



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

**MONDAY, FEBRUARY 10, 2020  
2:30 P.M.**

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

Committee Members:

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

**AGENDA**

**Roll Call**

**Public Comment**

**Review of Agendas**

1. **Approval of Minutes: January 27, 2020**
2. **Review and Approve Draft Agendas:**
  - a. 2/25/20 – 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

8. **Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12** *(Item contains supplemental material)*  
**From: Fair Campaign Practices Commission**  
**Referred: February 4, 2020**  
**Due: June 23, 2020**  
**Recommendation:** Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).  
**Council Referral:** To refer a discussion of Officeholder Accounts and Council District (D-13) accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.  
**Financial Implications:** None  
Contact: Samuel Harvey, Commission Secretary, (510) 981-6950
9. **Discussion of Potential Revisions to the City Council Rules of Procedure and Order**

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

10. **Updating Berkeley Telecom Ordinances and BMC codes** *(Item contains revised material)*  
**From: Councilmember Davila**  
**Referred: November 25, 2019**  
**Due: May 24, 2020**  
**Recommendation:** Adopt a resolution directing the City Manager 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

## Unscheduled Items

### 11. 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

## Items for Future Agendas

- Discussion of items to be added to future agendas

**Adjournment – Next Meeting Monday, February 24, 2020**

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### **Additional items may be added to the draft agenda per Council Rules of Procedure.**

*Rules of Procedure as adopted by Council resolution, Article III, C3c - Agenda - Submission of Time Critical Items*

*Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.*

*The City Clerk shall bring any reports submitted as Time Critical to the meeting of the Agenda Committee. If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.*

*The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.*

*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 February 6, 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, JANUARY 27, 2020**

**2:30 P.M.**

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

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

**Roll Call:** 2:31 p.m. All present.

**Public Comment:** 2 speakers

## Review of Agendas

### 1. Approval of Minutes: January 13, 2020

**Action:** M/S/C (Wengraf/Harrison) to approve the Minutes of 1/13/20.

**Vote:** All Ayes.

### 2. Review and Approve Draft Agendas:

a. 2/11/20 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Wengraf/Harrison) to approve the Agenda of 2/11/20 with the changes noted below.

**Vote:** All Ayes.

- Ceremonial Items – Mansour Id-Deen; Berkeley Community Media
- Item Added – Excused Absence for Councilmember Hahn (Arreguin)
- Item Added – Wage Theft Prevention (Arreguin)
- Item 8 HR 5038 (Arreguin) – Councilmember Bartlett added as a co-sponsor
- Item 9 HR 5609 (Arreguin) – Councilmembers Bartlett and Harrison added as co-sponsors
- Item 10 Moped Ride-Share (Robinson) – Councilmembers Bartlett and Harrison added as co-sponsors

#### Policy Committee Track

- Item 15 Additional Fees (Arreguin) – Councilmembers Harrison, Hahn, and Robinson added as co-sponsors; referred to Land Use, Housing & Economic Development Committee
- Item 16 Rumford Plaque (Bartlett) – moved to 2/11/20 Consent Calendar
- Item 17 Adeline Street (Bartlett) – moved to 2/11/20 Action Calendar
- Item 18 Permit Service Center (Harrison) – removed from the agenda by author

#### Order of Action Items

Item 11 Code Enforcement  
Item 12 Ballot Measures  
Item 13 Electric Bike Share  
Item 14 Use of Cell Phones  
Item 17 Adeline Street

3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
  - None selected
4. **Adjournments In Memory**
  - Ove Wittstock, Berkeley Commissioner and Activist

## **Scheduling**

5. **Council Worksessions Schedule** – received and filed
6. **Council Referrals to Agenda Committee for Scheduling**
  - Item 3 Wage Theft removed and scheduled for 2/11/20
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. **Updating Berkeley Telecom Ordinances and BMC codes** *(Item contains revised material)*

**From: Councilmember Davila**  
**Referred: November 25, 2019**  
**Due: May 24, 2020**  
**Recommendation:** Adopt a resolution directing the City Manager 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

**Action:** Item held in committee pending scheduling of amendments on 3/10/20.

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

**9. 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

**Action:** Item held in committee pending presentation to Council on 2/25/20.

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

**Action:** No action taken

## Items for Future Agendas

- None

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 3:00 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on January 27, 2020.

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Mark Numainville  
City Clerk

## Communications

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at*

*2180 Milvia Street, 1st Floor, Berkeley, CA.*

## DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, February 25, 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.*

1. Presentation from StopWaste on SB 1383

**City Manager Comments:** *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

**Public Comment on Non-Agenda Matters:** *Persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.*

## Consent Calendar

*The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.*

*No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.*

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

**Public Comment on Consent Calendar and Information Items Only:** *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

*Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.*

## Consent Calendar

### 1. **Amendments to the Berkeley Election Reform Act; Amending BMC Chapter 2.12**

**From: Fair Campaign Practices Commission**

**Recommendation:** Adopt second reading of Ordinance No. 7,691-N.S. amending the Berkeley Elections Reform Act, BMC Chapter 2.12, regarding the public financing program.

**First Reading Vote:** All Ayes.

**Financial Implications:** None

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

### 2. **Minutes for Approval**

**From: City Manager**

**Recommendation:** Approve the minutes for the Council meetings of January 14, 2020 (special closed and special), January 21, 2020 (special closed and regular) and January 28, 2020 (special and regular).

**Financial Implications:** None

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

## Consent Calendar

**3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 25, 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:** General Fund - \$12,440,000

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

**4. Contract: Worldwide Travel Staffing for Nurse Registry Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with Worldwide Travel Staffing for nurse registry services for a total contract limit of \$313,800 for the period beginning March 1, 2020 and ending June 30, 2023. The contract will serve the needs of both the Mental Health and Public Health Divisions, providing fill-in nursing services as necessary at both the Mental Health clinics and the Berkeley High School Health Center.

**Financial Implications:** See report

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

**5. Contract: Van Meter Williams Pollack for Professional Planning Services to Prepare Zoning Standards and an Environmental Impact Report for the Ashby and North Berkeley BART Stations**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Van Meter Williams Pollack to perform professional planning services to prepare Zoning Standards and an Environmental Impact Report and conduct associated community outreach for the Ashby and North Berkeley Bay Area Rapid Transit (BART) Stations, in an amount not to exceed \$500,000 for the period from March 1, 2020 to July 31, 2021.

**Financial Implications:** See report.

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

**6. Amendment to the Agreement for Maintenance of State Highways in the City between the California Department of Transportation and City of Berkeley**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to the Agreement with the California Department of Transportation (Caltrans) for maintenance of the State highways within the City of Berkeley. The amendment will address roadway and traffic signal improvements from the City's Ninth Street Bicycle Boulevard Pathway Extension Phase II project.

**Financial Implications:** See report

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

## Consent Calendar

- 7. Contract: APB General Engineering for Sanitary Sewer Rehabilitation and Replacement - Urgent Sewer Repair Project FY 2020**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Urgent Sewer Repair Project FY 2020 with sites located throughout the City; accepting the bid of the lowest responsive and responsible bidder, APB General Engineering; and, authorizing City Manager to execute a contract and any amendments, extensions, or change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$388,489 which includes a 10% contingency of \$35,317.  
**Financial Implications:** Sanitary Sewer Fund - \$388,489  
Contact: Phillip Harrington, Public Works, (510) 981-6300
- 8. Permit Fee Waiver for Pacific Gas and Electric Company for the Undergrounding of Existing Overhead Electrical Facilities and Electrical Service Conversions within Utility Undergrounding District No. 48 – Grizzly Peak/Summit**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to waive all permit fees for Pacific Gas and Electric Company for the undergrounding of existing overhead electrical facilities and electrical service conversions in Utility Undergrounding District No. 48.  
**Financial Implications:** General Fund - \$100,000  
Contact: Phillip Harrington, Public Works, (510) 981-6300
- 9. Resolution: Condemn the Federal Government’s Administrative Decision Undermining Asylum Protection for Survivors of Domestic Violence**  
**From: Peace and Justice Commission**  
**Recommendation:** Adopt a resolution affirming Berkeley’s commitment to our asylum-seeking residents and condemning the Federal government’s administrative decision undermining asylum protection for survivors of domestic violence.  
**Financial Implications:** None.  
Contact: Nina Goldman, Commission Secretary, (510) 981-7000



## Council Consent Items

- 10. LifeLong Medical Care’s March 7, 2020 Annual Gala Fundraiser: 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 \$100 from Councilmember Cheryl Davila, to LifeLong Medical Care for their Annual Gala Fundraiser on March 7, 2020 with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 11. Luna Dance Institute March 7, 2020 Moon Dance Fundraising Gala: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmembers Davila and Hahn**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$100 from Councilmembers Cheryl Davila and Sophie Hahn, to Luna Dance Institute for their March 7, 2020 Moon Dance Fundraising Gala, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 12. Support for S.2012 (Feinstein)**  
**From: Councilmember Wengraf**  
**Recommendation:** Adopt a Resolution in support of S.2012, “Restoring Local Control Over Public Infrastructure Act of 2019” (Feinstein) and send copies to Senators Dianne Feinstein and Kamala Harris, and Congresswoman Barbara Lee.  
**Financial Implications:** None  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

## Council Consent Items

### 13. Support for SB-431, SB-801 and SB-802 (McGuire and Glazer)

**From: Councilmember Wengraf**

**Recommendation:** Adopt a resolution in support of three bills which aim to protect people whose lives could be endangered without use of needed electrical resources during PG&E's Public Safety Power Shut-offs. Send the resolution to California Senators Mike McGuire, Steve Glazer, Nancy Skinner and Buffy Wicks. The bills are: 1. SB-431 Mobile telephony service base transceiver station towers: performance reliability standards (McGuire & Glazer); 2. SB-801 Electrical corporations: wildfire mitigation plans: deenergization: public safety protocol (McGuire & Glazer); 3. SB-802 Emergency backup generators: health facilities: permit operating condition exclusion (Glazer)

**Financial Implications:** None

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

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

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

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

## Action Calendar – Public Hearings

- 14a. Public Hearing: Landmarks Preservation Commission Appeal: Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing on the appeal of the Landmarks Preservation Commission (LPC) decision to approve Structural Alteration Permit #LMSAP2019-0004 to modify and rehabilitate a City Landmark and National Register building and site.  
**Financial Implications:** None.  
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400
- 14b. Public Hearing: Zoning Adjustments Board Appeal: Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing on the appeal of the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP20190061, to convert the Hillside School to residential use.  
**Financial Implications:** None.  
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400
- 14c. Appeals of Landmarks Preservation Commission and Zoning Adjustments Board Actions -- Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue**  
**From: City Manager**  
**Recommendation:** Upon conclusion of the agendized public hearings, adopt a Resolution affirming the Landmarks Preservation Commission (LPC) decision to approve Structural Alteration Permit #LMSAP2019-0004 and the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP20190061, to rehabilitate and convert the Hillside School to residential use, and dismiss the appeals.  
**Financial Implications:** None.  
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400
- 15. ZAB Appeal: 2422 Fifth Street, Use Permit #ZP2018-0108**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2018-0108 to construct a three-story, 4,806-square-foot mixed-use building containing 967 square feet of medical office space and two dwelling units on the rear of a lot with an existing duplex, including a request to waive two residential parking spaces and establish two joint use commercial/residential spaces, and dismiss the appeal.  
**Financial Implications:** None.  
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

## Action Calendar – Old Business

16. **Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras** *(Continued from January 28, 2020. Item contains supplemental materials.)*

**From: City Manager**

**Recommendation:** Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers and Body Worn Cameras submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

**Financial Implications:** None

Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000

## Action Calendar – New Business

17. **Issuance of \$38,000,000 General Obligation Bonds for Measure O – Affordable Housing**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the issuance and sale of general obligation bonds to finance acquisition and improvement of affordable housing and authorizing actions related thereto.

**Financial Implications:** See report

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

18. **Refinancing of 2009 and 2010 General Obligation Bonds (Measure FF)**

**From: City Manager**

**Recommendation:** Adopt two Resolutions authorizing the issuance and sale of general obligation bonds to refund outstanding 2009 and 2010 bonds and authorizing actions related thereto.

**Financial Implications:** See report

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

19. **Refinancing of 2010 Certificates of Participation Originally Issued to Finance Animal Shelter Project**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the issuance and sale of lease revenue bonds to refinance outstanding 2010 certificates of participation and approving related documents and official actions.

**Financial Implications:** See report

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

## Council Action Items

20. **Ronald V. Dellums Fair Chance Access to Housing Ordinance; Adding BMC Chapter 13.106** (*Reviewed by Land Use, Housing, and Economic Development Committee*)

**From: Mayor Arreguin, Councilmember Davila, Councilmember Harrison, Councilmember Bartlett**

**Recommendation:**

1. Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing Ordinance, adding Berkeley Municipal Code Chapter 13.106 and;
2. Direct the City Manager to take all necessary steps to implement this chapter including but not limited to developing administrative regulations in consultation with all relevant City Departments including the Rent Stabilization Board, preparing an annual implementation budget, designating hearing officers and other necessary staffing for administrative complaint, exploring the development of a compliance testing program similar to that used by the Seattle Office of Civil Rights, developing timelines and procedures for complaints, conducting outreach and education in partnership with the Alameda County Fair Chance Housing Coalition, and referring program costs to the June budget process.

**Financial Implications:** See report

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

## Action Calendar – Policy Committee Track Items

21. **Referral to Schedule a Special City Council Meeting on Ohlone History and Culture**

**From: Councilmembers Hahn and Davila**

**Recommendation:** Refer to the Agenda & Rules Policy Committee to schedule a Special City Council Meeting of at least one hour in duration immediately prior to a Regular City Council Meeting for representatives of the Ohlone community to present on Ohlone history and culture to provide additional context for the placement of signs stating "Welcome to the City of Berkeley Ohlone Territory" at entrances to our City.

**Financial Implications:** None

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

## Action Calendar – Policy Committee Track Items

### 22. Referral: Street Lighting Near Campus

**From: Councilmembers Robinson, Droste, Harrison, and Wengraf**

**Recommendation:** Refer to the Public Works Commission to include the following in the Street Lighting Subcommittee Work Plan, for the purposes of seeking input from key stakeholders and bringing together work that happens through parallel processes. The Subcommittee should: 1. Invite input from representatives from the UC Berkeley administration, UC Berkeley undergraduate and graduate students, UCPD and BPD, the Department of Public Works, and other relevant groups. 2. Develop a streamlined and accessible process for requesting street lights that includes neighborhood and campus input, while recognizing the overriding public safety concern posed by substandard lighting. 3. Develop a plan for expeditiously installing new streetlights near campus that prioritizes high-crime areas, high-injury pedestrian corridors, and student-priority areas as determined by student input.

**Financial Implications:** Staff time

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

## Information Reports

### 23. Audit Status Report Response: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight from April 17, 2019 – December 13, 2019

**From: City Manager**

Contact: Erin Steffen, City Manager's Office, (510) 981-7000

### 24. Report on Regional Leadership and Goals for 2020

**From: Mayor Arreguin**

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

## 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](mailto:clerk@cityofberkeley.info)

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

**COMMUNICATION ACCESS INFORMATION:**

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

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



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

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Office of the City Manager

CONSENT CALENDAR  
February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Berkeley Peace & Justice Commission

Submitted by: Igor Tregub, Chairperson

Subject: Resolution: Condemn the Federal Government's Administrative Decision Undermining Asylum Protection for Survivors of Domestic Violence

RECOMMENDATION

Adopt a resolution affirming Berkeley's commitment to our asylum-seeking residents and condemning the Federal government's administrative decision undermining asylum protection for survivors of domestic violence.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

In his June 11, 2018 decision in the asylum case *Matter of A-B-* (27 I&N Dec. 316 (A.G. 2018)), former Attorney General Sessions declared that asylum seekers presenting claims based on domestic violence will "generally" no longer qualify for relief. His decision included sweeping pronouncements undermining protections for individuals fleeing other forms of persecution perpetrated by nongovernment actors, including gangs and organized crime groups.

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 affirming Berkeley's commitment to our asylum-seeking residents and condemning the Federal government's administrative decision undermining asylum protection for survivors of domestic violence. The vote for the attached resolution was as follows:

M/S/C: Bohn/Rodriguez

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.

RATIONALE FOR RECOMMENDATION

The Berkeley City Council has repeatedly affirmed its commitment to protecting our immigrant communities, and since January 2017 has consistently condemned actions of the Trump Administration that target our immigrant and asylum-seeking residents.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

The City Manager takes no position.

CONTACT PERSON

Igor Tregub, Chairperson, Peace and Justice Commission

Nina Goldman, Commission Secretary, City Manager's Office (510) 981-7537

Attachment:

1. Resolution Affirming Berkeley's Commitment to our Asylum-Seeking Residents and Condemning the Federal Government's Administrative Decision Undermining Asylum Protection for Survivors of Domestic Violence

RESOLUTION NO. ##,###-N.S.  
AFFIRM BERKELEY'S COMMITMENT TO OUR ASYLUM-SEEKING RESIDENTS  
AND CONDEMN THE FEDERAL GOVERNMENT'S ADMINISTRATIVE DECISION  
UNDERMINING ASYLUM PROTECTIONS FOR SURVIVORS OF DOMESTIC  
VIOLENCE

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, the Berkeley City Council has repeatedly affirmed its commitment to protecting our immigrant communities, and since January 2017 has consistently condemned actions of the Trump Administration that target our immigrant and asylum-seeking residents; and

WHEREAS, the City of Berkeley has a long history and proud legacy of leading the fight to advance women's rights and combat gender-based violence;<sup>i</sup> and

WHEREAS, former U.S. Attorney General Jefferson B. Sessions, on June 11, 2018, issued a sweeping decision in the asylum case *Matter of A-B-* (27 I&N Dec. 316 (A.G. 2018)), involving a domestic violence survivor from El Salvador, which vacated the Board of Immigration Appeals' landmark decision in *Matter of A-R-C-G-* (26 I&N Dec. 388 (BIA 2014)), which had recognized domestic violence as a basis for asylum; and

WHEREAS, in his decision then-Attorney General Sessions declared that asylum seekers presenting claims based on domestic violence will "generally" no longer qualify for relief, and his decision included sweeping pronouncements undermining protections for individuals fleeing other forms of persecution perpetrated by nongovernment actors, including gangs and organized crime groups;<sup>ii</sup> and

WHEREAS, in *Grace v. Whitaker* (344 F. Supp. 3d 96 (D.D.C. 2018)), the U.S. District Court for the District of Columbia found the heightened standards articulated by Sessions in *Matter of A-B-* to be inconsistent with existing legal precedents and congressional intent behind the Refugee Act of 1980, holding that there can be no blanket rule barring domestic violence asylum claims, and although the *Grace* decision has halted the implementation of *Matter of A-B-* in initial credible fear proceedings, the Departments of Homeland Security and Justice have instructed adjudicators that *Matter of A-B-* must continue to be used in deciding asylum claims on their merits. Berkeley's East Bay Sanctuary Covenant was a lead plaintiff in successful lawsuit challenging the Trump Administration in this matter;<sup>iii</sup> and

WHEREAS, the majority of women and girls seeking asylum at the U.S. southern border hail from the Northern Triangle countries of Central America, El Salvador, Guatemala,

and Honduras, where rates of femicide (gender motivated killings of women) are among the highest in the world, and which are currently experiencing epidemic levels of violence, including widespread domestic violence and other forms of gender-based violence, which is perpetrated with virtual impunity;<sup>iv</sup> and

WHEREAS, according to data from the Syracuse University Transactional Records Access Clearinghouse (TRAC), in the 12 months following the issuance of the *Matter of A-B-* decision national asylum grant rates for applicants from El Salvador, Guatemala, and Honduras fell to an average of 15 percent, compared to a 24 percent grant rate in the year prior to the decision; and the *Matter of A-B-* decision has put countless women, children, LGBTQ people, and families at heightened risk of removal to perilous situations where their lives are in danger;<sup>v</sup> and

WHEREAS, United Nations guidance and international law reflect that domestic violence can form the basis of asylum protection when all other elements of the refugee definition are met, and the United Nations High Commissioner for Refugees (UNHCR) has asserted that the *Matter of A-B-* ruling stands at odds with the United States' international treaty obligations by creating a high barrier to women fleeing domestic violence;<sup>vi</sup> and

WHEREAS, in 2018, 84 members of Congress, including Congresswoman Barbara Lee, cosponsored Congresswoman Jan Schakowsky's (D-Ill.) resolution (H. Res. 987) condemning the former Attorney General's decision in *Matter of A-B*;<sup>vii</sup> and

WHEREAS, Senators Feinstein and Harris have decried the *Matter of A-B-* ruling and called for its reversal;<sup>viii</sup> and

WHEREAS, 118 members of Congress, including Barbara Lee, signed a letter sent on September 12, 2018 to then-Attorney General Sessions requesting that he rescind his decision in *Matter of A-B*.<sup>ix</sup>

NOW THEREFORE BE IT RESOLVED, that the Council of the City of Berkeley declare its condemnation of former Attorney General Sessions' decision in *Matter of A-B-* seeking to close the door to women and others seeking asylum on the basis of domestic violence.

