyclingrulesac.org/enforcement-overview/>

# SB 1383

## Reducing Short-Lived Climate Pollutants in California

### An Overview of SB 1383's Organic Waste Reduction Requirements



*Note to presenter: This slide presentation was developed for local jurisdiction staff by CalRecycle staff to educate city council members city board members, city and county staff, decision-makers, and other impacted colleagues. The slides include suggested talking points. We have also provided a handful of slides with artwork, images, and icons that you can use to build new content if needed. Please view this presentation in slideshow mode before presenting to familiarize yourself with the animations. If you have any questions, you can contact Christina Files in the CalRecycle Office of Public Affairs: [christina.files@calrecycle.ca.gov](mailto:christina.files@calrecycle.ca.gov).*

### Presentation Introduction

- SB 1383 (Lara, Chapter 395, Statutes of 2016) is the most significant waste reduction mandate to be adopted in California in the last 30 years.
- SB 1383 requires the state to reduce organic waste [food waste, green waste, paper products, etc.] disposal by 75% by 2025. In other words, the state must reduce organic waste disposal by more than 20 million tons annually by 2025.
- The law also requires the state to increase edible food recovery by 20 percent by 2025.
- This has significant policy and legal implications for the state and local governments.
  1. SB 1383 establishes a statewide target and not a jurisdiction organic waste recycling target.
  2. Given that it is a statewide target and there are not jurisdiction targets, the regulation requires a more prescriptive approach (this is different than AB 939).
    - A. CalRecycle must adopt regulations that impose requirements necessary to achieve the statewide targets.
    - B. This makes the regulation more similar to other environmental quality regulations where regulated entities, i.e., jurisdictions, are required to implement specific actions, rather than achieve unique targets.

- a. For example AB 32 established GHG reduction targets for the state, and the implementing Cap-and-Trade regulations require businesses to take specific actions.
  - i. The individual businesses are not required to achieve a specific target.
  - ii. They are required to take actions prescribed by the date.

### Overview of Presentation

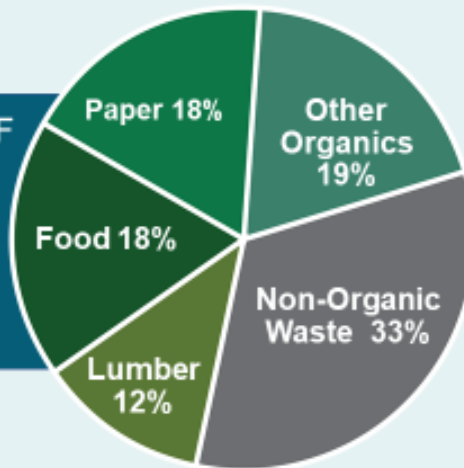
- Background and Context of SB 1383: Why California passed this law
- SB 1383 Requirements: A big picture look at the law's requirements and objectives
- Jurisdiction Responsibilities: What SB 1383 requires of local governments
  - Provide organic waste collection to all residents and businesses
  - Establish an edible food recovery program that recovers edible food from the waste stream
  - Conduct outreach and education to all affected parties, including generators, haulers, facilities, edible food recovery organizations, and city/county departments
  - Capacity Planning: Evaluating your jurisdiction's readiness to implement SB 1383
  - Procure recycled organic waste products like compost, mulch, and renewable natural gas (RNG)
  - Inspect and enforce compliance with SB 1383
  - Maintain accurate and timely records of SB 1383 compliance
- CalRecycle Oversight Responsibilities
- SB 1383 Key Implementation Dates
- SB 1383 Key Jurisdiction Dates

### Additional Resources

- CalRecycle's Short-Lived Climate Pollutants (SLCP): Organic Waste Methane Emissions Reductions webpage has more information: <https://www.calrecycle.ca.gov/Climate/SLCP/>
- CalRecycle's SB 1383 Rulemaking webpage as more information about the status of 1383 regulations: <https://www.calrecycle.ca.gov/laws/rulemaking/slcp>

## Organic Waste Is the Largest Waste Stream in California

CALIFORNIA DISPOSED OF APPROXIMATELY **27 MILLION TONS** OF ORGANIC WASTE IN 2017



California's Waste Stream

IN CALIFORNIA, MILLIONS ARE  
**FOOD INSECURE**

1 IN 8 CALIFORNIANS  
1 IN 5 CHILDREN



CALIFORNIA THROWS AWAY  
**MORE THAN 6 MILLION TONS**  
OF FOOD WASTE EVERY YEAR!

CalRecycle 

- When we are talking about organic waste for the purposes of SB 1383 we are talking about green waste, wood waste, food waste, but also fibers, such as paper and cardboard.
- Organic waste comprises two-thirds of our waste stream.
- Food waste alone is the largest waste stream in California.
  - According to CalRecycle's last waste characterization study in 2014, food waste comprised 18 percent of what we disposed.
- SB 1383 also requires California to recover 20 percent of currently disposed edible food.
  - We currently don't know how much of the food waste stream is edible.
  - CalRecycle is conducting a new waste characterization study in 2018/19 that is taking a closer look at our food waste stream.
  - The results of this study will help determine how much edible food waste is landfilled on average throughout the state.
- Here's what we do know:
  - 1 in 5 children go hungry every night in California – redirecting perfectly edible food that is currently being disposed to feed those in need can help alleviate this.
  - For every 2 ½ tons of food rescued, that's the equivalent of taking 1 car off the road for a year. (<https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>)

# CLIMATE CHANGE NEGATIVELY IMPACTS CALIFORNIA

Landfilled Organic Waste Emits

## Methane Gas— A Super Pollutant

More Powerful than CO<sub>2</sub>

Methane Gas Contributes to  
Climate Change in California



**CALIFORNIA**  
is already experiencing  
the impacts of  
**CLIMATE CHANGE**

IN 2015 THE DROUGHT COST THE  
AGRICULTURE INDUSTRY IN THE  
CENTRAL VALLEY AN ESTIMATED  
\$2.7 BILLION & 20,000 JOBS

CalRecycle 

- Landfilling organic waste leads to the anaerobic breakdown of that material, which creates methane.
- Landfills are responsible for 21% of the state's methane emissions. **Landfills are the third largest producer of methane.**
- Methane is 72 times more potent than Carbon Dioxide (CO<sub>2</sub>) over a 20-year horizon.
- Climate change may seem like a distant problem, but there are other more localized environmental impacts associated with landfill disposal of organic waste that **have immediate negative impacts on our community now.**
  - Landfilling organic waste is a significant source of local air quality pollutants (NOX and PM<sub>2.5</sub>).
  - These pollutants have an immediate negative impact on the air our community and it can cause respiratory issues and hospitalizations.
  - Diverting organic waste to recycling can significantly reduce these local air quality emissions and the associated negative impacts.