BE IT FURTHER RESOLVED, that Council of the City of Berkeley recognize the decision as a shameful attempt to eviscerate protections for women, children, LGBTQ people, and families fleeing harrowing violence.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley call on the U.S. Department of Justice to rescind the *Matter of A-B-* decision.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley urge congressional appropriators to instruct the Departments of Justice and Homeland Security that they may not use appropriated funds to implement *Matter of A-B*.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley urge our representatives in Congress to enact laws that address the issues created by *Matter of A-B*- and restore justice and fairness to our asylum system.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley urge the federal courts of appeals to overturn *Matter of A-B*- and affirm that domestic violence may be a basis for asylum.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley ask the City Clerk to send a copy of this resolution to Congresswoman Barbara Lee, Senators Dianne Feinstein and Kamala Harris, the Chairs of the Congressional Appropriations Committees, and the Chairs of the Committees on the Judiciary.

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<sup>i</sup> “Adopt the Operative Principles of the UN Convention on the Elimination of All Forms of Discrimination Against Women,” BMC Chapter 13.20, <https://www.codepublishing.com> › CA › Berkeley › Berkeley1320020.html

<sup>ii</sup> “Attorney General issues precedent decision, *Matter of A-B*-, seeking to limit protection for asylum seekers,” Reena Arya: <https://cliniclegal.org/resources/attorney-general-issues-precedent-decision-matter-b-seeking-limit-protection-asylum>  
And: *Grace v. Whitaker* (344 F. Supp. 3d 96 (D.D.C. 2018)), the U.S. District Court for the District of Columbia found the heightened standards articulated by Sessions in *Matter of A-B*- to be inconsistent with existing legal precedents and congressional intent: <https://casetext.com/case/grace-v-whitaker>  
and: <https://www.aclu.org/legal-document/grace-v-whitaker-opinion>

<sup>iii</sup> “*East Bay Sanctuary Covenant v. Trump*,” February 7, 2019, ACLU, <https://www.aclu.org/cases/east-bay-sanctuary-covenant-v-trump>  
And:  
“Groups file a federal lawsuit challenging new Trump Asylum restrictions,” Feb 7, 2019, ACLU, <https://www.aclu.org/press-releases/groups-file-federal-lawsuit-challenging-new-trump-asylum-restrictions>  
and:  
“*East Bay Sanctuary Covenant v. Trump*. Restrictions on Asylum,” Aug 13, 2019, [https://www.ca9.uscourts.gov](https://www.ca9.uscourts.gov/content/view) › content › view

<sup>iv</sup> “Central America’s Turbulent Northern Triangle,” October 1, 2019, Center on Foreign Relations, <https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle>

<sup>v</sup> “Asylum Representation Rates Have Fallen Amid Rising Denial Rates,” Transactional Records Access Clearinghouse (TRAC), <https://trac.syr.edu/immigration/reports/491/>

<sup>vi</sup> “Why domestic abuse and anti-gay violence qualify as persecution in asylum law,” June 15, 2018, <http://theconversation.com/why-domestic-abuse-and-anti-gay-violence-qualify-as-persecution-in-asylum-law-98354>

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vii “H.Res.987 - Condemning the Attorney General's decision in "Matter of A-B-" seeking to declare domestic violence and gang violence as invalid grounds for seeking asylum,” <https://www.congress.gov/bill/115th-congress/house-resolution/987/all-info>

viii “Feinstein Statement on Asylum Law Changes,” June 11, 2018, Sen. Dianne Feinstein, <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=51182C79-CC38-4A12-9395-10404C2C0044> and <https://twitter.com/SenKamalaHarris/status/1017481406866444288>

ix “118 House Democrats to AG Sessions: Reverse Decision Ending Asylum for Victims of Domestic, Gang, and Gender-Based Violence,” September 13, 2018, Rep. Jim McGovern, <https://mcgovern.house.gov/news/documentsingle.aspx?DocumentID=397246>



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: LifeLong Medical Care's March 7, 2020 Annual Gala Fundraiser: 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 \$100 from Councilmember Cheryl Davila, to LifeLong Medical Care for their Annual Gala Fundraiser on March 7, 2020 with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.

BACKGROUND

LifeLong Medical Care has been committed to serving the community for over 40 years with compassion. LifeLong has a number of robust programs offering quality care including medical, dental and social services throughout Alameda and Contra Costa Counties for all ages. They have provided services to over 61,000 underserved individuals, many with complex health conditions every year.

LifeLong will hold their Annual Gala Fundraiser on Saturday, March 7, 2020, at 5:30 PM at the Claremont Club and Spa, 41 Tunnel Road in Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact. \$100 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (011-11-102-000-0000-000-411).

ENVIRONMENTAL SUSTAINABILITY

Protecting low income residents and people who experience homelessness is itself an act of environmental sustainability.

CONTACT PERSON

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

ATTACHMENTS:

1. Resolution
2. LifeLong Medical Care's March 7, 2020 Annual Gala Fundraiser Information:  
<https://www.lifelongmedical.org/news-a-events/annual-fundraiser/2020-annual-gala.html>

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEYS 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, LifeLong Medical Care, a California non-profit tax-exempt corporation, is seeking donations for their First Annual Fundraiser on Saturday, March 7, 2020 at 5:30 PM at the Claremont Club and Spa, 41 Tunnel Road in Berkeley; and

WHEREAS, LifeLong Medical Care has been committed to serving the community for over 40 years with compassion. LifeLong has a number of robust programs offering quality care including medical, dental and social services throughout Alameda and Contra Costa Counties for all ages; and

WHEREAS, LifeLong Medical Care provides services to over 61,000 underserved individuals, many with complex health conditions every year; and

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 Councilmember, including \$100 from Councilmember Cheryl Davila, shall be granted to LifeLong Medical Care for their Annual Gala Fundraiser on March 7, 2020.



<https://www.lifelongmedical.org/news-a-events/annual-fundraiser/2020-annual-gala.html>

# 2020 ANNUAL GALA



## LifeLong Medical Care

invites you to join us at our

## Annual Gala

Come and Celebrate our Commitment to Providing Care and Compassion to our Communities for more than 40 Years!

**Saturday, March 7, 2020**  
5:30pm

**Claremont Club & Spa - A Fairmont Hotel**  
41 Tunnel Road | Berkeley, California

Hosted wine  
Seated 3 course dinner  
Cocktail Attire

Drink, Bid, Mingle: 5:30 – 7:15 PM  
Dinner, Program, Dessert & Dancing: 7:15 PM

If you are interested in sponsoring our Gala, please contact  
Kara De La Paz at (510) 981-4154 or [development@lifelongmedical.org](mailto:development@lifelongmedical.org)





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila and Councilmember Sophie Hahn

Subject: Luna Dance Institute March 7, 2020 Moon Dance Fundraising Gala: 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 \$100 from Councilmembers Cheryl Davila and Sophie Hahn, to Luna Dance Institute for their March 7, 2020 Moon Dance Fundraising Gala, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.

BACKGROUND

Luna Dance Institute is a community based 501(c)3 organization non-profit organization, whose mission is to bring creativity, equity and community to every child's life through the art of dance.

Luna Dance Institute exists as an example of what is possible when an organization seeks to defend and further children's freedom through the art of dance. Luna Dance Institute works with allies to champion systemic change in arts, education, and social justice.

Since 1992, Luna Dance Institute has grown from a local children's dance program to a nationally recognized dance education organization that develops future choreographers, leaders, and visionaries. Berkeley is proud to be the home of Luna Dance Institute who each year brings dance to more than 20,000 children and 300+ artists, teachers, and social service providers.

Luna Dance Institute will hold their Moon Dance Fundraising Gala on Saturday, March 7, 2020 from 7-10 PM at Emerytech Building (Clif Bar Theater), 1370 65th Street, Emeryville. The event features music from the Left Coast Sextet (an all women Jazz band), and auction items donated by local restaurants and performance venues.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact. \$100 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. Resolution

2. Luna Dance Institute March 7, 2020 Moon Dance Fundraising Gala Information:

<http://lunadanceinstitute.org/2020-gala/>

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEYS 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, Luna Dance Institute, a California non-profit tax-exempt corporation, is seeking donations for their Moon Dance Fundraising Gala on March 7, 2020 from 7PM-10 PM at Emerytech Building (Clif Bar Theater), 1370 65th Street, Emeryville; and

WHEREAS, Luna Dance Institute mission is to bring creativity, equity and community to every child's life through the art of dance; and

WHEREAS, Since 1992, Luna Dance Institute has grown from a local children's dance program to a nationally recognized dance education organization that develops future choreographers, leaders, and visionaries. Each year, Luna Dance Institute brings dance to more than 20,000 children and 300+ artists, teachers, and social service providers; and

WHEREAS, Luna Dance Institute exists as an example of what is possible when an organization seeks to defend and further children's freedom through the art of dance. They work with allies to champion systemic change in arts, education, and social justice; and

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 Councilmember, including \$100 from Councilmember Cheryl Davila, shall be granted to Luna Dance Institute for their March 7, 2020 Moon Dance Fundraising Gala.

<http://lunadanceinstitute.org/2020-gala/>



## Moon Dance: A Marvelous Night...

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Join us for a marvelous night of dancing, live music, games, hearty appetizers, desserts, & more.

Support our efforts to bring high quality dance education to 20,000 children at Luna Dance Institute's 2020 gala.

**Date:** March 7, 2020

**Place:** Emerytech Building (Clif Bar Theater), 1370 65th Street, Emeryville

**Time:** 7:00 – 10:00 PM

Dance to the music of the [Left Coast Sextet](#), an all women Jazz band, bid on auction items donated by local restaurants and performance venues. Check this page for entertainment updates. We look forward to dancing with you on March 7th!

RESERVE TICKETS

Can't make it but still want to support Luna's programming? Consider [making a donation](#).

Interested in [donating goods](#) or [sponsoring](#) this event? Please contact Aiano ([anakagawa@lunadanceinstitute.org](mailto:anakagawa@lunadanceinstitute.org)). As a nonprofit 501(c)3 organization, your donation is considered a charitable gift and may be tax-deductible.

**Luna Dance Institute EIN:** 56-2467645.



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
February 25, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Susan Wengraf  
Subject: Support for S.2012 (Feinstein)

RECOMMENDATION

Adopt a Resolution in support of S.2012, “Restoring Local Control Over Public Infrastructure Act of 2019” (Feinstein) and send copies to Senators Dianne Feinstein and Kamala Harris, and Congresswoman Barbara Lee.

FINANCIAL IMPLICATIONS

None

BACKGROUND

S.2012, the [Restoring Local Control Over Public Infrastructure Act](#) proposes to restore local government control over how wireless carriers deploy small cell and other wireless equipment on utility poles.

The legislation is in response to a pair of recent FCC rules that revoke local authority to regulate telecommunications equipment deployment. The FCC rules also determine how much wireless carriers would pay to use public phone and utility poles, without any local input.

Senator Feinstein's bill would overturn the new FCC rules and restore local control concerning the placement of small cell and other wireless equipment on phone and utility poles.

S.2012 would also overturn the FCC's 60 to 90 day limits for local governments to review applications to use public infrastructure before being automatically approved.

The bill is cosponsored by Senators Charles E. Schumer (D-N.Y.), Michael Bennet (D-Colo.), Kamala D. Harris (D-Calif.), Ron Wyden (D-Ore.), Ben Cardin (D-Md.) and Richard Blumenthal (D-Conn.).

The bill is supported by the U.S. Conference of Mayors, National Association of Telecommunications Officers and Advisors, American Public Power Association,

Communications Workers of America, National Association of Counties, League of California Cities and American Public Works Association.

ENVIRONMENTAL SUSTAINABILITY

Local control over telecommunication equipment placement supports the city's efforts to provide a safe community.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

2: Bill S-2012

3: FCC Press Release about its September 26, 2018 Declaratory Ruling

4: Link to [FCCs 116 page Declaratory Ruling and Third Report and Order](#)



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

City of Berkeley Support for S.2012 (Feinstein)

WHEREAS, The FCC passed the Declaratory Ruling and Third Report and Order, in September 2018 that allow telecom providers to install heavy equipment on local infrastructure with little input from the impacted local jurisdictions ; and

WHEREAS, These rules, ostensibly intended to fast-track the 5G rollout, supersede local and state regulations, taking away local control over how wireless companies may attach small cell and other wireless transmission devices to utility poles, light poles and traffic lights; and

WHEREAS, The rules dictate how much local governments can charge wireless companies for permits and use of public infrastructure. The fee allowed is far less than it costs to the City of Berkeley to process; and

WHEREAS, The FCC Rules give jurisdictions just 60 days to review a wireless corporation's application for installation of small cell equipment, which is hardly enough time to consider the safety and aesthetic effects of the deployment. Applications that aren't processed within the 60 day period are automatically approved; and

WHEREAS, Wireless companies won't bear the responsibility when things go wrong from the weight of their equipment. Attaching small cells that are the size of a mini-refrigerator to utility poles will make them more vulnerable to falling, posing danger to residents and property, including the increased potential of fires; and

WHEREAS, The City of Berkeley shouldn't be asked to subsidize private commercial development without local oversight. In order to prevent big wireless companies from sidelining local jurisdictions, Congress must act.

NOW THEREFORE, BE IT RESOLVED by the City of Berkeley that it fully supports S.2012 "Restoring Local Control Over Public Infrastructure Act of 2019" (Feinstein)

BE IT FURTHER RESOLVED that the Berkeley City Council appreciates Senator Feinstein's leadership on this item and Senator Harris' co-sponsorship.

116TH CONGRESS  
1ST SESSION

# S. 2012

To provide that certain regulatory actions by the Federal Communications Commission shall have no force or effect.

IN THE SENATE OF THE UNITED STATES  
JUNE 27, 2019

Mrs. FEINSTEIN (for herself, Mr. SCHUMER, Ms. HARRIS, Mr. BENNET, Mr. WYDEN, Mr. CARDIN, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

**A BILL**

To provide that certain regulatory actions by the Federal Communications Commission shall have no force or effect.

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

**3 SECTION 1. SHORT TITLE.**

*4 This Act may be cited as the “Restoring Local Con-*  
*5 trol Over Public Infrastructure Act of 2019”.*

**6 SEC. 2. DEFINITION.**

*7 In this Act, the term “Commission” means the Fed-*  
*8 eral Communications Commission.*

2

**1 SEC. 3. PRESERVATION OF RIGHTS OF STATE AND LOCAL  
2 GOVERNMENTS.**

3 The following regulatory actions of the Commission  
4 shall have no force or effect:

5 (1) The Declaratory Ruling in the “Third Re-  
6 port and Order and Declaratory Ruling in the mat-  
7 ter of Accelerating Wireline Broadband Deployment  
8 by Removing Barriers to Infrastructure Investment  
9 and Accelerating Wireless Broadband Deployment  
10 by Removing Barriers to Infrastructure Investment”  
11 adopted by the Commission on August 2, 2018  
12 (FCC 18–111).

13 (2) The “Declaratory Ruling and Third Report  
14 and Order in the matter of Accelerating Wireless  
15 Broadband Deployment by Removing Barriers to In-  
16 frastructure Investment and Accelerating Wireline  
17 Broadband Deployment by Removing Barriers to In-  
18 frastructure Investment” adopted by the Commis-  
19 sion on September 26, 2018 (FCC 18–133).

20 (3) The rule adopted by the Commission enti-  
21 tled “Accelerating Wireless and Wireline Broadband  
22 Deployment by Removing Barriers to Infrastructure  
23 Investment” (83 Fed. Reg. 51867 (October 15,  
24 2018)).

Æ

**Media Contact:**

Cecilia Sulhoff, (202) 418-0587  
cecilia.sulhoff@fcc.gov

**For Immediate Release**

**FCC FACILITATES DEPLOYMENT OF WIRELESS  
INFRASTRUCTURE FOR 5G CONNECTIVITY**

***Action Removes Regulatory Barriers to Infrastructure  
Investment***

WASHINGTON, September 26, 2018—Today, the Federal Communications Commission took another important step in its ongoing efforts to remove regulatory barriers that inhibit the deployment of infrastructure necessary for 5G and other advanced wireless services. This action, which builds upon those already taken by states and localities to streamline deployment, underscores the FCC's commitment to ensuring that the United States wins the global race to 5G.

The first part of the Commission's decision, a Declaratory Ruling, focuses primarily on local fees for the authorizations necessary to deploy small wireless facilities. Specifically, the Declaratory Ruling:

- 1 Explains when a state or local regulation of wireless infrastructure deployment constitutes an effective prohibition of service prohibited by Sections 253 or 332(c)(7) of the Communications Act;
- 2 Concludes that Section 253 and 332(c)(7) limit state and local governments to charging fees that are no greater than a reasonable approximation of objectively reasonable costs for processing applications and for managing deployments in the rights-of-way.
- 3 Removes uncertainty by identifying specific fee levels for small wireless facility deployments that presumably comply with the relevant standard; and
- 4 Provides guidance on when certain state and local non-fee requirements that are allowed under the Act—such as aesthetic and undergrounding requirements—may constitute an effective prohibition of service.

The second part of the Commission's decision, the Third Report & Order in the Wireless Infrastructure Docket:

- 5 Establishes two new shot clocks for small wireless facilities (60 days for collocation on preexisting structures and 90 days for new builds);
- 6 Codifies the existing 90 and 150 day shot clocks for wireless facility deployments that do not qualify as small cells that were established in 2009;
- 7 Concludes that all state and local government authorizations necessary for the deployment of personal wireless service infrastructure are subject to those shot clocks; and
- 8 Adopts a new remedy for missed shot clocks by finding that a failure to act within the new small wireless facility shot clock constitutes a presumptive prohibition on the provision of services.

Action by the Commission September 26, 2018 by Declaratory Ruling and Report and Order (FCC 18-133). Chairman Pai, Commissioners O’Rielly and Carr approving. Commissioner Rosenworcel approving in part and dissenting in part. Chairman Pai, Commissioners O’Rielly, Carr, and Rosenworcel issuing separate statements.

WT Docket No. 17-79; WC Docket No. 17-84

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*This is an unofficial announcement of Commission Action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974)*





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
February 25, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Susan Wengraf  
Subject: Support for SB-431, SB-801 and SB-802 (McGuire and Glazer)

RECOMMENDATION

Adopt a resolution in support of three bills which aim to protect people whose lives could be endangered without use of needed electrical resources during PG&E's Public Safety Power Shut-offs. Send the resolution to California Senators Mike McGuire, Steve Glazer, Nancy Skinner and Buffy Wicks. The bills are:

- 1) [SB-431](#) Mobile telephony service base transceiver station towers: performance reliability standards (McGuire & Glazer)
- 2) [SB-801](#) Electrical corporations: wildfire mitigation plans: deenergization: public safety protocol (McGuire & Glazer)
- 3) [SB-802](#) Emergency backup generators: health facilities: permit operating condition exclusion (Glazer)

FINANCIAL IMPLICATIONS

None

BACKGROUND

PG&E and other utilities are working to improve their ability to provide power without fire risk during high wind and low moisture conditions. In the meantime, PG&E will continue to impose the Public Safety Power Shut-off program. These bills are vital to help residents deal with power outages.

SB-431 will require mobile phone companies to provide at least 72 hours of back-up power on their towers. Cell phones are lifelines in emergencies. Californians learned during the Public Safety Power Shut Offs that many cell towers were inoperable, leaving large numbers of people without access to receiving emergency notifications, or the ability to call for help.

SB-801 will require that utilities provide back-up battery packs to **all** customers whose lives would be endangered by an extended, deliberate power outage. PG&E alone has over 10,000 people signed up for the “medical baseline” designation, meaning they depend on electricity for their health. However PG&E had only about 500 back-up battery packs to distribute to their medical baseline customers during last years’ Public Safety Power Shut-offs, just a tiny percentage of the need. This legislation will mandate PG&E to provide emergency power to those whose lives depend on it.

SB-802 clarifies state laws and regulations so that hospitals don’t need to shut down generators during an extended outage. Hospitals are currently allowed to run their diesel-powered generators without limits during a declared disaster. But most local air pollution districts have limits on how many hours a generator can run. Many hospitals are concerned that those limits apply even during a Public Safety Power Shut-off. Hospitals need to run their generators so they can take care of patients without fearing fines or other air quality regulation penalties.

ENVIRONMENTAL SUSTAINABILITY

Protecting people whose lives could be endangered without use of needed electrical resources supports the city’s efforts to provide a healthy and environmentally sustainable community.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

- 1: Resolution
- 2: SB-431
- 3: SB-801
- 4: SB-802



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

City of Berkeley Supports SB-431, SB-801 and SB-802

WHEREAS, PG&E's Public Safety Shut-offs have demonstrated the need for legislation to protect lives that could be endangered without access to electrical resources: and

WHEREAS, SB-801 requires all California utility companies to provide back-up battery packs to all customers whose lives would be endangered by an extended, deliberate power outage; and

WHEREAS, SB-802 clarifies that hospitals can run back-up diesel generators for the duration of a planned utility power shut-off even if the governor has not declared a disaster or state emergency; and

WHEREAS, SB-431 requires mobile phone companies to provide at least 72 hours of back-up power on their towers, and

WHEREAS, SB 801, SB 802 and SB 431 are critical state bills that will help protect Berkeley residents during PG&E's Public Safety Shut-offs and during other emergencies.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it fully supports Senators Steve Glazer and Mike McGuire's bills: SB-801 Electrical corporations: wildfire mitigation plans: deenergization: public safety protocol; SB-802 Emergency backup generators: health facilities; permit operating condition exclusion; and SB-431 Mobile telephony service base transceiver station towers: performance reliability standards.

AMENDED IN ASSEMBLY JUNE 12, 2019

**SENATE BILL No. 431**

**Introduced by Senator McGuire**

February 21, 2019

An act to ~~amend Section 2146 of the Elections Code, add Section 776.2 to the Public Utilities Code, relating to elections.~~ *communications.*

legislative counsel's digest

SB 431, as amended, McGuire. ~~Elections: voter registration forms.~~ *Mobile telephony service base transceiver station towers: performance reliability standards.*

*Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to develop and implement performance reliability standards for backup power systems installed on the property of residential and small commercial customers by a facilities-based provider of telephony services upon determining that the benefits of the standards exceed the costs.*

*This bill would require the commission, in consultation with the Office of Emergency Services, to develop and implement performance reliability standards, as specified, for all mobile telephony service base transceiver station towers, commonly known as "cell towers," located within a commission-designated Tier 2 or Tier 3 High Fire Threat District.*

*Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.*

*Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission*

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**SB 431 — 2 —**

*implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.*

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

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law requires the Secretary of State to annually provide every high school, community college, and California State University and University of California campus with voter registration forms, and to provide additional forms to a school, free of charge, if so requested by the school.~~

~~This bill would require the Secretary of State to provide additional forms requested by a school within 30 days.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.

State-mandated local program: ~~no~~-yes.

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

1     SECTION 1. Section 776.2 is added to the Public Utilities  
2     Code, to read:  
3     776.2. (a) The commission, in consultation with the Office of  
4     Emergency Services, shall develop and implement performance  
5     reliability standards for all mobile telephony service base  
6     transceiver station towers located within a commission-designated  
7     Tier 2 or Tier 3 High Fire Threat District. Those standards shall  
8     do both of the following:  
9     (1) Establish a minimum operating life for backup power systems  
10    of no less than 48 hours.  
11    (2) Establish means to warn a customer when the backup power  
12    system is low or when the transceiver system can no longer be  
13    supported by the backup power system.  
14    (b) In developing and implementing any standards pursuant to  
15    subdivision (a), the commission shall consider current best  
16    practices and technical feasibility for establishing backup power  
17    system requirements.  
18    (c) The commission shall collect data necessary to identify the  
19    mobile telephony service base transceiver station infrastructure

— 3 — SB 431

1 that shall be subject to the performance reliability standards  
2 adopted pursuant to subdivision (a).

3 (d) The commission may require a mobile telephony services  
4 provider to collect and forward to the commission any relevant  
5 information that may be useful to the commission’s development  
6 or implementation of performance reliability standards pursuant  
7 to this section.

8 SEC. 2. No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution because  
10 the only costs that may be incurred by a local agency or school  
11 district will be incurred because this act creates a new crime or  
12 infraction, eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section 17556 of  
14 the Government Code, or changes the definition of a crime within  
15 the meaning of Section 6 of Article XIII B of the California  
16 Constitution.

17 SECTION 1. Section 2146 of the Elections Code is amended  
18 to read:

19 2146. (a) The Secretary of State shall annually provide every  
20 high school, community college, and California State University  
21 and University of California campus with voter registration forms.  
22 The Secretary of State shall provide additional forms to a school,  
23 free of charge, within 30 days of receiving a request for additional  
24 forms.

25 (b) The Secretary of State shall provide a written notice with  
26 each registration form describing eligibility requirements and  
27 informing each student that they may return the completed form  
28 in person or by mail to the elections official of the county in which  
29 the student resides or to the Secretary of State.

30 (c) (1) (A) Every community college and California State  
31 University campus that operates an automated class registration  
32 system on or before January 1, 2008, shall, through an automated  
33 program, in coordination with the Secretary of State, permit  
34 students, during the class registration process, to apply to register  
35 to vote online by submitting an affidavit of voter registration  
36 electronically on the internet website of the Secretary of State.

37 (B) A community college or California State University campus  
38 that does not operate an automated class registration system on or  
39 before January 1, 2008, shall, within two years of implementing  
40 an automated class registration system, through an automated

1 program in coordination with the Secretary of State, permit  
 2 students, during the class registration process, to apply to register  
 3 to vote online by submitting an affidavit of voter registration  
 4 electronically on the internet website of the Secretary of State.

5 (2) As soon as a community college or California State  
 6 University or University of California campus complies with  
 7 paragraph (1), the Secretary of State may continue, at their  
 8 discretion, to provide the campus with voter registration forms  
 9 unless the campus requests not to receive the voter registration  
 10 forms.

11 (3) The University of California is encouraged to comply with  
 12 this subdivision.

13 (d) The Secretary of State shall submit to the Legislature, on or  
 14 before January 1 of each year, a report on its student voter  
 15 registration efforts pursuant to this article. This report shall include  
 16 estimates as to how many voter registration forms were sent to  
 17 high schools, community colleges, and California State University  
 18 and University of California campuses; how many voter registration  
 19 forms were submitted; and how many electronic affidavits of voter  
 20 registration were submitted by students pursuant to subdivision  
 21 (c).

22 (e) It is the intent of the Legislature that every eligible high  
 23 school and college student receive a meaningful opportunity to  
 24 apply to register to vote. It is also the intent of the Legislature that  
 25 every school do all in its power to ensure that students are provided  
 26 the opportunity and means to apply to register to vote. This may  
 27 include providing voter registration forms at the start of the school  
 28 year, including voter registration forms with orientation materials;  
 29 placing voter registration forms at central locations, including voter  
 30 registration forms with graduation materials; or providing  
 31 hyperlinks to, and the internet website address of, the Secretary  
 32 of State's electronic voter registration system in notices sent by  
 33 electronic mail to students and placed on the internet website of  
 34 the high school, college, or university.

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## SENATE BILL No. 801

Introduced by Senators Glazer and McGuire

(Principal coauthor: Assembly Member Bauer-Kahan)

(Coauthors: Senators Dodd, Hill, Nielsen, Stern, and Wilk)

January 7, 2020

An act to amend Section 8386 of the Public Utilities Code, relating to electricity.

legislative counsel's digest

SB 801, as introduced, Glazer. Electrical corporations: wildfire mitigation plans: deenergization: public safety protocol.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law requires each electrical corporation to annually prepare and submit a wildfire mitigation plan to the commission for review and approval, as specified. Following approval, the commission is required to oversee compliance with the plans. Existing law requires a wildfire mitigation plan of an electrical corporation to include, among other things, protocols for deenergizing portions of the electrical distribution system that consider the associated impacts on public safety. As part of these protocols, an electrical corporation is required to include protocols related to mitigating the public safety impacts of deenergizing portions of the electrical distribution system that consider customers that receive medical baseline allowances. Existing law authorizes an electrical corporation to deploy backup electrical resources or provide financial assistance for backup electrical resources to a customer receiving a medical baseline allowance if the customer meets specified conditions. This bill would require an electrical corporation to deploy backup electrical resources or provide financial assistance for backup electrical

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resources to a customer receiving a medical baseline allowance if the customer meets those conditions.

Under existing law, a violation of any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because this bill would add additional requirements to an electrical corporation’s wildfire mitigation plan that would be approved and overseen by the commission and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

20 SECTION 1. Section 8386 of the Public Utilities Code is  
21 amended to read:  
22 8386. (a) Each electrical corporation shall construct, maintain,  
23 and operate its electrical lines and equipment in a manner that will  
24 minimize the risk of catastrophic wildfire posed by those electrical  
25 lines and equipment.  
26 (b) Each electrical corporation shall annually prepare and submit  
27 a wildfire mitigation plan to the Wildfire Safety Division for review  
28 and approval. In calendar year 2020, and thereafter, the plans shall  
29 cover at least a three-year period. The division shall establish a  
30 schedule for the submission of subsequent comprehensive wildfire  
31 mitigation plans, which may allow for the staggering of compliance  
32 periods for each electrical corporation. In its discretion, the division  
33 may allow the annual submissions to be updates to the last  
34 approved comprehensive wildfire mitigation plan; provided, that  
35 each electrical corporation shall submit a comprehensive wildfire  
36 mitigation plan at least once every three years.  
37 (c) The wildfire mitigation plan shall include all of the  
38 following:

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41 (1) An accounting of the responsibilities of persons responsible  
42 for executing the plan.

43 (2) The objectives of the plan.

44 (3) A description of the preventive strategies and programs to  
45 be adopted by the electrical corporation to minimize the risk of its  
46 electrical lines and equipment causing catastrophic wildfires,  
47 including consideration of dynamic climate change risks.

48 (4) A description of the metrics the electrical corporation plans  
49 to use to evaluate the plan's performance and the assumptions that  
50 underlie the use of those metrics.

51 (5) A discussion of how the application of previously identified  
52 metrics to previous plan performances has informed the plan.

53 (6) Protocols for disabling reclosers and deenergizing portions  
54 of the electrical distribution system that consider the associated  
55 impacts on public safety. As part of these protocols, each electrical  
56 corporation shall include protocols related to mitigating the public  
57 safety impacts of disabling reclosers and deenergizing portions of  
58 the electrical distribution system that consider the impacts on all  
59 of the following:

60 (A) Critical first responders.

61 (B) Health and communication infrastructure.

62 (C) Customers who receive medical baseline allowances  
63 pursuant to subdivision (c) of Section 739. The electrical  
64 corporation ~~may~~ shall deploy backup electrical resources or provide  
65 financial assistance for backup electrical resources to a customer  
66 receiving a medical baseline allowance for a customer who meets  
67 all of the following requirements:

68 (i) The customer relies on life-support equipment that operates  
69 on electricity to sustain life.

70 (ii) The customer demonstrates financial need, including through  
71 enrollment in the California Alternate Rates for Energy program  
72 created pursuant to Section 739.1.

73 (iii) The customer is not eligible for backup electrical resources  
74 provided through medical services, medical insurance, or  
75 community resources.

76 (D) Subparagraph (C) shall not be construed as preventing an  
77 electrical corporation from deploying backup electrical resources  
78 or providing financial assistance for backup electrical resources  
79 under any other authority.

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21 (7) Appropriate and feasible procedures for notifying a customer  
22 who may be impacted by the deenergizing of electrical lines,  
23 including procedures for those customers receiving a medical  
24 baseline allowance as described in paragraph (6). The procedures  
25 shall direct notification to all public safety offices, critical first  
26 responders, health care facilities, and operators of  
27 telecommunications infrastructure with premises within the  
28 footprint of potential deenergization for a given event.

29 (8) Plans for vegetation management.

30 (9) Plans for inspections of the electrical corporation's electrical  
31 infrastructure.

32 (10) Protocols for the deenergization of the electrical  
33 corporation's transmission infrastructure, for instances when the  
34 deenergization may impact customers who, or entities that, are  
35 dependent upon the infrastructure.

36 (11) A list that identifies, describes, and prioritizes all wildfire  
37 risks, and drivers for those risks, throughout the electrical  
38 corporation's service territory, including all relevant wildfire risk  
39 and risk mitigation information that is part of the Safety Model  
40 Assessment Proceeding and the Risk Assessment Mitigation Phase  
41 filings. The list shall include, but not be limited to, both of the  
42 following:

43 (A) Risks and risk drivers associated with design, construction,  
44 operations, and maintenance of the electrical corporation's  
45 equipment and facilities.

46 (B) Particular risks and risk drivers associated with topographic  
47 and climatological risk factors throughout the different parts of  
48 the electrical corporation's service territory.

49 (12) A description of how the plan accounts for the wildfire risk  
50 identified in the electrical corporation's Risk Assessment  
51 Mitigation Phase filing.

52 (13) A description of the actions the electrical corporation will  
53 take to ensure its system will achieve the highest level of safety,  
54 reliability, and resiliency, and to ensure that its system is prepared  
55 for a major event, including hardening and modernizing its  
56 infrastructure with improved engineering, system design, standards,  
57 equipment, and facilities, such as undergrounding, insulation of  
58 distribution wires, and pole replacement.

59 (14) A description of where and how the electrical corporation  
60 considered undergrounding electrical distribution lines within those

35 areas of its service territory identified to have the highest wildfire  
36 risk in a commission fire threat map.

37 (15) A showing that the electrical corporation has an adequately  
38 sized and trained workforce to promptly restore service after a  
39 major event, taking into account employees of other utilities  
40 pursuant to mutual aid agreements and employees of entities that  
41 have entered into contracts with the electrical corporation.

42 (16) Identification of any geographic area in the electrical  
43 corporation's service territory that is a higher wildfire threat than  
44 is currently identified in a commission fire threat map, and where  
45 the commission should consider expanding the high fire threat  
46 district based on new information or changes in the environment.

47 (17) A methodology for identifying and presenting  
48 enterprisewide safety risk and wildfire-related risk that is consistent  
49 with the methodology used by other electrical corporations unless  
50 the commission determines otherwise.

51 (18) A description of how the plan is consistent with the  
52 electrical corporation's disaster and emergency preparedness plan  
53 prepared pursuant to Section 768.6, including both of the following:

54 (A) Plans to prepare for, and to restore service after, a wildfire,  
55 including workforce mobilization and prepositioning equipment  
56 and employees.

57 (B) Plans for community outreach and public awareness before,  
58 during, and after a wildfire, including language notification in  
59 English, Spanish, and the top three primary languages used in the  
60 state other than English or Spanish, as determined by the  
61 commission based on the United States Census data.

62 (19) A statement of how the electrical corporation will restore  
63 service after a wildfire.

64 (20) Protocols for compliance with requirements adopted by  
65 the commission regarding activities to support customers during  
66 and after a wildfire, outage reporting, support for low-income  
67 customers, billing adjustments, deposit waivers, extended payment  
68 plans, suspension of disconnection and nonpayment fees, repair  
69 processing and timing, access to electrical corporation  
70 representatives, and emergency communications.

71 (21) A description of the processes and procedures the electrical  
72 corporation will use to do all of the following:

73 (A) Monitor and audit the implementation of the plan.

(B) Identify any deficiencies in the plan or the plan's

2 implementation and correct those deficiencies.

3 (C) Monitor and audit the effectiveness of electrical line and  
4 equipment inspections, including inspections performed by  
5 contractors, carried out under the plan and other applicable statutes  
6 and commission rules.

7 (22) Any other information that the Wildfire Safety Division  
8 may require.

9 (d) The Wildfire Safety Division shall post all wildfire  
10 mitigation plans and annual updates on the commission's internet  
11 website for no less than two months before the division's decision  
12 regarding approval of the plan. The division shall accept comments  
13 on each plan from the public, other local and state agencies, and  
14 interested parties, and verify that the plan complies with all  
15 applicable rules, regulations, and standards, as appropriate.

16 SEC. 2. No reimbursement is required by this act pursuant to  
17 Section 6 of Article XIII B of the California Constitution because  
18 the only costs that may be incurred by a local agency or school  
19 district will be incurred because this act creates a new crime or  
20 infraction, eliminates a crime or infraction, or changes the penalty  
21 for a crime or infraction, within the meaning of Section 17556 of  
22 the Government Code, or changes the definition of a crime within  
23 the meaning of Section 6 of Article XIII B of the California  
24 Constitution.

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**SENATE BILL No. 802****Introduced by Senator Glazer**

(Principal coauthor: Assembly Member Bauer-Kahan)

**(Coauthors: Senators Dodd, Hill, Nielsen, and Wilk)**

January 7, 2020

An act to add Article 9.3 (commencing with Section 42000) to Chapter 3 of Part 4 of Division 26 of the Health and Safety Code, and to amend Section 8385 of, and to add Section 8386.7 to, the Public Utilities Code, relating to nonvehicular air pollution.

## legislative counsel's digest

SB 802, as introduced, Glazer. Emergency backup generators: health facilities: permit operating condition exclusion.

Existing law imposes various limitations on emissions of air contaminants for the control of air pollution from vehicular and nonvehicular sources. Existing law generally designates air pollution control and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law requires the State Air Resources Board to identify toxic air contaminants that are emitted into the ambient air of the state and to establish airborne toxic control measures to reduce emissions of toxic air contaminants from nonvehicular sources.

This bill would require an air district to adopt a rule or revise its existing rules, consistent with federal law, to allow a health facility that has received a permit from the district to construct and operate an emergency backup generator to use that emergency backup generator during a deenergization event without having that usage count toward any time limitation on actual usage and routine testing and maintenance included as a condition for issuance of that permit. By requiring air

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**SB 802 — 2 —**

districts to adopt or revise its rules, the bill would impose a state-mandated local program.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, while local publicly owned electric utilities are under the direction of their governing boards. Electrical cooperatives are subject to the regulatory authority of the commission, except as specified. Existing law requires each electrical corporation to annually prepare and submit a wildfire mitigation plan to the commission for review and approval, as specified. Following approval, the commission is required to oversee compliance with the plans. Existing law requires each local publicly owned electric utility and electrical cooperative to annually prepare a wildfire mitigation plan and to verify that the wildfire mitigation plan complies with all applicable rules, regulations, and standards, as appropriate. Existing law requires a wildfire mitigation plan of an

electrical corporation to include, among other things, protocols for deenergizing portions of the electrical distribution system that consider the associated impacts on public safety, as well as protocols related to mitigating the public safety impacts of those protocols, including impacts on critical first responders and on health and communications infrastructure. Existing law requires a wildfire mitigation plan of an electrical corporation to also include appropriate and feasible procedures for notifying a customer who may be impacted by the deenergizing of electrical lines and requires these procedures to consider the need to notify, as a priority, critical first responders, health care facilities, and operators of telecommunications infrastructure with premises within the footprint of a potential deenergization event. Existing law requires that an electrical cooperative and a local publicly owned electric utility consider these matters when developing and implementing a wildfire mitigation plan.

If an electrical corporation, electrical cooperative, or local publicly owned electric utility has undertaken a deenergization event during a calendar year, this bill would require the electrical corporation, electrical cooperative, or local publicly owned electric utility, by January 30 of the following calendar year, to submit a report with specified information to each air quality management district and air pollution control district affected by the deenergization event.

Under existing law, a violation of any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because this bill would require action by the commission to implement its requirements, and a violation of that action would be a crime, the

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bill would impose a state-mandated local program by creating a new crime. By requiring local publicly owned electric utilities to report matters to air quality management districts and air pollution control districts the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for specified reasons.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

39 SECTION 1. Article 9.3 (commencing with Section 42000) is  
40 added to Chapter 3 of Part 4 of Division 26 of the Health and Safety  
41 Code, to read:

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5 Article 9.3. Emergency Backup Generators 6

80 42000. For purposes of this article, the following terms apply:

81 (a) “Deenergization event” means the proactive interruption of  
82 electrical service for the purpose of mitigating or avoiding the risk  
83 of causing a wildfire.

84 (b) “Electrical corporation” has the same meaning as defined  
85 in Section 218 of the Public Utilities Code.

86 (c) “Emergency backup generator” means a device used for the  
87 generation of electricity for emergency use that is subject to the  
88 State Air Resources Board’s Airborne Toxic Control Measure for  
89 Stationary Compression Ignition Engines (Section 93115.1 of Title  
90 17 of the California Code of Regulations, and following). For these  
91 purposes, “emergency use” has the same meaning as defined in  
92 Section 93115.4 of Title 17 of the California Code of Regulations.

93 (d) “Health facility” has the same meaning as defined in  
Section 21 1250.

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61 (e) “Local publicly owned electric utility” has the same meaning  
62 as defined in Section 224.3 of the Public Utilities Code.

63 (f) “Permit” means a permit issued by the district pursuant to  
64 Article 1 (commencing with Section 42300) of Chapter 4.

65 42001. Consistent with federal law, a district shall adopt a rule,  
66 or revise its existing rules, to allow a health facility that has  
67 received a permit from the district to construct and operate an  
68 emergency backup generator to use that emergency backup  
69 generator during a deenergization event without having that usage  
70 count toward any time limitation on actual usage and routine testing  
71 and maintenance included as a condition for issuance of that permit.  
72 For a health facility that receives notice of a planned deenergization  
73 event, whether made specifically to the facility or made generally  
74 to the public, the period of permissible use exempt from the time  
75 limitation on actual usage shall encompass the period commencing  
76 when the health facility is notified that the deenergization will or  
77 will likely commence, and concluding when the health facility  
78 receives notification, whether specific or general, that reliable  
79 electrical service has been restored.

80 SEC. 2. Section 8385 of the Public Utilities Code is amended  
81 to read:

82 8385. (a) For purposes of this chapter, the following shall  
83 apply:

84 (1) “Compliance period” means a period of approximately one  
85 year.