We are starting to see the effects of climate change in cities and counties throughout California.

- Longer droughts and warmer temperatures are drying our forest and contributing to the ever increasing number of wildfires in CA (which also impact air quality).
- Cyclical droughts
- Bigger storms
- Coastal erosion due to rising sea levels
- We should not underestimate the cost of these climate change impacts.
  - The state and communities are spending billions fighting wildfires, removing debris and rebuilding homes.
  - That means we are paying for the effects of climate change today.

- The financial and public health impacts are here and **we need to take action to mitigate climate change now**
- That is why the state enacted SB 1383, which is designed to reduce the global warming gasses like methane, which are the most potent and are “short-lived”
- Reducing this gas now, through actions like organic waste recycling will significantly reduce emissions, and will reduce the impacts of climate change in our life time.

## SB 1383 Requirements

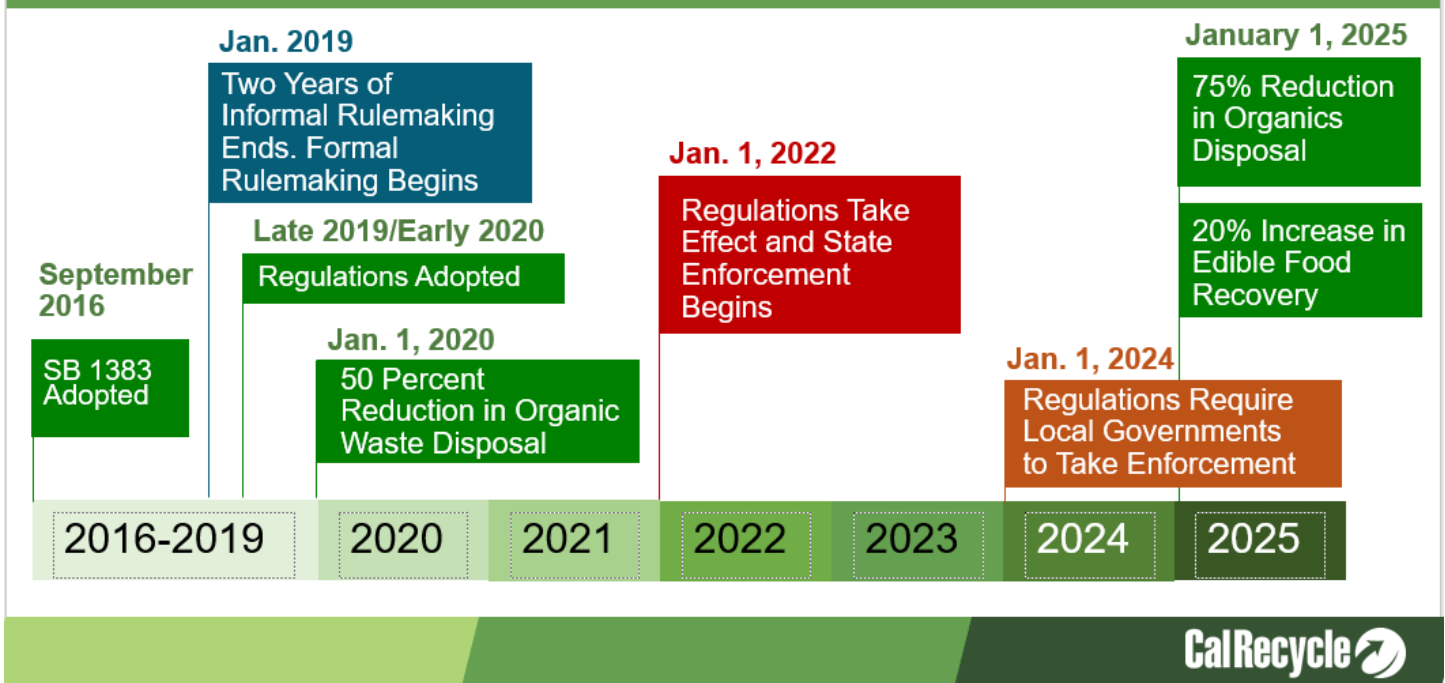
|      |                                                                                                        |
|------|--------------------------------------------------------------------------------------------------------|
| 2020 | 50 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE<br>(11.5 Million Tons Allowed Organic Waste Disposal) |
| 2022 | REGULATIONS TAKE EFFECT                                                                                |
| 2025 | 75 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE<br>(5.7 Million Tons Allowed Organic Waste Disposal)  |
| 2025 | 20 PERCENT INCREASE IN RECOVERY OF CURRENTLY DISPOSED EDIBLE FOOD                                      |



### Overview of SB 1383:

- SB 1383 establishes aggressive organic waste reduction targets.
- SB 1383 also builds upon Mandatory Commercial Organics Recycling law. Our jurisdiction has been implementing this law since 2016.
- SB 1383 requires Californians to reduce organic waste disposal by 50% by 2020 and 75% by 2025.
  - These targets use the 2014 Waste Characterization Study measurements when 23 million tons of organic waste were disposed.
  - These disposal reductions will reduce at least 4 million metric tons of greenhouse gas emissions annually by 2030.
- Additionally as a part of the disposal reduction targets the Legislature directed CalRecycle to increase edible food recovery by 20 percent by 2025.
  - The food recovery goal is unique.

# SB 1383 Key Implementation Dates



Highlighted here on the slide are the key dates for SB 1383 implementation and milestones.

1. This law, the targets, and the requirements for CalRecycle to adopt regulations were adopted in September 2016
2. CalRecycle conducted two years of informal hearings with local governments and stakeholders to develop regulatory concepts.

## Formal Rulemaking

1. CalRecycle started the formal regulation rulemaking January 18, 2019, this is expected to conclude by the end of 2019.