86 (2) “Deenergization event” means the proactive interruption  
87 of electrical service for the purpose of mitigating or avoiding the

88 *risk of causing a wildfire.*

29 (2)

74 (3) "Electrical cooperative" has the same meaning as defined  
75 in Section 2776.

76 (b) The commission shall supervise an electrical corporation's  
77 compliance with the requirements of this chapter pursuant to the  
78 Public Utilities Act (Part 1 (commencing with Section 201) of  
79 Division 1). Nothing in this chapter affects the commission's  
80 authority or jurisdiction over an electrical cooperative or local  
81 publicly owned ~~electrical corporation.~~ *electric utility.*

82 SEC. 3. Section 8386.7 is added to the Public Utilities Code,  
83 to read:

99

8386.7. If an electrical corporation, electrical cooperative, or  
25 local publicly owned electric utility has undertaken a  
26 deenergization event during a calendar year, the electrical utility  
27 shall submit a report, by January 30 of the following calendar year,  
28 to each air quality management district and air pollution control  
29 district affected by the deenergization event that includes all of  
30 the following:

31 (a) A description of the area affected by the deenergization  
32 event.

33 (b) A description of when the deenergization event began and  
34 when reliable electrical service was restored.

35 (c) A description of any notifications specifically provided to  
36 health care facilities that they would or would likely be affected  
37 by a deenergizing of electrical lines and when the deenergization  
38 event would likely begin or, absent specific notification, any  
39 notifications made generally to the public of when the  
40 deenergization event would or would likely commence.

41 (d) A description of any notifications specifically provided to  
42 health care facilities that reliable electrical service has been restored  
43 or, absent specific notification, any notifications made generally  
44 to the public that reliable electrical service has been restored.

45 SEC. 4. No reimbursement is required by this act pursuant to  
46 Section 6 of Article XIII B of the California Constitution for certain  
47 mandates because a local agency or school district has the authority  
48 to levy service charges, fees, or assessments sufficient to pay for  
49 the program or level of service mandated by this act or because  
50 costs that may be incurred by a local agency or school district will  
51 be incurred because this act creates a new crime or infraction,  
52 eliminates a crime or infraction, or changes the penalty for a crime  
53 or infraction, within the meaning of Section 17556 of the  
54 Government Code, or changes the definition of a crime within the  
55 meaning of Section 6 of Article XIII B of the California  
56 Constitution.

57 With respect to other mandates, if the Commission on State  
58 Mandates determines that this act contains costs mandated by the  
59 state, reimbursement to local agencies and school districts for those  
60 costs shall be made pursuant to Part 7 (commencing with Section  
61 17500) of Division 4 of Title 2 of the Government Code.

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Office of the Mayor

ACTION CALENDAR

February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín, Councilmembers Cheryl Davila, Kate Harrison, Ben Bartlett

Subject: Ronald V. Dellums Fair Chance Access to Housing Ordinance; Adding BMC Chapter 13.106

RECOMMENDATION

1. Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing Ordinance, adding Berkeley Municipal Code Chapter 13.106 and;
2. Direct the City Manager to take all necessary steps to implement this chapter including but not limited to developing administrative regulations in consultation with all relevant City Departments including the Rent Stabilization Board, preparing an annual implementation budget, designating hearing officers and other necessary staffing for administrative complaint, exploring the development of a compliance testing program similar to that used by the Seattle Office of Civil Rights, developing timelines and procedures for complaints, conducting outreach and education in partnership with the Alameda County Fair Chance Housing Coalition, and referring program costs to the June budget process.

POLICY COMMITTEE RECOMMENDATION

On November 7, 2019, the Land Use, Housing, and Economic Development Committee adopted the following action: M/S/C (Droste/Hahn) to move the item with amendments and subject to additional technical revisions with a positive recommendation. Vote: All Ayes.

BACKGROUND

The City of Berkeley, along with other California urban areas, has seen an unprecedented increase in homelessness, with dire public health and safety consequences. This proposed Fair Chance Housing Ordinance serves as critical strategy to house currently unhoused people and also prevent more people from becoming homeless.

Structural barriers faced by formerly incarcerated people continue to exist, with the persistent use of criminal records blocking housing opportunities for many. A lack of access to stable housing increases the risk of recidivism, furthering the cycle caused by an inequitable criminal justice system. A 2019 survey by UC Berkeley's Goldman

School for Public Policy found that a third of formerly incarcerated Alameda County residents had experienced homelessness or housing insecurity, and 54% had been denied either housing or the opportunity to live with a family member because of their criminal record.

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

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

The Fair Chance Ordinance was moved to the Land Use, Housing and Economic Committee where it was first discussed on July 18, 2019. The ordinance was discussed in depth over the course of five committee meetings. Several key amendments were accepted by the author and advocates based on input from property owners. These noted "exemptions" in the summary section on page four were the result of concerns raised about: (1) small Housing Providers not having access to information and/or the capacity to implement many changes into their existing systems; and (2) owner occupied Housing Providers having special considerations.

On November 7, 2019 the committee took the following action:

*M/S/C (Droste/Hahn) to move the item with amendments and subject to additional technical revisions with a positive recommendation. Vote: All Ayes.*

The final Committee amendments:

- Clarified definitions of "Adverse Action", "Aggrieved Person", "Close Family Member" and "Housing".
- Refined the terms of the exemptions for use of Background Check Reports
- Requested that the City Attorney make technical revisions to ensure appropriate formatting and define the locations where Housing Providers must post notices required under the Ordinance.

Subsequent to the Committee's action, the Mayor reviewed the ordinance to ensure that the language was clear and also compared our ordinance to the recently adopted Oakland Fair Chance Ordinance and has proposed new clarifying changes.

**SUMMARY**

As research and lived experience demonstrate, formerly incarcerated people experience significant barriers beyond the high cost of rent that prevent them from securing housing. They are screened out when applying to rent housing due to criminal background checks in private rental, nonprofit affordable housing, and public housing units. Even living with family members is not always a viable solution as it may put their family’s housing at risk-- rental agreements may prohibit or limit people with criminal histories from residing in the units. Fair Chance Housing is legislation that prohibits the use of criminal histories for most offenses in determining access to housing. It also bans the use of advertising language that excludes people with arrest records, conviction records, or criminal history. In short, Fair Chance Housing legislation removes structural barriers to housing and enables landlords to consider the merits of individual housing applications—providing people with a fair chance.

Led by Just Cities/the Dellums Institute for Social Justice, The Alameda County Fair Chance Housing Coalition has been working to remove such structural exclusionary barriers for people coming home from prison. The purposes of the Fair Chance Housing Ordinance are to: (1) increase access to housing for formerly incarcerated individuals and their family members; (2) reduce the homelessness and family separation that result from blanket exclusion of housing applicants based solely on criminal background checks; (3) reduce recidivism by removing structural barriers to stable housing; (4) provide formerly incarcerated people with a fair opportunity to reclaim their lives and effectively reintegrate into the Berkeley community; and (5) maintain existing safeguards for owners.

*The table below summarizes the main policy terms organized by the type of housing provider.*

| Housing Provider                          | Criminal Background Check                                              | Due Process                    | Reporting to City                  | Potential Remedies for Violations                                     |
|-------------------------------------------|------------------------------------------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------------------------|
| Private (Non-Affordable Housing Provider) | No                                                                     | City Complaint or Sue in Court | None                               | City complaint w/ fine. Court action w/ damages or injunctive relief. |
| Publicly Subsidized & Not HUD Funded      | No                                                                     | City Complaint or Sue in Court | Annual certification of compliance | City complaint w/ fine. Court action w/ damages or injunctive relief. |
| HUD Funded                                | Following due process protections, can check on 2 crimes per HUD rules | City Complaint or Sue in Court | Annual certification of compliance | City complaint w/ fine. Court action w/ damages or injunctive relief. |

*ORDINANCE PROHIBITIONS:*

The proposed ordinance prohibits ALL landlords from:

- (a) Advertising or using a policy that automatically excludes people with criminal histories from rental housing,
- (b) Asking about or requiring disclosure of someone's criminal history, or
- (c) Taking adverse action against an applicant or tenant based on his or her criminal history.

*EXEMPTIONS:*

- The following properties where the owner occupies the property are exempt from the ordinance: permitted ADUs, single family homes, duplexes, and triplexes.
- Property owners renting their primary dwelling when they are on sabbatical.
- Tenants renting out available bedrooms in the unit in which they reside.
- Pursuant to State law, landlords can review and consider whether an applicant is on the State operated registry of lifetime sex offenders in order to protect the safety of at risk people. This review should happen after a conditional offer has been made and upon receipt of written consent of the applicant. If a housing denial is based upon the registry information, the landlord must provide that information to the applicant and provide the applicant with the opportunity to rebut or provide mitigating information.
- Landlords of HUD funded housing have a partial exemption from the ordinance if they are complying with federal regulations that require them to automatically exclude tenants based on certain types of criminal history (lifetime sex offender registration requirement or making meth on a federally assisted housing property). However, the landlord should follow due process protections including obtaining written consent from the applicant. The landlord must also provide the background check information to the applicant and provide the applicant with the opportunity to rebut or provide mitigating information.

CURRENT SITUATION AND ITS EFFECTS

Information below is based upon research conducted by the Just Cities Team, former senior government officials and academic researchers. The Just Cities Policy Justice Memo is included in Attachment 2.

**SUMMARY OF FLAWS WITH CRIMINAL BACKGROUND DATABASE SYSTEMS**

Research shows that government repositories of criminal records are routinely incomplete, thus making commercial criminal background reports inaccurate and/or misleading. In 2006, the U.S. Department of Justice (DOJ) found that an estimated 50% of FBI arrest records, which are used by many background check companies, were missing information on the final disposition of the cases in question.<sup>1</sup> In 2016, the DOJ found that an estimated 32% of records in state criminal history repositories were missing final disposition data.<sup>2</sup> Incomplete data at the state and federal levels undermine the fairness and accuracy of commercial criminal background reports, which rely upon governmental data. In particular, out-of-date information about the final disposition of a case means that data about arrests are routinely listed in background reports even when the charges were eventually dropped, reduced, or disproven in court.

The consequences of these database gaps are significant. According to the National Employment Law Project (NELP), “one third of felony arrests do not result in conviction and many others are reduced to misdemeanors.”<sup>3</sup> While industry-wide data on the inaccuracies of commercial criminal background reports are unavailable, the NELP estimates that 1.8 million workers are subject to FBI checks that include faulty or incomplete information each year. Further, many on-line databases accessible through search engines are also inaccurate, even representing persons without criminal records as having been arrested or convicted.

The lack of accurate disposition data is one of many issues that undermine the accuracy of private criminal background reports. According to a review by the National Consumer Law Center, such reports suffer from a range of problems, including: the publication of sealed or expunged records; the misclassification of crimes (e.g. reporting a misdemeanor as a felony); the assignment of crimes to an individual who did not commit them, otherwise known as a “false positive”; and the display of data in a misleading manner (e.g. reporting a single arrest multiple times because it appears in

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<sup>1</sup> U.S. Department of Justice. (2006). *The Attorney General's Report on Criminal History Background Checks*, p. 3.

<sup>2</sup> National Consortium of Justice Statistics. (2018). *Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report*, p. 2.

<sup>3</sup> National Employment Law Project. (2013). *Wanted: Accurate FBI Background Checks for Employment*, pp. 1-2.

multiple databases).<sup>4</sup> Unlike government screens, such commercial background checks are conducted using basic personal information, like names. In the late 1990s, a task force consisting of state and federal agencies found that, compared with fingerprint-based checks, name-based checks resulted in a false-positive rate of 5.5%.<sup>5</sup> This means that around 1 in 20 apparent identifications of a crime was ascribed to a person who did not in fact commit that crime.

### **SUMMARY OF HOUSING ACCESS BARRIERS FOR PEOPLE WITH CRIMINAL RECORDS**

Alameda County service providers and national researchers have documented barriers to access to both private rental and publicly subsidized affordable housing faced by formerly incarcerated residents.<sup>6</sup> Results of a 2019 Goldman School survey and interviews of formerly incarcerated persons in Alameda County found that many formerly incarcerated persons could not stay in public housing with a relative or family member due to public housing rules or were denied private or public rental housing due to their incarceration record.<sup>7</sup> In addition, a recent survey by the Berkeley Property Owners Association found that the majority of landlord survey respondents conducted criminal background checks. We note that persons paroled from incarceration are generally required to be returned to the county of their residence (CA Penal Code 3003); therefore, parolees from this area will be returning home.

### **SUMMARY OF PUBLIC HEALTH & SAFETY IMPACTS FROM HOUSING BARRIERS:**

As the state with the second highest population of people currently in prison or jail in the country,<sup>8</sup> California will need to house formerly incarcerated people as they reenter society in a highly impacted housing market. Alameda County has a total of 7,900 people on probation or parole.<sup>9</sup> Incarceration and lack of housing can lead to severely

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<sup>4</sup> National Consumer Law Center. (2012). *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, p. 15.

<sup>5</sup> National Association of Professional Background Screeners. (2005). *The National Crime Information Center: A Review and Evaluation*, pp. 11-2.

<sup>6</sup> See Corinne Carey, No Second Chance: People with Criminal Records Denied Access to Public Housing, 36 University of Toledo Law Review 545; Caterina Gouvis Roman and Jeremy Travis, Urban Institute, Taking Stock: Housing, Homelessness and Prisoner Re-Entry (2004); and Every Door Closed: Barriers Facing Parents With Criminal Records, CLASP and CLS Report, Chapter 3, “Criminal Records and Subsidized Housing: Families Losing the Opportunity for Decent Shelter”.

<sup>7</sup> Rodriguez, Anthony (2019) “A Just Return Home: Identifying and Removing Barriers to Housing for Formerly Incarcerated Residents Through Suggested Policies for County of Alameda” Report for Just Cities and Goldman School of Public Policy. p.23

<sup>8</sup> California 2017 raw numbers. “State-by-State Data.” The Sentencing Project. Accessed October 4, 2019. <https://www.sentencingproject.org/the-facts/#detail?state1Option=U.S.Total&state2Option=0>

<sup>9</sup> Total population in probation, Q4 2018 “Alameda County Probation Department Data Dashboard”. Alameda County. Accessed October 4, 2019. <https://www.acgov.org/probation/dashboard.htm>.

limited economic opportunity, thereby increasing the chances of recidivism and public safety impacts.

Research has shown that access to stable and affordable housing enables people to successfully re-integrate into society. For example, a study in Maryland<sup>10</sup> found that providing supportive housing to recently released incarcerated persons reduced the chances that they would be rearrested in the first year. A government study conducted in the United Kingdom found that stable housing was associated with a 20% reduction in the chance of being reconvicted.<sup>11</sup>

Extensive research also shows the direct link between incarceration history, homelessness, and health.<sup>12</sup> For example, a recent participatory action research project between Just Cities, The Village, and the UC Berkeley Goldman School for Public Policy's Center for Civility & Democratic Engagement found that 73% of unhoused residents interviewed in Oakland's encampments were formerly incarcerated.<sup>13</sup> Based upon anecdotal and other data, we believe that unhoused people in Berkeley are also disproportionately formerly incarcerated. For example, in the 2017 Point in Time count for Berkeley homeless residents, one of the top six reasons listed for the primary cause of homelessness was incarceration (6% of respondents). In addition, there are an estimated 10 million children nationwide that are impacted by a parent or close relative who are in the criminal justice system.<sup>14</sup> These children suffer from an increased rate of depression, antisocial behavior, drug use, and suicide.<sup>15</sup>

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<sup>10</sup> Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." *Journal of Experimental Criminology* 14, no. 2 (2017): 213–26. <https://doi.org/10.1007/s11292-017-9317-z>.

<sup>11</sup> Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." *Journal of Experimental Criminology* 14, no. 2 (2017): 213–26. <https://doi.org/10.1007/s11292-017-9317-z>.

<sup>12</sup> Roman, Caterina Gouvis, and Jeremy Travis. "Taking Stock: Housing, Homelessness, and Prisoner Reentry." *PsycEXTRA Dataset*, 2004. [http://webarchive.urban.org/UploadedPDF/411096\\_taking\\_stock.pdf](http://webarchive.urban.org/UploadedPDF/411096_taking_stock.pdf) p.7-8

<sup>13</sup> Tsai, Tim. "Standing Together: A Prevention-Oriented Approach to Ending Homelessness in Oakland." <http://bit.ly/HomelessPrevention2019> p.12

<sup>14</sup> Hirsch, Amy E, Sharon M Dietrich, Rue Landau, Peter D Schneider, Irv Ackelsberg, Judith Bernstein-Baker, and Joseph Hohenstein. *Every Door Closed: Barriers Facing Parents with Criminal Records*. Philadelphia, PA: Community Legal Services, Inc, 2002. p.1  
[https://www.clasp.org/sites/default/files/publications/2018/01/every\\_door\\_closed.pdf](https://www.clasp.org/sites/default/files/publications/2018/01/every_door_closed.pdf)

<sup>15</sup> Davis, Laurel, and Rebecca J. Shlafer. "Mental Health of Adolescents with Currently and Formerly Incarcerated Parents." *Journal of Adolescence* 54 (2017): 120–34. <https://doi.org/10.1016/j.adolescence.2016.10.006>.

Shlafer, Rebecca J, Erica Gerrity, Ebony Ruhland, and Marc Wheeler. "Children with Incarcerated Parents – Considering Children's Outcomes in the Context of Complex Family Experiences." *Children, Youth, and Family Consortium*, 2013. <https://www.prisonpolicy.org/scans/umn/June2013ereview.pdf> p.3

**SUMMARY OF RACIAL DISPARITY:**

There is an extreme racial disparity in criminal conviction and incarceration rates, which translates to a racial disparity in access to housing.

There are statistical racial disparities at every stage of the criminal justice system. Research has demonstrated that African Americans are more likely to be stopped by police,<sup>16</sup> prosecuted disproportionately, and punished more harshly than other ethnic groups.<sup>17</sup> As a result, Black men—one third of whom are likely to serve time in prison or jail at some point in their lives—are incarcerated at a rate that is five times that of White men. Racial bias in plea-bargaining, which accounts for the vast majority of new criminal convictions, is a significant source of the disparity in incarceration. In a recent study of more than 48,000 cases in Wisconsin, legal scholar Carlos Berdejó found that White defendants were 25% more likely than Black ones to have their most serious charge either dropped or reduced to a less serious charge.<sup>18</sup> As a result, Whites who were initially charged with a felony were an estimated 15% more likely to end up convicted of a misdemeanor instead. In addition, Whites who were initially charged with a misdemeanor were an estimated 75% more likely to be convicted of a crime carrying no possible incarceration, or not convicted at all.<sup>19</sup>

These disparities are even more acute in California. According to the Public Policy Institute of California, in 2017, African Americans made up 5.6% of the state's adult men but 28.5% of its male prisoners.<sup>20</sup> As a result, Black men were ten times more likely than White men to be incarcerated. Latino men were more than twice as likely as White men to be incarcerated. There were significant disparities among Black women, too, who were five times more likely than White women to be incarcerated.<sup>21</sup> Inequalities in incarceration were driven in part by inequalities in policing. Again, according to the Public Policy Institute of California, Black male residents were three times more likely than White ones to be arrested in 2016.<sup>22</sup>

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<sup>16</sup> "Findings" Stanford Open Policing Project. Accessed October 4, 2019. <https://openpolicing.stanford.edu/findings/>.

<sup>17</sup> Porter, Nicole D., Nazgol Ghandnoosh, Josh Rovner, and Jean Chung. "Racial Disparity." The Sentencing Project, September 30, 2019. <https://www.sentencingproject.org/issues/racial-disparity/>.

<sup>18</sup> Berdejó, Carlos. (2018). [Criminalizing Race: Racial Disparities in Plea-Bargaining](#). *Boston College Law Review*, 59(4), pp. 1189-91.

<sup>19</sup> Berdejó, Carlos. (2018). [Criminalizing Race: Racial Disparities in Plea-Bargaining](#). *Boston College Law Review*, 59(4), pp. 1189-91.

<sup>20</sup> Public Policy Institute of California. (2019). [California's Prison Population](#), p. 1.

<sup>21</sup> Public Policy Institute of California. (2019). [California's Prison Population](#), p. 1.

<sup>22</sup> Public Policy Institute of California. (2019). [Racial Disparities in California Arrests](#), p. 1.



Here in Alameda County, 48% of probationers are African American<sup>23</sup> even though African Americans make up only 11% of the population.<sup>24</sup>

This means that both nationally and locally, a disproportionate number of African Americans are impacted by criminal background checks in housing applications.

### ALTERNATIVE ACTIONS CONSIDERED

Berkeley's Fair Chance Ordinance builds upon the work of other coalitions and communities to advance fair chance housing policies, namely in the cities of Oakland, Richmond, Seattle, and Portland. Seattle and Portland have first in time housing policies which limit landlord discretion in the selection of their tenants. Alameda County cities do not have such a policy.