## Regulations Take Effect

1. The regulations will become enforceable in 2022.
  - a. **Jurisdictions must have their programs in place on January 1, 2022.**

## Jurisdictions Must Initiate Enforcement

1. **In 2024 Jurisdictions will be required to take enforcement against noncompliant entities.**
2. Finally, in 2025 the state must achieve the 75 percent reduction and 20 food recovery targets.
3. To meet the deadline of January 1, 2022, **CalRecycle expects that jurisdictions will be planning and making programmatic and budgetary decisions regarding the requirements in advance of the deadline.**
4. CalRecycle can begin enforcement actions on jurisdictions and other entities starting on Jan. 1, 2022.
5. **The enforcement process on jurisdictions is different than under AB 939:**
  - a. Like many solid waste and recycling regulations, a regulated entity (such as a city or county) can be issued a violation and be subject to enforcement for failure to comply with any individual aspect of the regulation. This is different from the unique AB 939 enforcement structure where a jurisdiction's overall efforts to achieve specific target are reviewed in arrears



- b. Like most regulatory enforcement programs, the enforcing agency (CalRecycle) will have discretion to determine the level of penalty necessary to remedy any given violation. E.g. A reporting violation may be considered less severe than a failure to provide collection services to all generators.
  - c. CalRecycle will consider certain mitigating factors which are specifically enumerated in the regulation. This is not the same as good faith effort but includes similar considerations. The specific nuances regarding requirements for state and local enforcement will be discussed in the later slides.
- **These timelines mean that we need to start planning now.**

## SB 1383 Key Jurisdiction Dates

2022



Provide Organics Collection Service to All Residents and Businesses



Establish Edible Food Recovery Program



Conduct Education and Outreach



Procurement



Capacity Planning

2024



Starting January 1, 2024 Jurisdictions must take action against non-compliant entities

1. To meet the deadline of January 1, 2022, **CalRecycle expects that jurisdictions will be planning and making programmatic and budgetary decisions regarding the requirements in advance of the deadline.**
  - a. CalRecycle can begin enforcement actions on jurisdictions and other entities starting on Jan. 1, 2022.
2. This slide outlines the major programmatic activities for jurisdictions and the following slides will cover more details.
3. In 2024 Jurisdictions will be required to take enforcement against noncompliant entities.
  - a. There are additional details in the draft regulations regarding the enforcement requirements
4. CalRecycle has some funding through competitive grant programs, as well as a loan program, for establishing the infrastructure for recycling organic waste and recovering edible food. However, for the programmatic activities, such as enforcement, inspections, education, collection we will need to plan for budgetary changes to address these.

- a. In early 2020 CalRecycle will have a number of tools that we can begin utilizing, such as a model enforcement ordinance, franchise agreement models, and education materials. Using the 2018 and 2020 Statewide Waste Characterization Studies, jurisdictions will have data needed to conduct some of the capacity planning requirements.
- b. Although the regulations are not finalized the major components are not expected to change.
- c. We need to **start planning now** to have the programmatic and budgetary changes in place by January 1, 2022.

## JURISDICTION RESPONSIBILITIES

**Provide Organics  
Collection Services to All  
Residents and Businesses**



**Conduct Education  
and Outreach to  
Community**



**Secure Access to  
Recycling and Edible  
Food Recovery Capacity**



**Establish Edible  
Food Recovery  
Program**



**Procure Recyclable  
and Recovered  
Organic Products**



**Monitor Compliance  
and Conduct  
Enforcement**

**CalRecycle**

Jurisdictions will be required to adequately resource these programs:

1. **Provide organic waste collection services to all residents and businesses.**
  - A. This means for all organic waste, including green waste, wood waste, food waste, manure, fibers, etc.
  - B. Containers have prescribed colors (any shade of grey or black for trash, green for organic waste and blue containers for traditional recyclables)
  - C. There are container labeling and contamination monitoring requirements
  - D. We need to assess our current collection programs and determine what may need to be, expanded, or changed
2. **Establish edible food recovery program for all Tier 1 and 2 commercial edible food generators**
  - A. This means ensuring that there are edible food recovery organizations that have enough capacity
  - B. This may entail providing funding to ensure there is adequate capacity and collection services
3. **Conduct education and outreach to all generators**

- A. This will require education to be provided to all generators, and when applicable education may need to be provided in Spanish and other languages.
4. **Our jurisdiction will be required to procure certain levels of compost, renewable gas used for transportation fuels, electricity, heating applications, or pipeline injection, or electricity from biomass conversion produced from organic waste.**
5. **Plan and secure access for recycling and edible food recovery capacity.**
6. **We will be required to monitor compliance and conduct enforcement**
  - A. **Monitoring and education must begin in 2022**
  - B. **Enforcement actions must start Jan 1, 2024**
7. **We will need to adopt an ordinance, or similarly enforceable mechanism that is consistent with these regulatory requirements prior to 2022.**
8. **Planning in 2019 will be critical to meet the deadline.**



1. Jurisdictions should start planning now to get ready for SB 1383 implementation.
2. This **law extends beyond directing waste management and recycling operations and staff.**
  - a. **Each department will need to understand how SB 1383 impacts their work.**
  - b. **Recordkeeping and reporting requirements extend to all of these departments,** and jurisdiction leaders will play a vital role in ensuring compliance with SB 1383.
- **City Councils and Boards of Supervisors** will need to pass local enforcement ordinances to require all residents and businesses to subscribe to these services.
- **City Managers and Chief Administrative Officers** will be involved in capacity planning, directing procurement of recycled organic products like compost and renewable natural gas, and establishing edible food recovery programs.

- **Finance and Legal staff** will be involved in local enforcement ordinances, new collection fees, and ensuring programs are adequately resourced.
- **Purchasing staff** will be central to procuring recycled organic products, including paper.
  - Procure does not necessarily mean purchase, but this department is likely aware of current compost, mulch, RNG, and paper product purchases for the jurisdiction.
- **Public Works staff** are involved with hauler agreements, local waste management processing facilities, and organic waste recycling facilities (like compost and anaerobic digestion facilities). They may also be involved in civil engineering activities where compost may be utilized (as in erosion control along city streets and embankments).
- **Public Parks staff** may be involved with assessing the need for local compost application to parks and city landscaped areas.
- **Environmental Health staff** may be tasked with enforcement duties, including inspecting commercial food generators for compliance with edible food recovery requirements.
- **Public Transportation and Fleet departments** could be involved in procuring renewable natural gas for city and county owned vehicles.

## SB 1383 IN ACTION

### JURISDICTION REQUIREMENTS






**Provide organics collection service to all residents and businesses**

## Organic Waste Collection Services



**Three-Container “source separated” Collection Service**

- Organics prohibited from black container
- All organic waste segregated for collection and recycling



**Two-Container Collection Service**

- One container for collection of segregated organic waste
- One container for collection of mixed waste (subject to 75% organic content recovery standard)



**One-Container Collection Service**

- One container for collection of mixed waste (subject to 75% organic content recovery standard)

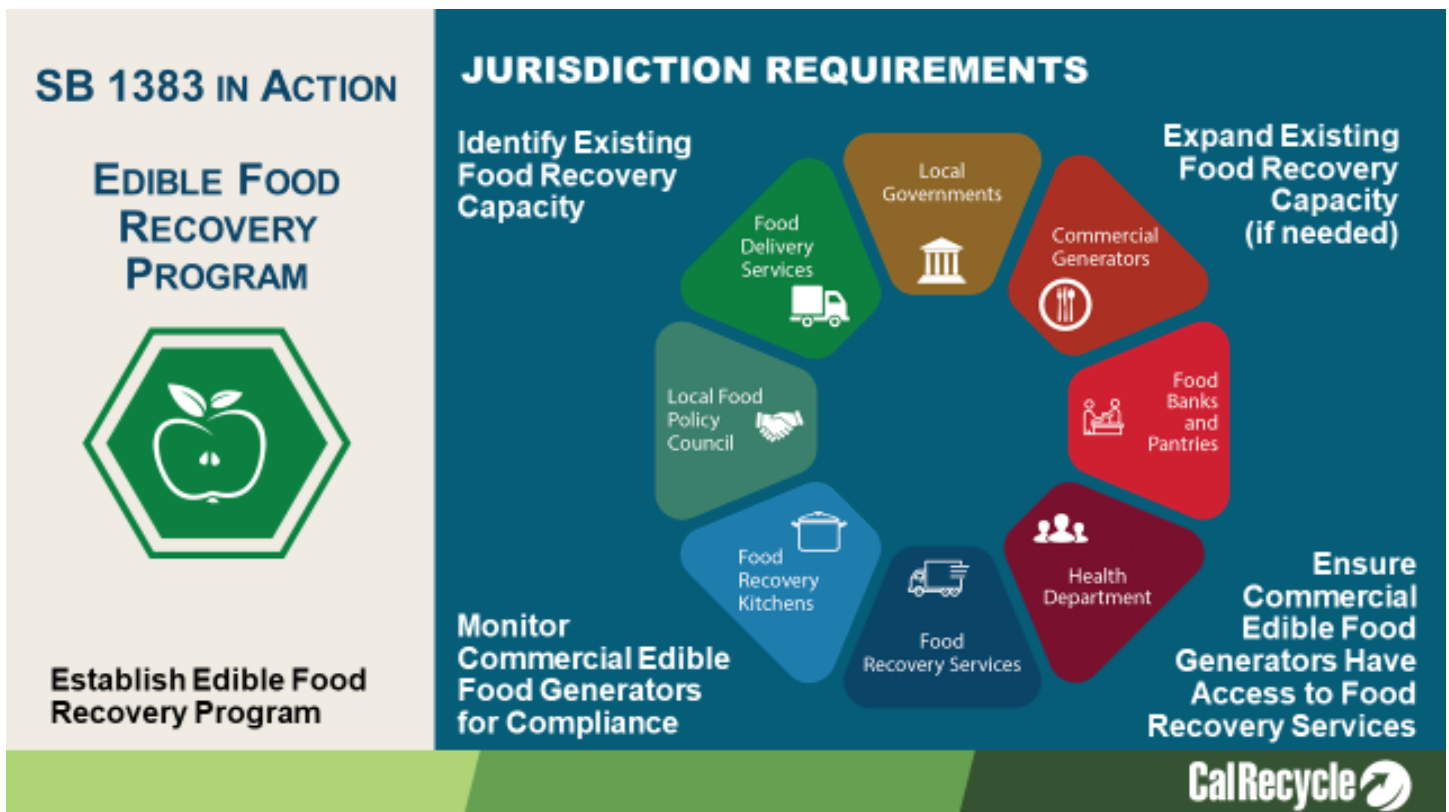
- Minimum contamination monitoring and reduction requirements
- Collection waivers authorized for certain documented circumstances



*(Note to presenter: You might customize this slide to reflect the collection system for residential and commercial recycling programs. Remember this law/regulation is about all organic waste so that means the fibers, foodwaste, greenwaste, manure, etc.)*

- The most basic element of the regulation is that jurisdictions are **required to provide an organic waste collection service to each of their residents and businesses.**
- The regulations also **require all residents and businesses to use an organic waste recycling service that meets the regulatory requirements.**
- Jurisdictions must have enforceable requirements on its haulers that collect organic waste in the jurisdiction, and also for commercial and residential generators and self-haulers.

- There is a lot of detail regarding the types of allowable collection programs (several pages of regulatory text dedicated just to this). These are the high level requirements.
  - **Each resident and business**, must subscribe to an organic waste collection service that either “source-separates” the waste (e.g. separate bins), or transports all unsegregated waste to a facility that recovers 75 percent of the organic content collected from the system.
  - The regulations allow for a menu of collection options.
    - A one-can system – you’ll be responsible for ensuring that all contents are transported to a facility that recovers 75% of organic content
    - A two-can system – at least one of the containers (whichever includes organic waste and garbage) must be transported to a facility that recovers 75% of organic content
    - A three-can system – organic waste is required to be source separated (paper in blue, food and yard in green). No recovery rate
    - The three-can option also allows additional separation at the hauler/generators discretion... For example some jurisdictions provided separate containers for yard (green) and food (brown) waste so they can be managed separately
- The same rules will apply to entities not subject to local control, and CalRecycle will oversee State Agencies, UCs, CSUs, Community Colleges, K-12 schools and other entities not subject to local oversight.



*(Note to presenter: You may want to customize the speaking points depending on how much your community is already doing to implement edible food recovery programs)*

SB 1383 requires that we strengthen our existing infrastructure for edible food recovery and food distribution.

**Jurisdictions** – are responsible to implement Edible Food Recovery Programs in their communities. Even in communities where existing infrastructure already exists, there are new recordkeeping and inspection tasks that will need to be implemented.