Comparison between the Berkeley proposal and policies enacted by the cities of Oakland, Richmond, Seattle, and Portland:

- Similar to Oakland, Seattle and Portland, the Berkeley proposal would apply to all housing units, private and publicly subsidized.
- Similar to Oakland, Richmond and Seattle, the Berkeley proposal would enable Housing Providers who are funded by HUD to conduct limited criminal records checks and subject to due process protections for the applicant.
- Similar to Richmond, the Berkeley proposal would provide for a private right of action in addition to City enforcement. The City of Seattle, instead, utilizes its robust Department of Civil Rights which enforces civil rights violations.
- Unlike Portland and Seattle, the Berkeley proposal DOES NOT have a first in time tenant acceptance requirement. In addition, the Berkeley proposal maintains landlord discretion in the review of relevant information including landlord references, employment and income status, and credit report checks.

Less comprehensive versions of fair chance policies have passed in other cities including San Francisco; Urbana, Illinois; Madison, Wisconsin; New York, New York; and Newark, New Jersey.

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<sup>23</sup> Total population in probation, Q4 2018 "Alameda County Probation Department Data Dashboard". Alameda County. Accessed October 4, 2019. <https://www.acgov.org/probation/dashboard.htm>.

<sup>24</sup> "U.S. Census Bureau QuickFacts: Alameda County, California." United States Census Bureau. Accessed October 4, 2019. <https://www.census.gov/quickfacts/alamedacountycalifornia>.

CONSULTATION/OUTREACH OVERVIEW AND RESULTS*Transformative Policymaking Process:*

The development of the Fair Chance Housing policy and ordinance was a partnership effort between the City sponsors and the Alameda County Fair Chance Housing Coalition leaders that followed the principles of democratic participatory policymaking. In the process led by the Just Cities team, people most impacted by the policy problems—formerly incarcerated residents and their family members—identified both the policy problems and also the policy solutions. A team of researchers from UC Berkeley Goldman School of Public Policy, policy experts, lawyers, and former City of Oakland senior officials from the City Administrator and City Attorney’s offices provided research, policy, and legal support. The Coalition leaders also selected government officials to sponsor their proposed policy based upon their partnership criteria. More information about this transformative policymaking process and the policy research rationale behind the ordinance is included in the Just Cities’ Policy Justice Memo, Attachment 2.

We are grateful for the dedicated leadership and hard work of the Coalition’s leaders: John Jones III with Just Cities, Ms. Towanda Sherry with Faith in Action East Bay, Ms. Anita Wills with Essie Justice Group, and Katie Dixon, Taqwaa Bonner, and Succati Shaw with All of Us or None. The technical assistance and research partners included Margaretta Lin, Richard Illgen, and Alex Werth from Just Cities; Dan Lindheim, Larry Rosenthal, Tim Tsai, and Anthony Rodriguez from the Goldman School’s Center for Civility and Democratic Engagement; Lisa Sitkin from the National Housing Law Project; and Tamisha Walker from the Safe Return Project.

The Coalition partners and supporters include: All of Us or None, Berkeley NAACP, Berkeley Oakland Support Services (BOSS), Community Works, Church by the Side of the Road, East Bay Community Law Center, East Bay for Everyone, East Bay Young Democrats, Essie Justice Group, Friends of Adeline, Just Cities, Justice Reinvestment Coalition, Laney College Restoring Our Communities Center, League of Women Voters for Oakland, Make Oakland Better Now, McGee Baptist Church, National Housing Law Project, Our Beloved Community Action Network, PolicyLink, Root & Rebound, Safe Return Project, Sierra Club, Tech Equity Collaborative, Underground Scholars of UC Berkeley, and The Way Church.

*External Stakeholders Consulted*

This ordinance was crafted after more than seven public hearings before the City of Berkeley’s 4x4 and Land-Use, Housing & Economic Development Committees, multiple meetings with the leaders of the Berkeley Property Owners association, the Berkeley

Housing Authority, Seattle Office of Civil Rights and a community forum with Berkeley residents and community organizations.

### *Internal Stakeholders Consulted*

This ordinance was developed in close consultation with the City Attorney's office, as well as feedback and support from the Berkeley Rent Stabilization Board.

### *Results*

As a result of this consultation, outreach and committee processes the ordinance has been amended and improved. For example, Close Family Members were included in the definition of aggrieved person based on the lived experience of one of the POLs. Through the Policy Committee process, exemptions were included for owner-occupants, property owners renting their unit while on sabbatical, as well as ADUs, single-family homes, duplexes and triplexes. This principle of choice with whom you live was extended to tenants as a result of this process.

## RATIONALE FOR RECOMMENDATION

### *POLICY GOALS:*

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

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The effective date of the Ordinance is thirty days after final adoption of the ordinance. However, like in Oakland, a Housing Provider will not be liable for a violation within 180 days after the final adoption of the Ordinance unless the Provider has received a warning letter from the City regarding a violation of the Ordinance.

The Fair Chance Housing Ordinance applies to all Berkeley Housing Providers, with exemptions noted above. All applicants subject to an adverse action have a right to file a complaint with the City Manager within a year of the date of their application to be evaluated through an administrative hearing process. In the case of a hearing the public and complainant would be informed of available City or community resources to assist in the filing of the complaint or preparing for the hearing, including the gathering of evidence. The City can enforce any violation of the ordinance, with or without a complaint, under B.M.C. 1.28.

Similar to existing local tenant law, private right of action and attorney's fees for the prevailing applicant are awarded. The applicants and the City may avail themselves of any or all of these enforcement mechanisms to ensure compliance and an appropriate remedy for any violation.

In the case an applicant is denied access to private housing they are entitled to any notices required by state and federal law, and may also request a reason for the denial. Landlords are required to maintain documentation of any conviction history that they obtain on applicants for at least three years. Landlord retaliation is explicitly prohibited under this ordinance.

Under the ordinance Affordable Housing is defined as any housing provider receiving direct local, county, state, or federal subsidy. Section 8 landlords are excluded from the definition of Affordable Housing provider since the Housing Authority conducts the background checks for Section 8 voucher holders and because of Berkeley's source of income anti-discrimination law<sup>25</sup>.

HUD funded housing providers may conduct a limited background check if required by federal requirements. The housing provider must seek written consent from the applicant, provide the applicant with a copy of the criminal background report, and provide the applicant with the opportunity to provide rebutting or mitigating information.

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<sup>25</sup> City of Berkeley Municipal Code 13.31.020 Discrimination based on source of income prohibited.

Only publicly subsidized housing providers would submit an annual certification of compliance to the City utilizing a City template as provided by Administrative Regulations. The Coalition would like to work with the City on designing the compliance template.

The City Manager or their designee would provide an annual status report to the City Council and public including: a) which Affordable Housing providers submitted an annual certification of compliance; b) number of complaints filed with the City and the resolution; c) information from local service providers and community organizations on the number of court cases filed and the resolution or other compliance information. It is especially critical in the early years of new legislation for the City Council and the public to know about the implementation status of the legislation and whether any aspects need to be refined.

Additionally, the City Manager should explore alternatives to a complaint based enforcement process that might prove more effective. For example, staff from Seattle's Office of Civil Rights shared that their most effective measure of enforcement is their compliance testing program. In addition to accepting complaints, Seattle staff submits housing applications across the city to discern compliance with anti-discrimination laws. Good faith actors found to be in violation are offered technical assistance in the form of education and training prior to any penalties being assessed. Just as in Seattle, a testing program might contribute to broader Berkeley enforcement efforts.

#### *Addressing Common Concerns and Misconceptions*

Under this ordinance, landlords maintain their discretion to use accurate information that is critical to assessing whether an applicant will be a good tenant. This ordinance does not prevent the use of credit checks, income verification, or references from informing a landlord's decision-making process. Unlike jurisdictions that have passed similar ordinances, Berkeley does not have first-in-time laws that require a landlord to accept the first qualified applicant as their tenant.

Contrary to misconceptions, the Fair Chance Housing Ordinance does not impact landlords' ability to remove troublesome tenants. Existing state and local laws remain intact that address the rights of landlords and tenants to manage problematic behaviors. B.M.C. 13.76.130 outlines reasons for a "just-cause" eviction including refusal to pay rent, substantial violation of the terms of a lease, or substantial damages to the property.

One of the “just-cause” terms for an eviction allowed in B.M.C. 13.76.130 (A.5.) expressly allows eviction for illegal activities pursuant to subdivision 4 of the Code of Civil Procedure Section 1161. Thus, if a tenant commits certain serious violations, under Cal. Code of Civ. Proc. § 1161(4), a landlord can issue a three-day unconditional quit notice to vacate. The tenant must move out of the unit within three days of receiving the notice or they may face eviction.

Landlords must always use their best judgement when selecting tenants. The Fair Chance Housing Ordinance prohibits the use of problematic, error-prone databases as a tool in these evaluations. Existing remedies and laws remain to support landlords’ with troublesome or criminal tenants.

### *City Funding for Additional Community Outreach and Education*

As City experience has informed us, effective implementation of new legislation requires informing both the regulated groups and members of the protected groups of the new laws. In sharing their lessons learned about their Fair Chance Housing policy, the City of Seattle’s Civil Rights Office strongly recommended City investment in community outreach and education efforts. The City of Oakland Community and Economic Development committee unanimously passed a motion to include City funds for Fair Chance Housing community outreach and enforcement as part of their mid-cycle budget process. The Alameda County Fair Chance Housing Coalition have been in conversation with private funders and Alameda County about their potential investment in countywide community outreach and education to ensure effective implementation of the Fair Chance Housing policies being passed in Alameda County.

The City of Berkeley should participate in a countywide coordinated community outreach and education program and allocate appropriate funding as determined by the City Manager during the next budget cycle towards these critical efforts.

### REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS

In 2014 the City Council unanimously passed a Fair Chance Ordinance to extend its existing policy, passed in 2008, to eliminate disclosure of conviction history information from the City’s job application, or “Ban the Box” policy, to private employers within the City of Berkeley<sup>26</sup>. Fair Chance Housing legislation is proposed in this same spirit of acknowledging and reconciling some of the harm and injustice caused by our criminal “justice” system of mass incarceration.

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<sup>26</sup> [http://www.cityofberkeley.info/Clerk/City\\_Council/2014/10\\_Oct/Documents/2014-10-21\\_Item\\_25\\_Fair\\_Chance\\_Ordinance.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2014/10_Oct/Documents/2014-10-21_Item_25_Fair_Chance_Ordinance.aspx)

FINANCIAL IMPLICATIONS

Costs associated with the adoption of this Ordinance include development and mailing of required notices, public education, annual reporting, and administrative enforcement (investigation and processing of complaints).

The coalition has indicated that they have partners interested in supporting the city with community education and a participatory action impact study.

Given the direct connection between housing barriers for formerly incarcerated people and homelessness, we believe that removing these barriers may reduce the number of homeless persons and result in potential City cost savings overtime.

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Ordinance
- 2: Berkeley Fair Chance Housing Policy Brief-Just Cities, December





ORDINANCE NO. -N.S.

**PROHIBITING ~~CONSIDERATION OF CRIMINAL HISTORIES IN SCREENING APPLICATIONS FOR RENTAL HOUSING THE USE OF CRIMINAL HISTORY IN HOUSING DECISIONS~~**

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

Section 1. That Berkeley Municipal Code Chapter 13.106 is hereby added to read as follows:

**Chapter 13.106**

**Prohibiting the Use of Criminal History in Housing Decisions**

**Sections:**

- 13.106.010 Title**
- 13.106.020 Findings**
- 13.106.030 Definitions**
- 13.106.040 Use of Criminal History in Housing Decisions**
- 13.106.050 Requirements for Housing Providers**
- 13.106.060 Retaliation Prohibited**
- 13.106.070 Recordkeeping and Confidentiality**
- 13.106.080 Implementation**
- 13.106.090 Administrative Complaints**
- 13.106.100 Enforcement**
- 13.106.110 ~~Severability~~No Conflict with State or Federal Law**
- 13.106.120 ~~Effective Date~~Severability**

**13.106.010 Title**

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

**13.106.020 Findings**

- A. Mass incarceration is a national and local crisis and restoring the rights of people affected by mass incarceration is a national priority.
- B. The U.S. Department of Justice has estimated one in every three adults in the United States has either an arrest or conviction record.
- C. Studies have found that private criminal databases pull source information from inadequate records and lack accountability procedures to ensure that the database records provided to Housing Providers are accurate. Housing Providers in conducting criminal background checks are relying on such inaccurate information in evaluating housing applications.
- D. Formerly incarcerated persons face barriers to access to both private rental and publicly subsidized affordable housing.

- E. Homelessness is a critical issue in Berkeley and formerly incarcerated people are disproportionately affected by homelessness, which can prevent a formerly incarcerated person from getting a job, from visiting with their children, and from fulfilling other needs that are fundamental to reintegrating with the community after incarceration.
- F. The unmet housing needs of formerly incarcerated people in Berkeley are an acute challenge to the dignity, public health and safety, and equal opportunity for this population and the broader community.
- G. Research has found that access to housing reduces recidivism, and the lack of housing can be a significant barrier to successful reintegration after incarceration.
- H. Reliance on criminal history to select tenants impedes formerly incarcerated persons from gaining access to housing in the City of Berkeley, to the detriment of health, welfare, and public safety of the City's residents.

### 13.106.30 Definitions

- A. "Adverse Action" means to take one of the following actions based on ~~based on~~ a person's Criminal or Conviction History:
  - 1. Failing or refusing to rent or lease Housing to a person;
  - 2. Failing or refusing to continue to rent or lease Housing to a person;
  - 3. Reducing the amount or term of any person's subsidy for Housing;
  - 4. Treating an Applicant or tenant differently from other applicants or tenants, including but not limited to, taking such actions as requiring higher security deposit or rent;
  - 5. Treating a person as ineligible for a tenant-based rental assistance program, including but not limited to, the Section 8 ~~tenant-based voucher~~ Housing Choice Voucher ~~p~~Program (42 U.S.C. Section 1437f); or
  - 6. Failing to permit a tenant's Close Family Member to occupy a rental unit while the occupying tenant remains in occupancy.
- B. "Affordable Housing" shall mean any Housing that (1) has received or is receiving City, County, State, or Federal funding, tax credits, or other subsidies connected in whole or in part to developing, rehabilitating, restricting rents, subsidizing ownership, or otherwise providing rental housing for extremely low income, very low income, low income, and moderate income households (collectively, "Public Funding"), with the exception of Housing where the only Public Funding received is in the form of a Local, State or Federal tenant-based voucher, such as through the Section 8 ~~tenant-based~~ Housing Choice voucher ~~Voucher p~~Program (42 U.S.C. Section 1437f); or (2) is subject to affordability and related requirements pursuant to the City's Below Market-Rate Rental Housing Program, including but not limited to the Affordable Housing Mitigation Fee Ordinance (Chapter Section 22.20.065), the State Density Bonus law (California Government Code Sections 65915-65918 and Chapter 23C.14), and the Low Income Inclusionary Live/Work Units Ordinance (Section 23E.20.080).

- C. "Affordable Housing Provider" shall mean any Housing Provider that owns, master leases, manages, or develops Affordable Housing in the City. Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Housing Providers, and any government agency, including but not limited to the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including but not limited to the Section 8 ~~Housing Choice Voucher p~~Program (42 U.S.C. Section 1437f), shall also be considered an "Affordable Housing Provider."
- D. "Aggrieved Person" means an Applicant who believes they were subject to an Adverse Action; a tenant who believes they or their Close Family Member was subject to an Adverse Action based on the application of an Applicant to reside in such family member's rental unit; or a tenant who believes they were subject to an Adverse Action based on the failure or refusal to permit a person to reside in such tenant's rental unit to replace an existing tenant, add a new tenant, or to sublet to a subtenant.
- E. "Applicant" means a person who seeks information about, visits, or applies to rent or lease Housing; who applies for a tenant-based rental assistance program, including but not limited to the Section 8 ~~Housing Choice Voucher p~~Program (42 U.S.C. ~~section1437f~~Section 1437f); who seeks to be added as a household member to an existing lease for Housing; or, with respect to any Criminal History that occurred prior to the beginning of the person's tenancy, who currently rents or has a lease for Housing.
- F. "Arrest" means a record from any jurisdiction that ~~does not result in a Conviction and~~ includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for investigation by a law enforcement, police, or prosecutorial agency and/or charged with, indicted, ~~and/or tried, and/or convicted or and~~ acquitted for any felony, misdemeanor, or other criminal offense.
- G. "Background Check Report" means any report regarding an Applicant's Criminal History, including but not limited to those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement agencies, courts, or any consumer reporting or tenant screening agency.
- H. "Close Family Member" means a spouse, ~~registered~~ domestic partner, child, sibling, parent, grandparent, or grandchild.
- I. "Conviction" means a record from any jurisdiction that includes information indicating that a person has been convicted ~~of a felony or misdemeanor or other of a criminal offense and for which the person was placed on probation, fined, imprisoned and/or paroled.~~
- J. "Criminal History" means information transmitted orally or in writing or by any other means, and obtained from any source, including but not limited to the person to whom the information pertains, a government agency, or a Background Check Report, regarding one or more Convictions or Arrests; a Conviction that has been sealed, dismissed, vacated, expunged, ~~sealed~~, voided, invalidated, or otherwise rendered inoperative by judicial action or by statute (for example, under California Penal Code Sections 1203.1 or 1203.4); a determination or adjudication in the juvenile justice system; a matter considered in or processed through the juvenile justice system; or participation in or completion of a diversion or a deferral of judgment program.
- K. "Housing" means any residential rental housing, building, or unit in the City of Berkeley, with the exception of the following:

**Commented [TT1]:** Jay suggested this change to clarify who would actually qualify to make this complaint. He felt it was important to be able to discern who can trigger the hearing process.

1. Single Family Dwellings where one or more owners occupies the dwelling as their principal residence;
  2. Single Family Dwellings with ~~an~~ Accessory Dwelling Units, as defined in Section 23F.04.010, where either the main or an Accessory Dwelling Unit is occupied by one or more owners as their principal residence;
  3. Duplexes or triplexes where one of the units is occupied by one or more owners as their principal residence;
  4. Units rented pursuant to Section 13.76.130 A.10; and
  5. Tenant-occupied units where an occupying tenant seeks to replace an existing co-tenant, add an additional co-tenant, or sublet the unit, provided that the occupying tenant remains in occupancy.
- L. "Housing Provider" shall mean any Person that owns, master leases, manages, or develops Housing in the City. For the purpose of this definition, "Person" includes one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and any political or civil subdivision or agency or instrumentality of the City. In addition, Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Persons, and any government agency, including but not limited to the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including but not limited to the Section 8 Housing Choice Voucher Program program (42 U.S.C. Section 1437f), shall also be considered a "Housing Provider".
- ~~M. "Person" shall mean one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, or any political or civil subdivision or agency or instrumentality of the City.~~

#### **13.106.040 Use of Criminal History in Housing Decisions**

- A. Except as provided in Paragraphs B and C of this Section, a Housing Provider shall not, at any time or by any means, whether direct or indirect, inquire about an Applicant's Criminal History, require an Applicant to disclose their Criminal History, require an Applicant to authorize the release of their Criminal History or, if such information is received, base an Adverse Action in whole or in part on an Applicant's Criminal History.
- B. It shall not be a violation of this Chapter for a Housing Provider to comply with Federal or State laws that require the Housing Provider to automatically exclude tenants based on certain types of criminal history (e.g. Ineligibility of Dangerous Sex Offenders for Admission to Public Housing (42 U.S.C. Section 13663(a); Ineligibility of Individuals Convicted for Manufacturing Methamphetamine on Premises of Federally Assisted Housing for Admission to Public Housing and Housing Choice Voucher Programs (24 C.F.R. Section 982.553));<sup>1</sup> However, if such a requirement applies, the Housing Provider shall not inquire about, require disclosure of, or, if such information is received, review an Applicant's Criminal History until the Housing Provider first does the following: (1) informs the Applicant in advance that the Housing Provider will check for certain types of criminal history; (2) requests and obtains written consent, or if the Applicant objects, provides the applicant the

~~opportunity to withdraw their application; (3) complies with the requirements in subsections D and E of this Section. provided that if such a requirement applies, Applicant's Criminal History until the Housing Provider has first obtained written consent and followed Paragraphs D and E of this Section:~~

~~B.—Any Adverse Action based on Criminal History obtained pursuant to this Paragraph shall be limited to actions required to comply with State or Federal law.~~

- ~~1. Determined that the Applicant is qualified to rent the Housing under all of the Housing Provider's criteria for assessing Applicants except for any criteria related to Criminal History;~~
- ~~2. Provided to the Applicant a conditional lease agreement that commits the Housing to the Applicant as long as the Applicant meets the Housing Provider's Criminal History criteria; and~~
- ~~3. Informed the Applicant in advance that the Housing Provider will be obtaining information about the Applicant's Criminal History and obtained the written consent of the Applicant to obtain such information.~~

~~The Applicant may elect to withhold such consent and withdraw their application. Any Adverse Action based on Criminal History obtained pursuant to this Paragraph shall be limited to actions required to comply with State or Federal law.~~

C. In compliance with state law, in order to protect persons at risk pursuant to Penal Code Section 290.46(j)(1), the A Housing Provider may review the State registry of lifetime sex offenders operated by the State of California Department of Justice; provided, ~~however, that~~ (1) the Housing Provider has stated the lifetime sex offender screening requirement in writing in the rental application; and (2) the Housing Provider may shall not inquire about, require disclosure of, or, if such information is received, review an Applicant's Criminal History until the Housing Provider has first:

1. Determined that the Applicant is qualified to rent the Housing under all of the Housing Provider's criteria for assessing Applicants except for any criteria related to Criminal History;
2. Provided to the Applicant a conditional lease-rental agreement that commits the Housing to the Applicant as long as the Applicant meets the Housing Provider's Criminal History and other qualifying criteria; and
3. Informed the Applicant in advance that the Housing Provider will checking the sex offender registry and obtaining information about the Applicant's Criminal History and obtained the written consent of the Applicant to obtain such information.

The Applicant may elect to withhold such consent and withdraw their application. Any use of information obtained by a Housing Provider pursuant to this Paragraph shall comply with California Penal Code Section 290.46(l).

D. A Housing Provider's request to obtain written consent from the Applicant to obtain information about the Applicant's Criminal History under Paragraphs B or C of this Section shall inform the Applicant that the Housing Provider may be required to share information about the Applicant's Criminal History with the City of Berkeley for purposes of enforcing the requirements of this Chapter.

- E. If any Adverse Action is based in whole or in part on the Applicant's Criminal History, the Housing Provider shall provide a written notice to the Applicant regarding the Adverse Action that includes, at a minimum, the reason(s) for the Adverse Action, instructions on how to file a complaint about the Adverse Action with the City, a list of local legal service providers including contact information, and the Applicant with a copy of any Background Check Report or other information related to the Applicant's Criminal History that served as a basis for the Adverse Action. The Housing Provider shall provide the Applicant an opportunity to respond with rebutting or mitigating information prior to the denial of the Applicant's housing application. present evidence that information about the Applicant's Criminal History is inaccurate or of mitigating circumstances related to the Applicant's Criminal History. The Housing Provider shall not require reimbursement or payment from the Applicant for the cost of providing any information required under this Paragraph.

### 13.106.050 Requirements for Housing Providers

- A. It shall be unlawful for any Housing Provider subject to the requirements of this Chapter to produce or disseminate any advertisement related to Housing that expresses stating, directly or indirectly, that any person with Criminal History will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, Criminal History will be considered in connection with the rental or lease of real property, except as required by State or Federal law.
- B. The City shall publish and make available to Housing Providers, in English, Spanish, and all languages spoken by more than five percent (5%) of the City's population, a notice that informs Applicants for Housing of their rights under this Chapter. The notice shall contain the following information:
1. A description of the restrictions and requirements of this Chapter;
  2. Instructions for submitting a complaint to the City regarding a violation of this Chapter; and
  3. Information about community resources available to assist an Applicant in connection with a violation of this Chapter.
- C. Housing Providers subject to the requirements of this Chapter shall prominently display the notice made available pursuant to Section 13.106.50.B. in their application materials, on their websites, and at any rental or leasing offices.
- D. In addition to the requirements in Paragraphs A-C of this Section, Affordable Housing Providers shall:
1. Provide any Applicant subject to an Adverse Action a written notice regarding the Adverse Action that includes, at a minimum, the reason(s) for the Adverse Action; instructions regarding how to file a complaint about the Adverse Action with the City, including the deadlines set forth in Section 13.106.090.A; a list of local legal services providers, including contact information; and a copy of any Background Check Report or other Criminal History obtained by the Affordable Housing Provider; and
  2. Submit to the City an annual certificate of compliance with the requirements of this Chapter in the form provided by the City.



### 13.106.060 Retaliation Prohibited

It shall be a violation of this Chapter to interfere with, ~~or~~ ~~restrain,~~ ~~or deny the exercise of, or the attempt to exercise,~~ any right protected under this Chapter, or to take any Adverse Action against any Person because the Person exercised or attempted in good faith to exercise any right protected under this Chapter.

### 13.106.070 Recordkeeping and Confidentiality

- A. Housing Providers shall maintain a record of any Criminal History obtained for any Applicant for Housing for a period of at least three years. To the maximum extent permitted by law, any information obtained regarding an Applicant's Criminal History shall remain confidential.
- B. Nothing in this section shall prohibit a Housing Provider from complying with a request by the City to provide records for purposes of enforcing the requirements of this Chapter.

### 13.106.080 Implementation

- A. The City Manager or their designee shall take all necessary steps to implement this Chapter, including but not limited to the following:
  - 1. Developing any notice required for purposes of implementing the requirements of this Chapter, the annual compliance certification form, and other implementation documents, including written materials for Housing Providers and potential Applicants; and
  - 2. Conducting outreach to and preparing a plan to provide ongoing training about the requirements Chapter for Housing Providers.

The City Manager is authorized to adopt ~~administrative~~ Administrative regulations Regulations necessary to implement the requirements of this Chapter.

- B. The City Manager or their designee shall provide an annual public report to the City Council on the implementation and enforcement of this Chapter. The annual report shall include, at a minimum: (1) a summary of the annual compliance certifications submitted by Affordable Housing Providers; (2) the number of complaints filed with the City regarding violations of this Chapter and the outcomes of such complaints; (3) and the number of notices filed with the City regarding actions brought under Section 13.106.100.C and the outcomes of any such actions.

### 13.106.90 Administrative Complaints

- A. Any Applicant subject to an Adverse Action or their Close Family Member who believes the Adverse Action was based on a violation of this Chapter shall have the right to submit a complaint to the City within one year of the date the Applicant submitted an application to the Housing Provider or the date of the violation, whichever is earlier. The City will schedule an administrative hearing before a hearing officer designated by the City Manager within 90 days of the date of submission of the complaint. The deadlines set forth in this Paragraph may be extended with the consent of all parties.
- B. The parties shall have the following rights at an administrative hearing conducted pursuant to this Section:

1. To have an advocate of their choosing to represent them at the hearing;
  2. To present any relevant witnesses and evidence, which will be considered without regard to the admissibility under the Rules of Evidence applicable to a judicial proceeding;
  3. To examine the other party's evidence and to rebut and cross-examine any witnesses;
  4. To have a translator present at the hearing, when translation is reasonably necessary and reasonably available;
  5. To request any reasonable accommodation needed to participate in the hearing process; and
  6. To record the hearing.
- C. Where the City determines that a violation of the Chapter has occurred, the City shall issue a determination and order any appropriate relief under this Chapter.

#### **13.106.100 Enforcement**

- A. The City may issue an ~~administrative~~ Administrative citation-Citation under Chapter 1.28 to any Person who violates any provision of this Chapter.
- B. The City Attorney may bring an action on behalf of the City seeking injunctive relief to restrain or enjoin any violation of this Chapter.
- C. Any Aggrieved Person who believes that the provisions of this Chapter have been violated shall have a private right of action for injunctive relief, and actual damages or statutory damages up to three times the amount of one month's rent that the Housing Provider charged for the unit in question at the time of the violation. In addition to actual or statutory damages, a court may award punitive damages where it is proven by clear and convincing evidence that a violation of this Chapter has been committed with oppression, fraud, or malice. In any action brought under this Chapter, the court may award reasonable attorneys' fees and cost of action pursuant to Code of Civil Procedure section 1021.5. The right to file an action under this Paragraph is independent of the right to file an administrative complaint under Section 13.106.90 and does not require an Applicant to have filed a prior complaint with the City of Berkeley.
- D. When permitted by law, an award of actual damages under this Chapter may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the court if a defendant is found to have acted in knowing violation of, or in reckless disregard of, the provisions of this Chapter.
- E. In an action brought by the City Attorney pursuant to this Section, a court of competent jurisdiction may order that a civil penalty be assessed against the Housing Provider to vindicate the public interest, which penalty shall be payable to the City of Berkeley. The civil penalty assessed against a Housing Provider shall be at least one thousand dollars (\$1,000) and shall not exceed ten thousand dollars (\$10,000) for each violation of this



Chapter. A defendant shall be liable for an additional civil penalty of up to five thousand dollars (\$5,000) for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926 *et seq.*, or is aged sixty-five (65) or over.

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

**13.106.110 No Conflict with State or Federal Law**

This Chapter is not intended to conflict with state or federal law. If there is a conflict between the provisions of federal or state law and this Article, federal or state law shall control.

**13.106.1210 Severability**

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

**13.106.120**

**Section 2. —Effective Date**

The provisions of this Chapter shall take effect upon thirty days after final adoption of this ordinance. A Housing Provider shall not be liable for a violation within 180 days after final adoption of this Chapter, unless the Housing Provider has first received a warning letter from the City regarding a violation of the Ordinance.

The provisions of this Chapter shall take effect on July 1September 1, 2020.

**Section 3. Notice to Housing Providers**

The City Manager is directed to cause notice of this Ordinance to be mailed to all residential rental property owners subject to this Chapter within 90 days of final adoption of this Ordinance.

**Section 4. Posting**

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.



**DATE:** October 28, 2019, updated January 23, 2020

**TO:** City of Berkeley Mayor Jesse Arreguin and Land Use Committee

**FROM:** Just Cities: Margaretta Lin, JD, MA, Executive Director; John Jones III, Director of Community & Political Engagement; Richard Illgen, Senior Advisor; Tim Tsai, MPP, Policy Justice Research Associate; Alex Werth, PhD, Research Consultant

**SUBJECT:** Fair Chance Housing Ordinance that removes structural barriers for people with criminal histories in applications for rental housing

## **SUMMARY**

As research and lived experience demonstrate, formerly incarcerated people experience significant barriers beyond the high cost of rent that prevent them from securing housing. They are screened out when applying to rent housing due to criminal background checks in private rental, nonprofit affordable housing, and public housing units. Even living with family members is not always a viable solution as it may put their family’s housing at risk-- rental agreements may prohibit or limit people with criminal histories from residing in the units. Fair Chance Housing is legislation that prohibits the use of criminal histories for most offenses in determining access to housing. It also bans the use of advertising language that excludes people with arrest records, conviction records, or criminal history. In short, Fair Chance Housing legislation removes structural barriers to housing and enables landlords to consider the merits of individual housing applications—providing people with a fair chance.

Led by Just Cities/the Dellums Institute for Social Justice, The **Alameda County Fair Chance Housing Coalition** has been working to remove such structural exclusionary barriers for people coming home from prison. The Coalition partners and supporters include: All of Us or None, Berkeley NAACP, Berkeley Oakland Support Services (BOSS), Community Works, Church by the Side of the Road, East Bay Community Law Center, East Bay for Everyone, East Bay Young Democrats, Essie Justice Group, Friends of Adeline, Just Cities, Justice Reinvestment Coalition, Laney College Restoring Our Communities Center, League of Women Voters for Oakland, Make Oakland Better Now, McGee Baptist Church, National Housing Law Project, Our Beloved Community Action Network, PolicyLink, Root & Rebound, Safe Return Project, Tech Equity Collaborative, Underground Scholars of UC Berkeley, and The Way Church.

The Fair Chance Housing Ordinance would result in:

- 1) Clear rules and standards for all landlords regarding the use of criminal background checks in the housing application process and the elimination of the current arbitrary system that relies on inaccurate criminal background databases.



- 2) Landlords assessing the merits of individual housing applications rather than the current status of blanket exclusion of applications solely on the basis of criminal records.
- 3) Formerly incarcerated people and their family members having access to safe, stable, and affordable housing that they need in order to reclaim their lives and effectively re-integrate into the community.
- 4) Decrease in recidivism rates by removing structural barriers to stable housing, including with family members, for formerly incarcerated people.

## **BACKGROUND**

### **SUMMARY OF FLAWS WITH CRIMINAL BACKGROUND DATABASE SYSTEMS**

Research shows that government repositories of criminal records are routinely incomplete, thus making commercial criminal background reports inaccurate and/or misleading. In 2006, the U.S. Department of Justice (DOJ) found that an estimated 50% of FBI arrest records, which are used by many background check companies, were missing information on the final disposition of the cases in question.<sup>1</sup> In 2016, the DOJ found that an estimated 32% of records in state criminal history repositories were missing final disposition data.<sup>2</sup> Incomplete data at the state and federal levels undermine the fairness and accuracy of commercial criminal background reports, which rely upon governmental data. In particular, out-of-date information about the final disposition of a case means that data about arrests are routinely listed in background reports even when the charges were eventually dropped, reduced, or disproven in court.

The consequences of these database gaps are significant. According to the National Employment Law Project (NELP), “one third of felony arrests do not result in conviction and many others are reduced to misdemeanors.”<sup>3</sup> While industry-wide data on the inaccuracies of commercial criminal background reports are unavailable, the NELP estimates that 1.8 million workers are subject to FBI checks that include faulty or incomplete information each year. Further, many on-line databases accessible through search engines are also inaccurate, even representing persons without criminal records as having been arrested or convicted.

The lack of accurate disposition data is one of many issues that undermine the accuracy of private criminal background reports. According to a review by the National Consumer Law Center, such reports suffer from a range of problems, including: the publication of sealed or expunged records; the

<sup>1</sup> U.S. Department of Justice. (2006). *The Attorney General’s Report on Criminal History Background Checks*, p. 3.

<sup>2</sup> National Consortium of Justice Statistics. (2018). *Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report*, p. 2.

<sup>3</sup> National Employment Law Project. (2013). *Wanted: Accurate FBI Background Checks for Employment*, pp. 1-2.

misclassification of crimes (e.g. reporting a misdemeanor as a felony); the assignment of crimes to an individual who did not commit them, otherwise known as a “false positive”; and the display of data in a misleading manner (e.g. reporting a single arrest multiple times because it appears in multiple databases).<sup>4</sup> Unlike government screens, such commercial background checks are conducted using basic personal information, like names. In the late 1990s, a task force consisting of state and federal agencies found that, compared with fingerprint-based checks, name-based checks resulted in a false-positive rate of 5.5%.<sup>5</sup> This means that around 1 in 20 apparent identifications of a crime was ascribed to a person who did not in fact commit that crime.

### **SUMMARY OF HOUSING ACCESS BARRIERS FOR PEOPLE WITH CRIMINAL RECORDS**

Alameda County service providers and national researchers have documented barriers to access to both private rental and publicly subsidized affordable housing faced by formerly incarcerated residents.<sup>6</sup> Results of a 2019 Goldman School survey and interviews of formerly incarcerated persons in Alameda County found that many formerly incarcerated persons could not stay in public housing with a relative or family member due to public housing rules or were denied private or public rental housing due to their incarceration record.<sup>7</sup> In addition, a recent survey by the Berkeley Property Owners Association found that the majority of landlord survey respondents conducted criminal background checks. We note that persons paroled from incarceration are generally to be returned to the county of their residence (CA Penal Code 3003); therefore, parolees from this area will be returning home.

### **SUMMARY OF PUBLIC HEALTH & SAFETY IMPACTS FROM HOUSING BARRIERS:**

As the state with the second highest population of people currently in prison or jail in the country,<sup>8</sup> California will need to house formerly incarcerated people as they reenter society in a highly impacted housing market. Alameda County has a total of 7,900 people on probation or parole.<sup>9</sup> Incarceration and lack of housing can lead to severely limited economic opportunity, thereby increasing the chances of recidivism and public safety impacts.

<sup>4</sup> National Consumer Law Center. (2012). *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, p. 15.

<sup>5</sup> National Association of Professional Background Screeners. (2005). *The National Crime Information Center: A Review and Evaluation*, pp. 11-2.

<sup>6</sup> See Corinne Carey, No Second Chance: People with Criminal Records Denied Access to Public Housing, 36 University of Toledo Law Review 545; Caterina Gouvis Roman and Jeremy Travis, Urban Institute, Taking Stock: Housing, Homelessness and Prisoner Re-Entry (2004); and Every Door Closed: Barriers Facing Parents With Criminal Records, CLASP and CLS Report, Chapter 3, “Criminal Records and Subsidized Housing: Families Losing the Opportunity for Decent Shelter”.

<sup>7</sup> Rodriguez, Anthony (2019) “A Just Return Home: Identifying and Removing Barriers to Housing for Formerly Incarcerated Residents Through Suggested Policies for County of Alameda” Report for Just Cities and Goldman School of Public Policy. p.23

<sup>8</sup> California 2017 raw numbers. “State-by-State Data.” The Sentencing Project. Accessed October 4, 2019. <https://www.sentencingproject.org/the-facts/#detail?state1Option=U.S.Total&state2Option=0>

<sup>9</sup> Total population in probation, Q4 2018 “Alameda County Probation Department Data Dashboard”. Alameda County. Accessed October 4, 2019. <https://www.acgov.org/probation/dashboard.htm>.

Research has shown that access to stable and affordable housing enables people to successfully re-integrate into society. For example, two studies in Ohio<sup>10</sup> and Maryland<sup>11</sup> found that providing housing subsidies or public housing to recently released incarcerated persons reduced the chances that they would be rearrested in the first year. A government study conducted in the United Kingdom found that stable housing was associated with a 20% reduction in the chance of being reconvicted.<sup>12</sup>

Extensive research also shows the direct link between incarceration history, homelessness, and health.<sup>13</sup> For example, a recent participatory action research project between Just Cities, The Village, and the UC Berkeley Goldman School for Public Policy's Center for Civility & Democratic Engagement found that 73% of unhoused residents interviewed in Oakland's encampments were formerly incarcerated!<sup>14</sup> Based upon anecdotal and other data, we believe that unhoused people in Berkeley are also disproportionately formerly incarcerated. For example, in the 2017 Point in Time count for Berkeley homeless residents, one of the top six reasons listed for the primary cause of homelessness was incarceration (6% of respondents).

In addition, there are an estimated 10 million children nationwide that are impacted by a parent or close relative who are in the criminal justice system.<sup>15</sup> These children suffer from an increased rate of depression, antisocial behavior, drug use, and suicide.<sup>16</sup>

### **SUMMARY OF RACIAL DISPARITY:**

There is an extreme racial disparity in criminal conviction and incarceration rates, which translates to a racial disparity in access to housing.

<sup>10</sup> Fontaine, Jocelyn, Douglas Gilchrist-Scott, John Roman, Samuel Taxy, and Caterina Roman. "Supportive Housing for Returning Prisoners: Outcomes and Impacts of the Returning Home-Ohio Pilot Project." PsycEXTRA Dataset, August 2012. <https://doi.org/10.1037/e527702013-001>.

<sup>11</sup> Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." *Journal of Experimental Criminology* 14, no. 2 (2017): 213–26. <https://doi.org/10.1007/s11292-017-9317-z>.

<sup>12</sup> Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." *Journal of Experimental Criminology* 14, no. 2 (2017): 213–26. <https://doi.org/10.1007/s11292-017-9317-z>.

<sup>13</sup> Roman, Caterina Gouvis, and Jeremy Travis. "Taking Stock: Housing, Homelessness, and Prisoner Reentry." PsycEXTRA Dataset, 2004. [http://webarchive.urban.org/UploadedPDF/411096\\_taking\\_stock.pdf](http://webarchive.urban.org/UploadedPDF/411096_taking_stock.pdf) p.7-8

<sup>14</sup> Tsai, Tim. "Standing Together: A Prevention-Oriented Approach to Ending Homelessness in Oakland." <http://bit.ly/HomelessPrevention2019> p.12

<sup>15</sup> Hirsch, Amy E, Sharon M Dietrich, Rue Landau, Peter D Schneider, Irv Ackelsberg, Judith Bernstein-Baker, and Joseph Hohenstein. *Every Door Closed: Barriers Facing Parents with Criminal Records*. Philadelphia, PA: Community Legal Services, Inc, 2002. p.1 [https://www.clasp.org/sites/default/files/publications/2018/01/every\\_door\\_closed.pdf](https://www.clasp.org/sites/default/files/publications/2018/01/every_door_closed.pdf)

<sup>16</sup> Davis, Laurel, and Rebecca J. Shlafer. "Mental Health of Adolescents with Currently and Formerly Incarcerated Parents." *Journal of Adolescence* 54 (2017): 120–34. <https://doi.org/10.1016/j.adolescence.2016.10.006>. Shlafer, Rebecca J, Erica Gerrity, Ebony Ruhland, and Marc Wheeler. "Children with Incarcerated Parents – Considering Children's Outcomes in the Context of Complex Family Experiences." *Children, Youth, and Family Consortium*, 2013. <https://www.prisonpolicy.org/scans/umn/June2013ereview.pdf>. p.3

There are statistical racial disparities at every stage of the criminal justice system. Research has demonstrated that African Americans are more likely to be stopped by police,<sup>17</sup> prosecuted disproportionately, and punished more harshly than other ethnic groups.<sup>18</sup> As a result, Black men—one third of whom are likely to serve time in prison or jail at some point in their lives—are incarcerated at a rate that is five times that of White men. Racial bias in plea-bargaining, which accounts for the vast majority of new criminal convictions, is a significant source of the disparity in incarceration. In a recent study of more than 48,000 cases in Wisconsin, legal scholar Carlos Berdejó found that White defendants were 25% more likely than Black ones to have their most serious charge either dropped or reduced to a less serious charge.<sup>19</sup> As a result, Whites who were initially charged with a felony were an estimated 15% more likely to end up convicted of a misdemeanor instead. In addition, Whites who were initially charged with a misdemeanor were an estimated 75% more likely to be convicted of a crime carrying no possible incarceration, or not convicted at all.<sup>20</sup>

These disparities are even more acute in California. According to the Public Policy Institute of California, in 2017, African Americans made up 5.6% of the state’s adult men but 28.5% of its male prisoners.<sup>21</sup> As a result, Black men were ten times more likely than White men to be incarcerated. Latino men were more than twice as likely as White men to be incarcerated. There were significant disparities among Black women, too, who were five times more likely than White women to be incarcerated.<sup>22</sup> Inequalities in incarceration were driven in part by inequalities in policing. Again, according to the Public Policy Institute of California, Black male residents were three times more likely than White ones to be arrested in 2016.<sup>23</sup>

Here in Alameda County, 48% of probationers are African American<sup>24</sup> even though African Americans make up only 11% of the population.<sup>25</sup>

**This means that both nationally and locally, a disproportionate number of African Americans are impacted by criminal background checks in housing applications.**

<sup>17</sup> “Findings” Stanford Open Policing Project. Accessed October 4, 2019. <https://openpolicing.stanford.edu/findings/>.