- **Assess Capacity of Existing Food Recovery**
- **Establish Food Recovery Program (And Expand Existing Infrastructure if necessary)**
- **Inspect Commercial Generators for Compliance**
- **Education and Outreach**

Jurisdictions should get a **head start on 1383 implementation by assessing the infrastructure that currently exists within your community.** Jurisdictions need to assess the following:

- How many commercial generators do you have? How much edible food could they donate?
- How many food recovery organizations exist, and what is their capacity to receive this available food?
- What gaps do we have in our current infrastructure and what do we need to do to close them?
- How can we fund the expansion of edible food recovery organizations? (Grants, partnerships, sponsorships, etc.)
- What partnerships currently exist and what new partnerships need to be established?
  - CalRecycle will be developing some tools to assist jurisdictions with this assessment.

**SB 1383 IN ACTION**

**EDUCATION REQUIREMENTS**

**JURISDICTION REQUIREMENTS**

Annually educate all organic waste generators, commercial edible food generators, and self-haulers about relevant requirements

Jurisdictions must provide print or electronic communication.

Jurisdictions May Supplement with Direct Communication.

Appropriate educational material must be provided to linguistically isolated households

Conduct Education and Outreach to Community

CalRecycle


Jurisdictions must conduct education and outreach to:

1. **All businesses and residents** regarding collection service requirements, contamination standards, self-haul requirements, and overall compliance with 1383
2. **Commercial edible food generators** regarding edible food donation requirements, and available edible food recovery organizations

Educational material must be linguistically accessible to our non-English speaking residents.

## SB 1383 IN ACTION

### PROCUREMENT REQUIREMENTS



**Procure Recycled and Recovered Organic Products**

## JURISDICTION REQUIREMENTS


### COMPOST, RNG & ELECTRICITY

- Minimum Procurement

### PAPER PROCUREMENT REQUIREMENTS

- Recycled Content
- Recyclability





- Each jurisdiction will have a minimum procurement target that is linked to its population. CalRecycle will notify jurisdictions of their target Prior to January 1, 2022
  - The jurisdiction can decide what mix of compost, mulch, biomass derived electricity, or renewable gas they want to use to meet their target.
  - CalRecycle will provide a calculator with the conversion factors for compost/renewable gas/electricity from biomass conversion made from organic waste for a jurisdiction to use to calculate progress towards meeting their target.
- **Procurement doesn't necessarily mean purchase.**
  - A jurisdiction that produces its own compost, mulch, renewable gas, or electricity from biomass conversion can use that toward the procurement target. Same goes for the jurisdiction's direct service providers (for example, its haulers).
    - A jurisdiction can use compost or mulch for erosion control, soil amendment, soil cover, parks/open spaces, giveaways.
    - A jurisdiction can use renewable gas to fuel their fleets, or a jurisdiction's waste hauler could use renewable gas to fuel their trucks. Renewable gas can be used for transportation fuels, electricity, or heating applications.
- SB 1383 also **requires that jurisdictions procure recycled-content paper when it is available at the same price or less than virgin material.**
- Finally procured paper products must meet FTC recyclability guidelines (essentially products we purchase must be recyclable).

# Construction & Landscaping Requirements



Recycling organic waste commingled with C&D debris, to meet CalGreen 65% requirement for C&D recycling in both residential and non-residential projects

Model Water Efficient Landscape Ordinance (MWELo) requirements for compost and mulch application.



*(Note to presenter: If your Jurisdiction already enforces CalGreen and MWELo, then you would address that this would not be a new requirement, or this slide could be eliminated.)*

**Jurisdictions will have to adopt an ordinance or other enforceable requirement that requires compliance with CalGreen and Water Efficient Landscape Ordinance requirements (California Code of Regulations Title 24, Part 11):**

- Providing readily accessible areas for recycling containers in commercial and multi-family units
- Recycling organic waste commingled with C&D debris, to meet CalGreen 65% requirement for C&D recycling in both residential and non-residential projects
- Require new construction and landscaping projects to meet Water Efficient Landscape requirements for compost and mulch application.



# ORGANIC WASTE RECYCLING INFRASTRUCTURE



SB 1383 Requires 50-100  
New or Expanded  
Organic Waste Recycling Facilities



*(Note to presenter: You might customize this slide if you have already secured adequate capacity for your organic recyclables.)*

In California today we have about 180 compost facilities with 34 of them accepting food waste.

- We have 14 AD facilities accepting solid waste.
- There is also a significant number of Waste Water Treatment Plants that could be leveraged to use for co-digestion of food waste.
- It will take a significant number of new facilities to recycle an additional 20-25 million tons of organic waste annually. CalRecycle estimates we will need 50-100 new or expanded facilities (depending on the size of each new facility this number could fluctuate).

## SB 1383 IN ACTION

### CAPACITY PLANNING



**Evaluating Current  
Infrastructure and Planning  
New Compost and AD Facilities  
and Edible Food Recovery**

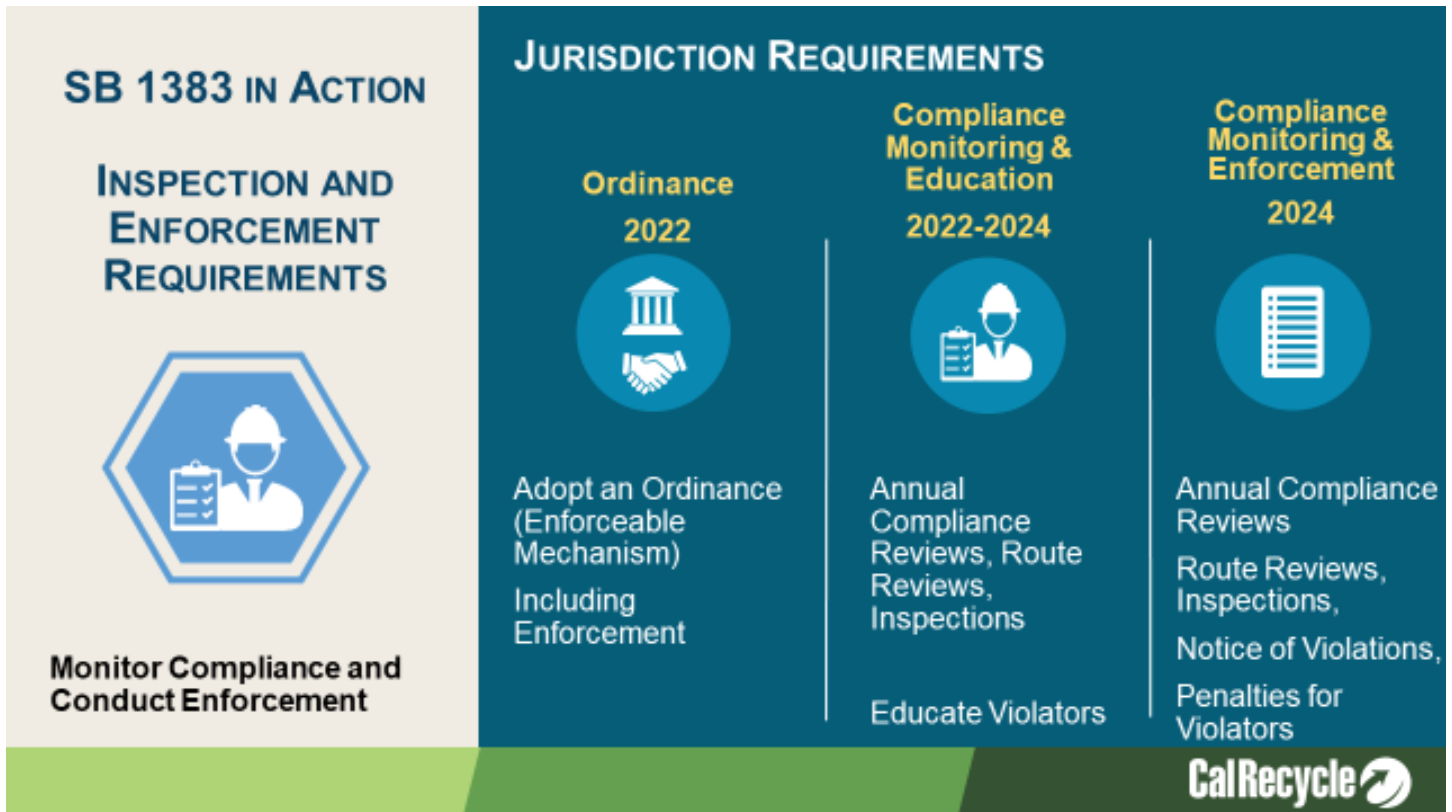


**CalRecycle**

#### Key Points:

1. **Each jurisdiction must plan for adequate capacity for recycling organic waste and for edible food recovery**
  - A. For edible food recovery capacity each jurisdiction must plan to recover 20 percent of the edible food for human consumption, must identify Tier 1 and 2 commercial edible food generators, and funding for edible food recovery infrastructure
2. Each county will lead this effort by coordinating with the cities in the county to estimate existing, new and/or expanded capacity.
3. Counties and cities must demonstrate that they have access to recycling capacity through existing contracts, franchise agreements, or other documented arrangements.
4. There are requirements for each jurisdiction to consult with specified entities to determine organic waste recycling capacity, such as the Local Enforcement Agency, Local Task Force, owners/operators of facilities, community composting operations, and from citizens, such as disadvantaged communities, i.e., to discuss the benefits and impacts associated with expansions/new facilities.
5. For edible food recovery the county and city must contact edible food recovery organizations that serve the jurisdiction to determine how much existing, new and/or planned capacity if available.
6. If capacity cannot be guaranteed, then each jurisdiction within the county that lacks capacity must submit an implementation schedule to CalRecycle that includes specified timelines and milestones, including funding for the necessary recycling or edible food recovery facilities.
7. The County must collect data from the cities on a specified schedule and report to CalRecycle. Cities are required to provide the required data to the County within 120 days.

- A. **Start year for planning and reporting is 2022 – that report must cover 2022-2025.**
- B. Subsequent reports will be due every 5 years, and will plan for a 10-year horizon



- **By January 1, 2022**, Jurisdictions are required to have:
  - An enforcement mechanism or ordinance in place, yet they are not required to enforce until 2024.
- **Between Jan 2022 and Dec 2023**, jurisdictions need to:
  - Identify businesses in violation and provide educational material to those generators
    - **The focus during the first 2 years is on educating generators.**
    - **The goal is to make sure every generator has an opportunity to comply before mandatory jurisdiction enforcement comes into effect in 2024.**
    - **The regulations allow 2 years for education and compliance.**
- **After January 2024**, jurisdictions shall take progressive enforcement against organic waste generators that are not in compliance.
  - The progressive approach allows for notification to the generator and provides ample time for the generator to comply before penalties are required to be issued by the jurisdiction.
  - CalRecycle sets a maximum timeframe that a jurisdiction has to issue a Notice of Violation and issue penalties to a generator.
  - The jurisdiction has the flexibility to develop its own enforcement process within these parameters.
    - When a Jurisdiction determines a violation occurred the jurisdiction is required to, at a minimum:

- Issue a Notice of Violation within 60 days of determining a violation.
- If the generator still has not complied within 150 days from the issuance of the Notice of Violation, then the jurisdiction is responsible to issue penalties
  - The 150 days, between the Notice and Violation and the penalty phase, allows the jurisdiction to use other methods to achieve compliance prior to being required to issue penalties. Therefore, only the most recalcitrant violators will need to be fined.
  - The regulations allow a generator to be out of compliance for a total 210 days, before penalties must be issued.
- The regulations set a minimum penalty amount of at least \$50 for the first offense within one year and can go up to \$500 a day for multiple offenses occurring within one year.
- **An early robust education program will minimize the amount of future enforcement action needed**

**JURISDICTION ENFORCEMENT REQUIREMENTS**

**Must Have Enforcement and Inspection Program that Includes:**

- **Annual Compliance Review**
  - Commercial Businesses that Generate  $\geq 2$  Cubic Yards/week
  - Verify Businesses are:
    - Subscribed to Service or Self-hauling
- **2 or 3 Container Collection Service: Route Reviews of Commercial/Residential Areas to Verify Service and Inspect for Contamination**
- **Single Unsegregated Collection Service: Verify Businesses are subscribed to a service that is Transporting Contents to a High Diversion Organic Waste Processing Facility**

Requirements Harmonize with AB 1826 and Don't Establish a Minimum Quantity of Physical Inspections

CalRecycle

*(Note to Presenter: If needed, customize the next couple of slides to fit the type of collection service that your City has/will have for residential and commercial. You may have residential on 3-container, multifamily on single or 2-container and businesses having all three depending on the business.)*

- If a Jurisdiction is using a 3- or 2-bin organic waste collection service they are required to do:
  - **Annual compliance review of commercial businesses just as we should be doing now with AB 1826 Mandatory Commercial Recycling**
    - Commercial businesses that generate 2 CY or more per week of solid waste (trash, recycling, organics),