<sup>18</sup> Porter, Nicole D., Nazgol Ghandnoosh, Josh Rovner, and Jean Chung. “Racial Disparity.” The Sentencing Project, September 30, 2019. <https://www.sentencingproject.org/issues/racial-disparity/>.

<sup>19</sup> Berdejó, Carlos. (2018). [Criminalizing Race: Racial Disparities in Plea-Bargaining](#). *Boston College Law Review*, 59(4), pp. 1189-91.

<sup>20</sup> Berdejó, Carlos. (2018). [Criminalizing Race: Racial Disparities in Plea-Bargaining](#). *Boston College Law Review*, 59(4), pp. 1189-91.

<sup>21</sup> Public Policy Institute of California. (2019). [California’s Prison Population](#), p. 1.

<sup>22</sup> Public Policy Institute of California. (2019). [California’s Prison Population](#), p. 1.

<sup>23</sup> Public Policy Institute of California. (2019). [Racial Disparities in California Arrests](#), p. 1.

<sup>24</sup> Total population in probation, Q4 2018 “Alameda County Probation Department Data Dashboard”. Alameda County. Accessed October 4, 2019. <https://www.acgov.org/probation/dashboard.htm>.

<sup>25</sup> “U.S. Census Bureau QuickFacts: Alameda County, California.” United States Census Bureau. Accessed October 4, 2019. <https://www.census.gov/quickfacts/alamedacountycalifornia>.





### **SUMMARY OF HUD GUIDANCE:**

On or about April 4, 2016, the United States Department of Housing and Urban Development issued the “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” in which it states that “Policies that exclude persons based on criminal history must be tailored to serve the housing provider’s substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction.”

### **SUMMARY OF OTHER FAIR CHANCE HOUSING POLICIES:**

The Coalition’s efforts build upon the remarkable work of other coalitions and communities to advance fair chance housing policies, namely in the cities of Richmond, Seattle, and Portland. In 2016, the Safe Return Project and its coalition partners including the Dellums Institute worked with the City of Richmond to pass legislation to remove housing barriers for formerly incarcerated residents to access any publicly subsidized housing. In 2017, Seattle community leaders in the Mayor’s Fair Housing Task Force worked with the City of Seattle to enact legislation that removed housing barriers for formerly incarcerated residents to access private or publicly subsidized rental housing. In 2019, the City of Portland enacted a Fair Chance Housing policy similar to Seattle’s policy.

We note that the cities of Seattle and Portland have first in time housing policies which limit landlord discretion in the selection of their tenants. Alameda County cities do not have such a policy.

Here’s a summary of the main comparison between the Berkeley proposal and policies enacted by the cities of Richmond, Seattle, and Portland:

- Similar to Seattle and Portland, the Berkeley proposal would apply to all housing units, private and publicly subsidized.
- Similar to Richmond and Seattle, the Berkeley proposal would enable Housing Providers who are funded by HUD to conduct criminal records checks after a Conditional Offer of Housing has been granted and subject to certain procedures.
- Similar to Richmond, the Berkeley proposal would provide for a private right of action in addition to City enforcement. The City of Seattle, instead, utilizes its robust Department of Civil Rights which enforces civil rights violations.
- Similar to Seattle, the Berkeley proposal would prohibit the use of criminal records checks in the housing application process, with the exception that allows for the review of sex offender registry.
- Unlike Portland and Seattle, the Berkeley proposal DOES NOT have a first in time tenant acceptance requirement. In addition, the Berkeley proposal maintains landlord discretion in the review of relevant information including landlord references, employment and income status, and credit report checks.



Less comprehensive versions of fair chance policies have passed in other cities including San Francisco; Urbana, Illinois; Madison, Wisconsin; New York, New York; and Newark, New Jersey.

**POLICY DEVELOPMENT PROCESS--CENTERING PEOPLE MOST IMPACTED BY THE POLICY PROBLEM:**

Building on their successful anti-displacement funding efforts with Alameda County and the cities of Berkeley and Oakland in 2017, the Our Beloved Community Action Network<sup>26</sup> (BCAN) leaders led by Just Cities/the Dellums Institute resolved to work together to address the removal of housing barriers for formerly incarcerated people. Through the advocacy of BCAN partner, the TechEquity Collaborative, the Chan Zuckerberg Initiative has provided resources for the development of the Alameda County Fair Chance Housing Coalition, including a leadership development program for formerly incarcerated people or their family members—the Policy and Outreach Leaders (POLs). The following community leaders have served as the POLs: Ms. Towanda Sherry, Ms. Anita Wills, Katie Dixon, and Taqwaa Bonner.

With support from Just Cities staff, the POLs have convened community forums and listening sessions with formerly incarcerated people and their family members, as well as participated in multiple research and policy design workshops. They have also worked with the UC Berkeley Goldman School of Public Policy's Center on Civility and Democratic Engagement to design and implement a survey to assess the individual, family, and community impacts of today's housing barriers for people with criminal records. In addition, Richard Illgen, former Oakland Deputy City Attorney, the Safe Return Project, and the National Housing Law Project have provided technical assistance to Just Cities and the POLs in developing the draft ordinance.

**SUMMARY OF FAIR CHANCE HOUSING POLICY TERMS**

The following is a summary of the proposed Fair Chance Housing policy. These policies were crafted after more than seven public hearings before the City of Berkeley's 4x4 and Land Use Committees; multiple meetings with the leaders of the Berkeley Property Owners Association; community forums with Berkeley residents and community organizations; and separate meetings with the Mayor and Council offices.

**NAMED AFTER CONGRESSMAN RON DELLUMS:**

The Coalition is proposing to name the Fair Chance Housing policy after former Berkeley City Councilmember, Congressman, Oakland Mayor, and world humanitarian Ronald V. Dellums in honor of his legacy and to inspire policymakers across the nation to champion human rights. Congressman Dellums passed away in July 2018. For over fifty years, Ron Dellums practiced courageous and principled leadership to advance the human rights and needs of all peoples, especially those who have

<sup>26</sup> For more information about the **Our Beloved Community Action Network**: <http://dellumsinstitute.org/bcan>





been discriminated against and marginalized. He was born in 1935 and grew up in a segregated West Oakland. He had a troubled youth and almost did not graduate from high school. After serving in the Marines, Ron Dellums became a UC Berkeley trained psychiatric social worker and a community organizer. At the age of 31, Ron Dellums was on his way to a PhD program at Brandeis when he was recruited by activists to serve on the Berkeley City Council.

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

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

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

Already in his 70s, Ron Dellums was drafted to serve as Mayor of Oakland from 2007 to 2010, where he opened up City Hall for Oakland's people to develop Oakland as a model city for the world. To institutionalize civic engagement, Ron Dellums created 41 Citizen Task Forces that involved over 800 residents and resulted in policy changes such as the adoption of an industrial lands policy to facilitate economic development and jobs for Oakland residents and strategies to improve air quality from Port operations. He created a Re-Entry Services program out of the Mayor's office that welcomed formerly incarcerated residents home and helped them find jobs, housing, and support. Ron Dellums developed a comprehensive public safety plan which resulted in a 38% decline in homicides and a 25% decline in



all Part I (major) crimes. He reformed the Oakland Police Department and advanced community and constitutional policing. He led unprecedented City efforts involving business, labor, education, and community leaders to develop a comprehensive vision for a sustainable and equitable local economy, which resulted in \$550 million of new funding for projects and the generation of over 14,000 jobs during the Great Recession.

In 2016, at the tender age of 80, Ron Dellums co-founded the Dellums Institute for Social Justice to create a platform for the collective advancement of racial and social justice.

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

#### **POLICY GOALS:**

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



**MAIN PROPOSED POLICY TERMS:**

The following is a summary of the proposed fair chance housing policy.

| Housing Provider                          | Criminal Background Check                                              | Due Process                    | Reporting to City                  | Potential Remedies for Violations                                     |
|-------------------------------------------|------------------------------------------------------------------------|--------------------------------|------------------------------------|-----------------------------------------------------------------------|
| Private (Non-Affordable Housing Provider) | No                                                                     | City Complaint or Sue in Court | None                               | City complaint w/ fine. Court action w/ damages or injunctive relief. |
| Publicly Subsidized & Not HUD Funded      | No                                                                     | City Complaint or Sue in Court | Annual certification of compliance | City complaint w/ fine. Court action w/ damages or injunctive relief. |
| HUD Funded                                | Following due process protections, can check on 2 crimes per HUD rules | City Complaint or Sue in Court | Annual certification of compliance | City complaint w/ fine. Court action w/ damages or injunctive relief. |

**CRIMINAL BACKGROUND CHECKS:**

The proposed ordinance prohibits ALL landlords from:

- (a) Advertising or using a policy that automatically excludes people with criminal histories from rental housing,
- (b) Asking about or requiring disclosure of someone’s criminal history, or
- (c) Taking adverse action against an applicant or tenant based on his or her criminal history.

Exemptions to the ordinance:

- The following properties where the owner occupies the property are exempt from the ordinance: ADUs, single family homes, duplexes, and triplexes.
- Property owners renting their primary dwelling when they are on sabbatical.
- Tenants renting out available bedrooms in the unit in which they reside.
- Pursuant to State law, landlords can review and consider whether an applicant is on the State operated registry of lifetime sex offenders after a conditional offer has been made and upon written consent from the applicant. If a housing denial is based upon the registry information, the landlord must provide that information to the applicant and provide the applicant with the opportunity to rebut or provide mitigating information.
- Landlords of HUD funded housing have a partial exemption from the ordinance if they are complying with federal regulations that require them to automatically exclude tenants based on certain types of criminal history (lifetime sex offender registration requirement or manufacturing meth on a federally assisted housing property). However, the landlord can only conduct the background check upon written consent from the applicant. If a housing denial is based upon one of the two HUD prescribed crimes, the landlord must provide the background check information to the applicant and provide the applicant with the opportunity to rebut or provide mitigating information.

**IMPLEMENTATION & ENFORCEMENT:**

 1. Private Rental Housing Application & Complaint Process

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

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

- Definition: any housing provider receiving direct local, county, state, or federal subsidy. We have removed Section 8 landlords from the definition of Affordable Housing provider since the Housing Authority conducts the background checks for Section 8 voucher holders and because of Berkeley's source of income anti-discrimination law.
- Background Check, Denial, and Due Process Protections: For HUD funded housing providers, the housing provider may conduct a criminal background check if required by federal requirements. The housing provider must ensure that the applicant provided prior written consent to the criminal background check, receive a copy of any criminal background check, and has the opportunity to respond with rebutting or mitigating information before the applicant is denied housing.
- Annual Reports: only publicly subsidized housing providers would submit an annual certification of compliance to the City utilizing a City template. The Coalition would like to work with the City on designing the compliance template.

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

- Complaint Process:
  - The applicant would have the right to file a complaint with the City Manager's designated hearing officer within one year from the date of application for housing.
  - The public and complainant would be informed of available City or community resources to assist in the filing of the complaint or preparing for the hearing, including the gathering of evidence.
- Similar to current local tenant law, private right of action and attorney's fees for the prevailing applicant are provided.
- Berkeley's current administrative penalty system is also integrated into the proposal.



- Landlord retaliation is explicitly prohibited.
- Landlords are required to maintain documentation of any conviction history that they obtain on applicants for at least three years.
- Effective date of the ordinance is 6 months after its adoption.
- The City Manager or their designee would provide an annual status report to the City Council and public including: a) which Affordable Housing providers submitted an annual certification of compliance; b) number of complaints filed with the City and the resolution; c) information from local service providers and community organizations on the number of court cases filed and the resolution or other compliance information.

## **CONCLUSION**

In the words of Just Cities' Director of Community & Political Engagement, John Arthur Jones III,

*The only place in America where one is guaranteed a roof over their head is in prison/jail. This Ordinance will take steps towards addressing the major intersection of Mass Incarceration and Housing barriers- BOTH resulting from policies and programs that were created and/or sanctioned by government- locally, statewide and nationally. In addition to constituting a human right, housing is also a Public Health and Public Safety issue. The impact of having a criminal record severely harms and impacts those who have never been arrested, including the children, parents, partners, and loved ones of those who are formerly incarcerated. Just as criminal records cannot and does not strip one of the legal duty of paying taxes, neither legally should having a criminal record strip anyone of one of the most quintessential elements of human rights- and that is housing.*



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CONSENT CALENDAR

February 25, 2020

To: Honorable Mayor and Members of the City Council  
 From: Vice Mayor Sophie Hahn and Councilmember Cheryl Davila  
 Subject: Referral to Schedule a Special City Council Meeting on Ohlone History and Culture

RECOMMENDATION

Refer to the Agenda & Rules Policy Committee to schedule a Special City Council Meeting of at least one hour in duration immediately prior to a Regular City Council Meeting for representatives of the Ohlone community to present on Ohlone history and culture to provide additional context for the placement of signs stating "Welcome to the City of Berkeley Ohlone Territory" at entrances to our City.

BACKGROUND

Long before the City of Berkeley was incorporated, the Bay Area was inhabited by Indigenous peoples, including the Ohlone. The Ohlone Village of Huchiun existed in what is now the Berkeley City limits, and the Ohlone language Chochenyo was (and is still) spoken here. The Ohlone peoples established sacred sites and burial sites in Berkeley and throughout the Bay Area.<sup>1</sup>

The City of Berkeley has a proud history of recognition, inclusiveness and diversity. For example, in 1992, Berkeley was the first city in the United States to rename as Indigenous Peoples' Day the federal holiday formerly recognized as Columbus Day. In recent years, Native American groups, including Ohlone tribal members and conservation activists, have been organized in spreading awareness throughout the community about their homeland and sacred sites in the Bay Area.

In January 2018, Councilmember Cheryl Davila introduced an item to change Berkeley's City Limits signs to "Welcome to Berkeley Ohlone Territory."<sup>2</sup> In October 2018, the City Council adopted a measure referring the City Manager to replace all Welcome to Berkeley signs with new signage, including "Ohlone Territory."<sup>3</sup> The purpose of the referral was to recognize the Ohlone Peoples as the original inhabitants of the land now called Berkeley, including the Bay Area region, and to celebrate the City's Indigenous communities. The measure underscored the

<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2016/01\\_Jan/Documents/2016-01-19\\_Item\\_31\\_Support\\_of\\_Indigenous\\_Peoples.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2016/01_Jan/Documents/2016-01-19_Item_31_Support_of_Indigenous_Peoples.aspx)

<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/01\\_Jan/Documents/2018-01-23\\_Item\\_39\\_Replace\\_City\\_Limit\\_Signs.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/01_Jan/Documents/2018-01-23_Item_39_Replace_City_Limit_Signs.aspx)

<sup>3</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/10\\_Oct/Documents/2018-10-02\\_Item\\_E\\_Welcome\\_to\\_Berkeley\\_Signage.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/10_Oct/Documents/2018-10-02_Item_E_Welcome_to_Berkeley_Signage.aspx)

importance of helping current Berkeley residents and visitors to understand what came before the current landscape.

In addition to recognizing and celebrating the Ohlone People through signage, the Council discussed the need for learning opportunities to add historical context, including a Council session on Ohlone history and culture, and a webpage on the City of Berkeley website linking to historic and cultural information about the Ohlone. In the spirit of that discussion, and in keeping with the City's commitment to recognize diversity, inclusion and to learning more about the original inhabitants of Berkeley, representatives of the Ohlone community are invited to present to the Council on Ohlone history and culture at a Special Meeting of the City Council.

#### FISCAL IMPACTS

There are no fiscal impacts associated with adopting the attached referral.

#### ENVIRONMENTAL SUSTAINABILITY & CLIMATE IMPACTS

This item is consistent with the City's vision on sustainability and environmental goals. Reports on the recent fires in Australia have highlighted the deep traditional ecological knowledge Australia's Indigenous people have about fire control and suppression.<sup>4</sup> "What Australians should really learn from the Aboriginal people is custodianship over the land . . . The way Aboriginal people deeply know and care for the land is something Australians should ponder and embrace."<sup>5</sup>

The Ohlone people were also profoundly knowledgeable stewards of the land and environment of the Bay Area. Learning about their history, ecological practices, and cultural values will provide important information about how Berkeley can be more resilient, reduce our climate and environmental impacts, and how we can all become better stewards of our community, our land and water, and the planet.

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

#### ATTACHMENTS

1. Photograph of "Welcome to the City of Berkeley Ohlone Territory" signage

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<sup>4</sup> <https://www.bbc.com/news/world-australia-51043828>; <https://www.cnn.com/2020/01/12/world/aboriginal-australia-fire-trnd/index.html>; <https://www.nytimes.com/2020/01/24/us/native-american-controlled-burns-california-wildfires.html>

<sup>5</sup> <https://www.cnn.com/2020/01/12/world/aboriginal-australia-fire-trnd/index.html>









CONSENT CALENDAR  
February 25, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Robinson, Droste, Harrison, and Wengraf  
 Subject: Referral: Street Lighting Near Campus

### RECOMMENDATION

Refer to the Public Works Commission to include the following in the Street Lighting Subcommittee Work Plan, for the purposes of seeking input from key stakeholders and bringing together work that happens through parallel processes. The Subcommittee should:

1. Invite input from representatives from the UC Berkeley administration, UC Berkeley undergraduate and graduate students, UCPD and BPD, the Department of Public Works, and other relevant groups.
2. Develop a streamlined and accessible process for requesting street lights that includes neighborhood and campus input, while recognizing the overriding public safety concern posed by substandard lighting.
3. Develop a plan for expeditiously installing new streetlights near campus that prioritizes high-crime areas, high-injury pedestrian corridors, and student-priority areas as determined by student input.

### BACKGROUND

This referral comes out of discussion at the City-UC-Student Relations (4x6) Committee, made up of the four Councilmembers whose districts border the UC campus and six representatives from UC Berkeley, the ASUC, and the Graduate Assembly. The student-led effort within the Committee to improve street lighting near campus was initiated in November 2018, when City and UC staff delivered presentations to the Committee and provided a map of existing lighting locations.<sup>1</sup> The recommendation in this item carries out the intent of the unanimous motion made at the February 8, 2019 4x6 meeting,<sup>2</sup> as well as continued discussion that occurred at the November 18, 2019 meeting.<sup>3</sup>

<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/DRAFT%20Combined%204x6%20Minutes%2013Nov2018.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/DRAFT%20Combined%204x6%20Minutes%2013Nov2018.pdf)

<sup>2</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_Commissions/Approved%202-8-19%20Minutes.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/Approved%202-8-19%20Minutes.pdf)

<sup>3</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_Commissions/MINUTES%204x6%2011-18-19%20DRAFT.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/MINUTES%204x6%2011-18-19%20DRAFT.pdf)

Adequate street lighting is an especially important issue around the UC Berkeley campus. 77 percent of UC Berkeley students get to and from campus by walking — fewer than 5 percent use a motorized vehicle of any kind.<sup>4</sup> These students often walk home from campus in the dark after extracurricular activities or study sessions. Sufficient street lighting is crucial late at night or in the early mornings, when light from building windows and porches cannot be used to supplement streetlights. Students, other residents, and visitors should feel safe walking at night. A well-lit streetscape near campus can help reduce crime and traffic crashes, and benefits not only students but the general population as well.

A combination of data analysis and community input is necessary to prioritize streetlight installation in a way that works for residents and the greater good of public safety. In order to ensure efficient use of City resources, the Subcommittee should examine UCPD and BPD crime data, City of Berkeley Vision Zero pedestrian injury data, and student input via organizations such as the ASUC and Graduate Assembly to develop a list of priority streetlight locations.