- Note: commercial businesses include multi-family dwellings of five units or more
- This can be a desk audit to review reports from our haulers to verify that service is provided or that they are complying through self-hauling or backhauling
- **2- or 3-Collection Service:**
  - **Route reviews:** We are supposed to conduct route reviews of commercial businesses and residential areas. The route reviews check for:
    - Verifying subscription (validating the desk review)
      - This entails seeing that the business has the appropriate external containers.
      - If a business does not use the hauler's service, then verifying the business is self-hauling would be necessary. As noted earlier this is same type of action that AB 1826 already requires
      - Note: This random inspection of routes does not require going inside a business to verify that the business has appropriate containers/labels inside of the business.
  - **Monitoring for contamination on**
    - Randomly selected containers, and ensuring all collection routes are reviewed annually and that contamination is being monitored in the collection containers and education is provided if there is an issue
  - OR
  - A jurisdiction has the option of conducting waste composition studies every six months to identify if there are prohibited container contaminants. If there is more than 25 percent prohibited container contaminants, then additional education must be provided
- The Route Reviews can be done by our hauler(s)
- **Single Unsegregated Collection Service:** Same as the 2- or 3-bin service except:
  - We will need to verify with our hauler(s) that the contents are transported to a high diversion organic waste processing facility and that the facility is meeting the requirements of the organic content recovery rate
    - Note: The department will be identifying in the future what facilities are high diversion organic waste processing facilities as the facilities will be reporting to CalRecycle.
  - There are no route reviews required

## JURISDICTION ENFORCEMENT REQUIREMENTS ON COMMERCIAL FOOD GENERATORS



## Must Have Enforcement and Inspection Program that Includes:

- Inspections to verify:
  - Edible food Recovery arrangements
- Tier 1 Commercial Edible Food Generators by 2022
- Tier 2 Commercial Edible Food Generators by 2024

Commercial Edible Food Generator Inspections Can Be Combined with Existing Mandatory Inspections

CalRecycle 

*(Note to Presenter: If your jurisdiction is already implementing an edible food recovery program and conducting inspections, such as through the Health Department you will want to revise the talking points.)*

### Edible Food Recovery Program

- These types of inspections will be new for our jurisdiction.
- We will need to plan resources to conduct these inspections.
  - We might consider partnering with Health Inspectors that are already visiting food generators.
- Inspections on Tier One edible food generators in 2022 and Tier Two in 2024
  - Verify they have arrangements with a food recovery organization
  - Verify that the food generators are not intentionally spoiling food that can be recovered

**SB 1383 IN ACTION**  
**JURISDICTION REQUIREMENTS**



**Maintain Records and Report to CalRecycle**

**Recordkeeping Requirements:**

|                                                                                                                   |                                                                                                                         |                                                                                                                  |                                                                                                                          |                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| <br>Organic Collection Services  | <br>Hauler Program                     | <br>Contamination Minimization | <br>Waivers                           | <br>Education & Outreach                  |
| <br>Edible Food Recovery Program | <br>Recycled Organic Waste Procurement | <br>Recycled Paper Procurement | <br>Commercial Edible Food Generators | <br>Jurisdiction Inspection & Enforcement |



- Our jurisdiction will have to maintain all information in an Implementation Record.
  - Many sections require a minimum level of recordkeeping such as “ordinances, contracts, and franchise agreements”.
  - This graphic is a snapshot of items to be kept in the Implementation Record.
  - CalRecycle staff may review the implementation record as part of an audit of our program.
- The Implementation Record needs to be stored in one central location
  - It can be kept as a physical or electronic record
  - It needs to be accessible to CalRecycle staff within ten business days
  - It needs to be retained for five years

**CALRECYCLE OVERSIGHT (BEGINS IN 2022)**

**STATE ENFORCEMENT**

**CalRecycle**

**Authorize Waivers**

- Low Population
- Rural Areas

**Emergency Circumstances**

**Oversee and Monitor**

- State Agencies and Facilities
- Local Education Agencies

**Oversee and Monitor for Compliance**

**Jurisdiction Review**

- Conduct joint inspections with jurisdictions
- Review Implementation Record

**If Violations**

- Issue Notices of Violation
- May Authorize Corrective Action Plan
- Allows up to 24 months to address barriers outside of a jurisdiction's control

**CalRecycle**

Enforcement – CalRecycle will authorize low population and rural area waivers. In the case of entities such as public universities, which may be exempt from local solid waste oversight, CalRecycle will be directly responsible for ensuring compliance. This will be monitored through CalRecycle’s existing state agency monitoring process.

**CalRecycle will be evaluating a Jurisdiction’s Compliance.**

For example:

- Verifying that all organic waste generators have service
- Jurisdictions are providing education
- Issuing Notices of Violation within the correct timeline

**SB 1383 is a Statewide target and not a jurisdiction organic waste diversion target.** Unlike with AB 939 where there was a specified target for each jurisdiction, SB 1383 prohibits a jurisdiction target. Due to this structure:

- The regulations require a more prescriptive approach, and establishes state minimum standards.
- Jurisdictions will have to demonstrate compliance with each of the prescriptive standards **rather than the determination of a Good Faith Effort**, which uses a suite of indicators to determine if a jurisdiction is actively trying to implement programs and achieve targets

**Under the SB 1383 regulations** if CalRecycle determines a jurisdiction is violating one or more of the requirements,

- A jurisdiction will be noticed and will have 90 days to correct.
- Most violations should be able to be corrected in this timeframe. For cases where the jurisdiction may need a little additional time, the timeframe can be expanded to 180 days



- **For violations that are due to barriers outside the jurisdictions control and which may take more time to correct, the** regulations allow for the jurisdiction to be placed on a Corrective Action Plan (CAP), allowing up to 24 months to comply. In these cases, it must be apparent that the jurisdiction has taken substantial effort to comply but cannot due to extenuating circumstances (such as a lack of capacity, disaster).
- An initial corrective action plan issued due to inadequate capacity of organic waste recovery facilities may be extended for a period of up to 12 months if the jurisdiction meets the requirements and timelines of its CAP and has demonstrated substantial effort to CalRecycle.

The Corrective Action Plan [or CAP] is modeled off of the Notice and Order Process that is used for noncompliance at solid waste facilities, where a number of steps or milestones must be taken by the solid waste facility operator prior to being able to fully comply.

Regarding eligibility for a CAP failure of a governing body to adopt and ordinance, or adequately fund/resource a program IS NOT *considered substantial effort or an Extenuating Circumstance* and will not allow a violation to be subject to a Corrective Action Plan.



**CalRecycle**  
**STAY ENGAGED**

 <https://www2.calrecycle.ca.gov/Listservs/Subscribe/152>

 <https://www.calrecycle.ca.gov/organics/slcp>

 **Presenter's Contact Info**

**CalRecycle** 

*(Note to presenter: If you have been participating in the regulatory workshops you might customize this slide. If you haven't been participating you might consider using this slide to discuss next steps with your elected officials and executive management.)*

**Jurisdictions are encouraged to participate in the 1383 regulatory process.**



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This version incorporates changes and amendments approved by the Agenda & Rules Committee on September 16, 2019 for approval by the City Council.

# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. ~~##,###~~–N.S.  
Effective October 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.

### 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 may set limits on the speaking time allotted to Councilmembers during Council discussion.

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 recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

**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.

## 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. In the absence of the two officers specified in this section, the Councilmember present with the longest period of Council service shall preside.

### 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 Conduct of Business

The agenda for the regular business meetings shall include the following: Ceremonial Items (including comments from the City Auditor if requested); Comments from the City Manager; 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. The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Upon request by the Mayor or any Councilmember, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by the Mayor or any Councilmember, the Council 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 & 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.

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 & 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**

Pursuant to the Open Government Ordinance, 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.

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

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 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 & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend up to the date of the Agenda & Rules Committee meeting for the first regular meeting after the Council recess.

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 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 Councilmembers may be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from 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 locations that are open to the public and meet accessibility requirements under the Americans with Disabilities Act. 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.

Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

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.

Ad hoc subcommittees may convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.

### 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 continued from a previous meeting and published on a revised agenda.

#### 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 the Mayor or any Councilmember, 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 the Mayor or a Councilmember 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-Sponsors (in addition to the Primary Author). Co-Sponsors to Council reports may only be added in the following manner:
  - In the original item as submitted by the Primary Author
  - In a revised item submitted by the Primary Author at the Agenda & Rules Committee
  - By verbal request of the Primary Author at the Agenda & Rules Committee
  - In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
  - By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full council at which the item is considered

Agenda items shall contain all relevant documentation, including the information listed below.

- a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;
- 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 report author that describes the action to be taken on the item, if applicable;

- 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.
  - k) Additional information and analysis as required. It is recommended that reports include the recommended points of analysis in the Council Report Guidelines in Appendix B.
2. "Primary Author" means the Mayor or Councilmember that initiated, authored, and submitted a council agenda item.
  3. "Co-Sponsor" means the Mayor or other Councilmembers designated by the Primary Author to be co-sponsor of the council agenda item.
  4. "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.
  5. "Packet" means the agenda plus all its corresponding duplicated agenda items.
  6. "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.
  7. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier.
  8. "Old Business" Items carried over from a prior agenda of a meeting occurring more than 11 days earlier.

## 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 the Mayor or any Councilmember, 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 the Agenda & Rules Committee, which shall be a standing committee of the City Council.

The 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 & 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 & Rules Committee meeting.

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

- a) **Items Authored by the Mayor, a Councilmember, or the Auditor.** As to items authored by the Mayor, a Councilmember, or the Auditor, the 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 & Rules Committee meeting whether they prefer 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 & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council agenda under consideration. Option 2 is not available for items eligible to be referred to a Policy Committee.

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

- b) **Items Authored by the City Manager.** The 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 & 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 recommendation of the Agenda & Rules Committee will automatically be placed on the Action Calendar.

- 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 & Rules Committee.

- i) For a commission item that does not require a companion report from the City Manager, the Agenda & Rules Committee may act on an agendaized 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 & Rules Committee may schedule the item on a Council agenda. The Committee must schedule the the commission item 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 & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.

- d) The 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.

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 is received by the City Clerk after established deadlines and is not included on the 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 & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the 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 & 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 Councilmember 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 Council evaluation.
- c) After 12:00 p.m. one calendar day 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 Councilmember 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.

### **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.



**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
4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment
7. Communications

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

The Agenda & Rules Committee shall have the authority to re-order 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**

### **1. Legislative Item Process**

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

#### Full Council Track

Items under this category are exempt from Agenda & 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 the Mayor and 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
- l. Committee and Regional Body Appointments

The Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item. If an item submitted by the Mayor or a Councilmember has 1) a significant lack of background or supporting information, or 2) significant grammatical or readability issues the Agenda & Rules committee may refer the item to a Policy Committee.

### Policy Committee Track

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

The Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the Agenda & Rules Committee. The Agenda & Rules Committee may only assign the item to a single Policy Committee.

For a Policy Committee Track item, the 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 Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The 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 may 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 & Rules Committee may go directly on a council agenda if determined to be time critical.

## **2. 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 that has been referred to the Policy Committee 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 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.

- 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, nor the Mayor, may attend as observers.
- g. An item may be considered by only one Policy Committee before it goes to the full Council.

#### **4. 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.
- g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.
- 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.
- j. Per Brown Act regulations, any such materials must be direct revisions or supplements to the item that was published in the agenda packet.

Items referred to a Policy Committee from the 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 & 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 recommendation will be included in a 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.

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.

If a Policy Committee does not take final action by the 120-day deadline, the item is returned to the Agenda & Rules Committee and appears on the next available Council agenda. The 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 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.

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 & Rules Committee on the

next available agenda. The 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.

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 committee approves expedited review.

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

Six committees are authorized, each comprised of three Councilmembers with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

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 & 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.

### **6. 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 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 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, the Mayor or 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.

**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.

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 & 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, Councilmembers, 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.

It is the policy of the Council that the Mayor or Councilmembers 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 the Mayor or any Councilmember shall be added to the appropriate section of the 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 Mayor or any Councilmember 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. The Mayor or a Councilmember may refer a communication to 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.

**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.

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.

#### **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.

**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 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.

### 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 amend or substitute, shall be put to a vote without debate.

**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 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 Mayor or Councilmember 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 Mayor or Councilmember 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 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 by a member on the prevailing side, 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.

**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. 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 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 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 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 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 Section D 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**

Under the following headings of business, unless the presiding officer rules otherwise, any 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.**

Interested parties or their authorized representatives may address the Council 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.



**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 the Mayor or a Councilmember shall address the Council without first securing the permission of the presiding officer or Council to do so.

## VI.FACILITIES

### A. Council Chamber Capacity

Attendance at council meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

### 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 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 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 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 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/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 meeting location has 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.

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 & 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**



# Communications

All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department.

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