The Subcommittee should also develop a streamlined streetlight request process. Currently, residents can submit requests for a streetlight to the City of Berkeley Public Works Commission, which evaluates each request based on current available lighting; proximity to public transit, schools, and hospitals; crime statistics and other safety concerns; pedestrian and bicycle traffic; and current zoning. The application process requires the signature of the eight residents who live adjacent to and across from the proposed location before submission. In the case of multi-family residential buildings, 60 percent of tenants in each of these eight properties must approve.<sup>5</sup>

Input from neighborhood residents is important and should be included in the application process. However, individual households should not have the ability to veto streetlights, since inadequate lighting is a pressing public safety concern. Furthermore, the requirement for 60 percent of tenant approval is an overly burdensome condition that disproportionately disadvantages multi-family residential neighborhoods and discourages residents from requesting a streetlight. Students living near campus may not have the time nor resources to collect signatures in large apartment complexes. The Street Lighting Subcommittee should create a streetlight application process that is streamlined and accessible for all Berkeley residents.

### FINANCIAL IMPLICATIONS

Staff time.

### ENVIRONMENTAL SUSTAINABILITY

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<sup>4</sup> [https://opa.berkeley.edu/sites/default/files/where\\_berkeley\\_students\\_live\\_0.pdf](https://opa.berkeley.edu/sites/default/files/where_berkeley_students_live_0.pdf)

<sup>5</sup> [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Sidewalks,\\_Streets\\_-\\_Utility/PW%20Application%20for%20New%20Streetlight.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Sidewalks,_Streets_-_Utility/PW%20Application%20for%20New%20Streetlight.pdf)

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Rachel Alper, Intern

Attachments:

1: Public Works Application for New Streetlight

[https://www.cityofberkeley.info/uploadedFiles/Public Works/Level 3 -  
\\_Sidewalks, Streets - Utility/PW%20Application%20for%20New%20Streetlight.pdf](https://www.cityofberkeley.info/uploadedFiles/Public%20Works/Level%203%20-%20Sidewalks,%20Streets%20-%20Utility/PW%20Application%20for%20New%20Streetlight.pdf)





TO: Honorable Members of the City Council

FROM: Mayor Arreguín

SUBJECT: Report on Regional Leadership and Goals for 2020

#### SUMMARY

In January, Mayor Jesse Arreguín was sworn in as the new President of ABAG for a two-year term. This comes at an important time in our region, with our population expected to grow by 2 million people over the next 20 years, while we face challenges such as housing, homelessness and transportation.

#### BACKGROUND

The San Francisco Bay Area is comprised of 101 municipalities and nine counties, and is home to almost 8 million people. It is also home to one of the fastest growing economies in the world. While each city has its own history and laws, no place exists within a bubble. The Bay Area is intertwined, and the decisions on housing, transportation, or the economy in one city has a ripple effect on others. Knowing that jurisdictions have a collective stake in addressing the issues that affect us all, the Association of Bay Area Governments (ABAG) was formed in 1961 to promote regional planning and collaboration. Today, ABAG is working with regional partners to address the needs and challenges of the Bay Area, from the affordable housing crisis to rising sea levels.

ABAG is led by an Executive Board comprised of Mayors, Councilmembers and County Supervisors from throughout the nine Bay Area counties. Decisions on the budget and work plan are made by the General Assembly of delegates from each Bay Area city and county. ABAG is truly representative of cities and towns of all sizes, and the goal of the agency is to be a voice for all of our region's local governments.

#### FUTURE ACTIONS

ABAG is set to make some big decisions in the coming year concerning the future of the

region. ABAG and the Metropolitan Transportation Commission (MTC) are developing a 30-year regional land use and transportation plan, also known as Plan Bay Area 2050<sup>1</sup>. This Plan is required by state and federal law to guide transportation investments and meet state climate goals. The goal of Plan Bay Area 2050 is to create a more equitable and resilient future for the region through investments in the local economy, environment, housing and transportation. During Mayor Arreguín's tenure as President, he is committed to working with local and regional representatives throughout the Bay Area in crafting a collaborative plan that the region can get behind. From addressing growing inequities to making us more resilient against the increasing threat of climate change, we must work together as one region if we are to achieve our goals. The ABAG Executive Board and MTC are expected to vote on Plan Bay Area 2050 in June 2021.

ABAG, which helps shape regional housing and land use policy, will become even more involved due to newly enacted state bills. One law of note is Assembly Bill 1487, the San Francisco Bay Area Regional Housing Finance Act, which empowers ABAG and MTC to place a regional measure on the Bay Area ballot for affordable housing funding. While it is common for counties and cities to place such measures on the ballot, it has not been done on a regional scale before, giving us the advantage of working through the regional lens we all know is necessary to truly address our crisis of affordable housing. Such a proposal will help us achieve our regional affordable housing goals and prevent displacement. However, specific zoning and local land use authority will continue to be under the scope of local jurisdictions.

The Regional Housing Needs Allocation (RHNA) is a state mandated process of allocating the region's housing need to individual counties and cities. Local governments must update their housing elements, and zoning if necessary, to demonstrate specific sites and regulations to permit the number of RHNA housing units allocated to each jurisdiction. The RHNA is a non-binding decision, but local Housing Elements must be in conformance to the RHNA or face penalty by the state. RHNA is the primary way in which we can measure the creation of new housing in the Bay Area. It is also how we implement state law under the Housing Element, which provides the total number of units that the Bay Area needs to be built. Drafting a RHNA methodology and allocation for the 2022-2030 cycle recently began and is being led by a Housing Methodology Committee, which Mayor Arreguín chairs. Mayor Arreguín will work to make sure that RHNA adoption guides us towards an equitable distribution of housing throughout the region, and addresses decades of past inequities in the production of affordable housing throughout the region. To this end, the state Housing

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<sup>1</sup> <https://www.planbayarea.org>



Element law was recently amended to require that the RHNA affirmatively further fair housing. As the Bay Area is facing an unprecedented housing affordability crisis, the RHNA can be a tool to increase opportunity and ensure equity and affordability. No city alone can address this crisis for the entire Bay Area; all of us have a stake.

Recent fires in Northern California have made the impacts of climate change real. Drier temperatures have made our communities more susceptible to fire risk. Berkeley in particular is along the urban-wildland interface and has seen devastating fires in its history. Preparing for and mitigating the risk of wildfire is one of many climate adaptation strategies we must prioritize. We also know that shoreline communities face the growing risk of rising sea levels. This will affect wetlands, park lands, highways and even whole city blocks. Regional planning must account for the threat of sea level rise and investments made in green and grey infrastructure to help reduce the risk of flooding.

The Bay Area and California are leading in climate change research and policy. As the new President of ABAG, Mayor Arreguín will make climate change a priority for our regional planning agency. This means recognizing the climate emergency that exists, and coordinating planning and policy across multiple regional agencies. It also involves policies and funding to decarbonize our buildings, transportation and promote local renewable energy infrastructure in our region.

In addition, homelessness is one of the most visible problems facing our region. While addressing the housing affordability crisis and preventing displacement are key homelessness prevention strategies, the growth of unsheltered homelessness is alarming. Despite the efforts of many cities, including Berkeley, to provide emergency shelter, permanent housing and social services, policy development and programs remain siloed. Some cities are leading the way, and others have done very little, or done more harm through laws pushing homeless out of their borders. Homelessness is a regional challenge and it requires a regional approach. As ABAG President, Mayor Arreguín plans to convene a regional conversation with elected officials and service providers to coordinate our response to homelessness.

The Bay Area is one of the most beautiful places in the world. The diversity of our residents and landscapes makes it an ideal location. Yet we know we face significant challenges that are proven to be a barrier for many to live here. With the Bay Area's population growing by 1% per year, we must make sure that we have the infrastructure and resources needed to keep up with our increasing population. This is what makes ABAG so important. It focuses on the needs of the region while working with local communities to help them achieve our

collective goals.

CONTACT

Mayor Jesse Arreguín

mayor@cityofberkeley.info | 510-981-7100

| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                                                                 |
|-------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scheduled Dates                                                               |                                                                                                                                                                 |
| March 17                                                                      | <ol style="list-style-type: none"> <li>1. CIP Update (PRW and Public Works)</li> <li>2. 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> <li>2. Vision 2050</li> </ol> |

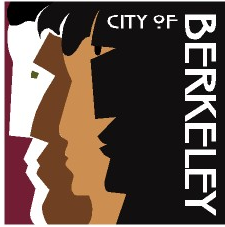
| Unscheduled Presentations (City Manager)                                 |
|--------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Systems Realignment</li> </ol> |

|    | <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> <i>Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.</i></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>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</b> (<i>Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee</i>) (<i>Referred from the January 21, 2020 agenda</i>)</p> <p><b>From: Councilmember Harrison</b></p> <p><b>Recommendation:</b></p> <ol style="list-style-type: none"> <li>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.</li> <li>2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.</li> </ol> <p><b>Financial Implications:</b> See report</p> <p>Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140</p> <p><i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p> |

| CITY CLERK DEPARTMENT                                                       |                      |                       |                                         |                   |
|-----------------------------------------------------------------------------|----------------------|-----------------------|-----------------------------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br>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>                                            |                      |                       |                                         |                   |
| 2336 Eighth St (construct addition to existing duplex)                      | ZAB                  | 2/12/2020             |                                         |                   |
| 2212 Ashby Ave (construct addition to existing duplex)                      | ZAB                  | 2/12/2020             |                                         |                   |
| 910 Ashby Ave (demolish commercial building)                                | ZAB                  | 2/12/2020             |                                         |                   |
| 1872 Allston Way (construct single-family dwelling)                         | ZAB                  | 2/12/2020             |                                         |                   |
| <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                  |                       |                                         | 2/25/2020         |
| 1581 Le Roy Ave (convert vacant elementary school property)                 | LPC                  |                       |                                         | 2/25/2020         |
| 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>                                                                |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |

1/30/2020





[First Last name]  
Councilmember District [District No.]

## SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** February 4, 2020

**Item Number:** 2

**Item Description:** Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**Submitted by:** Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.



**SOPHIE HAHN**

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

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Sophie Hahn  
Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.<sup>1</sup> They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.<sup>2</sup> Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

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<sup>1</sup> <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

<sup>2</sup> <http://www2.oaklandnet.com/w/OAK052051>



always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, “such as a newsletter or brochure, [...] delivered, by any means [...] to a person’s residence, place of employment or business, or post office box.”<sup>3</sup> Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.<sup>4</sup> Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or “Officeholder”) funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

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<sup>3</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

<sup>4</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.<sup>5</sup> For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

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<sup>5</sup> Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.<sup>5</sup>

*members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.*

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

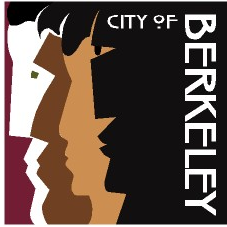
By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.<sup>6</sup>

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

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

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<sup>6</sup> <http://www2.oaklandnet.com/w/OAK052051>



Fair Campaign Practices Commission

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** February 4, 2020

**Item Number:** 2

**Item Description:** Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**Submitted by:** Samuel Harvey; Deputy City Attorney / Secretary, Fair Campaign Practices Commission

Attachment 4 to the report (“Memorandum signed by City Attorney Manuela Albuquerque”) included an attachment which was erroneously omitted from the Council item. Attached is Attachment 4 (for context) along with the additional pages which should be included to appear as pages 16 -17 of the item.



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

Page 2

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

PAUSERSUBEL2\offhldr.mem.doc

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

CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff Counsel

SUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSES

BACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Loni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

in opposition to the nomination or election of one or more candidates . . . . (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

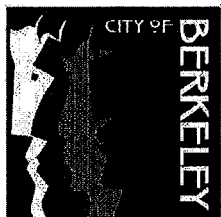
As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

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<sup>1/</sup>I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.





Office of the City Auditor  
Ann-Marie Hogan, City Auditor

## MEMORANDUM

**Date:** March 14, 2017  
**To:** Councilmember Harrison  
**From:** Ann-Marie Hogan, City Auditor  
**Re:** Council Expense Reimbursement Guidance

The purpose of this memo is to provide you with forms for, links to, and general guidance on Council expense and reimbursement policies. In some cases, the restrictions on expenses for Council Members are more restrictive and more complex than those for City employees, because of state law. You must contact my office prior to incurring expenses for attendance at a conference, seminar, or training, or making travel arrangements. The purchase of routine office supplies should be made using the City's standard procurement procedures and vendors, using a purchase order, but on those occasions when you must pay for something personally and then request reimbursement, you will also need to submit the request to my office. For information regarding the City's procurement procedures, see Administrative Regulation 3.4<sup>1</sup>. Once your City email is active, we'll send this memo to you via email, so you can click on the links to the City's intranet. Please feel free to contact me if you or your staff have questions.

In July 2006, the Berkeley City Council passed Resolution No. 63,412–N.S. to comply with state bill AB1234, which requires all cities to adopt an expense reimbursement policy for legislators in local government, and sets specific requirements for that policy. In September 2013, at the recommendation of the City Attorney, Council rescinded Resolution No. 63,412–N.S. and replaced it with Resolution No. 66,295–N.S. (See attached.) Council adopted the new resolution to incorporate a budget relinquishment and grant policy, and also to clarify the criteria and spending limitations associated with reimbursements for the Mayor and Council Members. Some of the spending limitations include:

- **Mileage and Transit**:- Mileage is reimbursed at the current year's IRS mileage rate and must be accompanied by supporting documentation, such as a Google Maps printout. Use the most economical mode of transportation practical.
- **Meals**: Meals are reimbursed at the per diem rates set forth in City Administrative Regulation 3.9, or the actual cost of the meal, whichever is *lower*.<sup>2</sup> The per diem rate covers the meal, tax,

<sup>1</sup> Administrative Regulation 3.4: <http://icobweb/AR/PDF/AR3-4.pdf>

<sup>2</sup> Administrative Regulation 3.9: [http://icobweb/AR/PDF/2016/Administrative Regulation 3.9.pdf](http://icobweb/AR/PDF/2016/Administrative%20Regulation%203.9.pdf)

tip, and nonalcoholic beverages (alcoholic beverages are not reimbursable). The per diem rate also applies when Council Members are requesting reimbursement for meals paid on behalf of individuals who are conducting city related business, such as Legislative Assistants. Council Members must submit original receipts, a list of attendees and the Statement of Municipal Purpose form (explaining how the expense benefits the City), as part of the reimbursement request. Any expense in excess of the individual meal allowance will not be reimbursed. The current per diem rates are:

- Breakfast \$10
  - Lunch \$15
  - Dinner \$26
- **Airfare**: Airfare is reimbursed based on the most economical mode and class of transportation reasonably consistent with scheduling needs. We suggest that you attach a printout of available fares with your request. Please note that the current language in Resolution No. 66,295–N.S. is out of date because it references a program that is no longer available. This will be corrected in Council’s next revision of that resolution.
  - **Lodging**: Lodging for conferences will be reimbursed at the available group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or the government rates published by the U.S. General Services Administration, whichever is greater. Where no conference rate is published, the reimbursement rate will be based on the government rate or the median rate listed on discount travel websites, whichever is greater. Trivago, Priceline, Kayak, Orbitz, Travelocity, and Expedia are examples of travel sites that provide discount rates and may be used to identify a reasonable median rate. Include a printout of the published conference rate, government rate, or travel site rates with the reimbursement request as applicable. Council Members can look up rates by using the U.S. General Services Administration’s Per Diem Rates Look-Up tool.<sup>3</sup> Council Members should select the specific location they are traveling to in the look-up tool.
  - **Registration**: Generally, Council Members should use a purchase order for conference, seminar, and training registrations as defined by Administrative Regulation 3.9. However, Council Members may use their credit card to register, if that is the vendor’s required form of payment. Council Members may not submit their reimbursement request until after the event has taken place, and must include proof of payment, and should include evidence of attendance with their request. Resolution No. 66,295–N.S. also requires that Council members provide a report to Council on training they attend, but we will be recommending that this requirement be deleted since it is not required by AB1234.

<sup>3</sup> Hotel fee tool: <http://www.gsa.gov/portal/category/100120>

When completing a reimbursement request, Council Members must complete and provide the following:

1. FN-024 payment voucher: available in Administration Regulation 3.14<sup>4</sup>, on the City's intranet<sup>5</sup>, or by contacting Accounts Payable at (510) 981-7310. All three sources provide guidance for completing this form.
2. Statement of municipal purpose form: available in City Auditor's Groupware section or by contacting the City Auditor's Office at (510) 981-6750 or auditor@cityofberkeley.info.
3. Supporting documentation: Council member original receipts, proof of payment, official per diem rates, etc.

Council Members must include account codes on the FN-024 payment voucher. The City's standard account codes are *14 digits* long and include both an element and an object code as the last four digits. The most commonly used element and object codes are:

- 4064: mileage/transportation (including taxi or ride-sharing service, such as Uber or Lyft)
- 4063: registration
- 4062: meals and lodging related to conferences, seminars, training, workshops, and similar
- 4061: airfare
- 5550: meals and food for city business, events, functions, and similar business meals

City Administrative Regulation (A.R.) 3.9 establishes the policies and procedures for reimbursing expenses incurred by City staff to attend conferences, meetings, seminars, trainings, and workshops. The regulation complements Resolution No. 66,295–N.S., which establishes the procedures for Council Members. A.R. 3.9 includes the following exceptions for Mayor and Council Members' expenses:

- **Attendance and travel request form:** The Mayor, Council Members, and Legislative Assistants are not required to submit an Attendance and Travel Request form. (A.R. 3.9, page two)
- **Paying for another employee's expenses:** The Mayor, Council Members, and Legislative Assistants may be reimbursed for paying for other legislative staff's or Council Members' expenses incurred for city related business. This is an exception to A.R. 3.9, noted on page three.
- **Business meals:** The Mayor and Council Members may be reimbursed for meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents). City Auditor review and approval is required. Council Members must describe the purpose of their business meal, e.g. issues discussed and how they relate to adopted priorities of Council, on the Statement of Municipal Purpose form and list the attendees. *Meals are reimbursed at the per diem rates as listed above, or the actual cost of the meal, whichever is lower.* (A.R. 3.9, page four) **Note that AB1234 requires that members of a legislative body shall**

<sup>4</sup> A.R. 3.14: <http://icobweb/AR/PDF/AR3-14.pdf>

<sup>5</sup> City Intranet: <http://icobweb/finance/GroupwareAP.FN-024&PettyCash.htm>

**provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.**

- **Receipts:** The Mayor, Council Members, and Legislative Assistants must submit meal receipts. Meals are reimbursed at the per diem rates as listed above, or the actual cost of the meal, whichever is lower. (A.R. 3.9, page four)

cc: Sheila Soo, Administrative Assistant, Auditor's Office

RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, the Councilmember Office Budget Relinquishment and Grant Policy generally falls under the purview of the existing City Expenditures and Expense Reimbursement for Mayor and Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 63,412-N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

**CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS**

**I. City Expenditures for Mayor and Council**

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

## **II. Reimbursement of Actual and Necessary Expense of Office**

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

### **A. Authorized Activities.**

Travel, meals and/or other food, incidentals, and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

### **B. Unauthorized Expenses**

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related

- expenses), or other recreational and cultural events;
- 5. Alcoholic beverages;
- 6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
- 7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

### C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. Reimbursement for travel must not exceed the rates available through the League program as published by the California Department of General Services.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services shall be considered the most economical and reasonable for purposes of reimbursement under this policy.
6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than

the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or government rates as published by the Federal General Services Agency, whichever is greater. Where no conference rate is published, the reimbursement will be based on the government rate or the median rate listed on priceline.com or similar service, whichever is greater.
8. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9.
9. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
12. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. The City in accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds may reimburse such purchases.

**D. Cash Advance Policy for Airfare and Hotel Only (per A.R, 3.9)**

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity
3. The benefit to the residents of the City.
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).



Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

**E. Expense Report Content and Submission Deadline**

1. A Statement of Expense must be completed, signed and submitted to the City Auditor for review and forwarding to the Finance Department for payment. The Statement of Expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their Statement of Expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

**F. Audits of Expense Reports**

All expenses are subject to verification by the City Auditor of compliance with this policy.

**G. Reports**

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

**H. Compliance with Laws**

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

**I. Violation of This Policy**

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

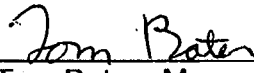
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The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Tom Bates, Mayor

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

## **Councilmember Office Budget Relinquishment and Grant Policy**

### **Introduction – Limitations on the Expenditure of Public Funds**

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.  
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.  
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

### **Criteria for Grants of City Funds from Councilmember Office Budgets**

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

| Recipient                                                                                                                                       | Purpose                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)                                                                       | Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                                                              |
| BUSD and other public agencies operating in Berkeley                                                                                            | Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                        |
| Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).                                      | City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed. |
| Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits) | To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                                                                         |

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.

# CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

**A.R. NUMBER: 3.4**  
**ORIGINAL DATE: 07/94**  
**POSTING DATE: 4/14/2009**  
**PAGE 1 of 5 PAGES**

## **SUBJECT: Purchasing Policy & Purchasing Manual**

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### **PURPOSE**

To ensure that the City receives the most favorable price, quality, and/or service available for all purchases, while adhering to City Council directives. The Precautionary Principle (PP) and Environmentally Preferable Purchasing Policies (EP3) should be considered whenever feasible, and in accordance with the adopted budget. Furthermore, the complete AR provides City employees with appropriate procedures to knowledgeably participate in the procurement process. This is the Executive Summary of AR 3.4, with an introduction to procedures for the City's Purchasing Policy. The Purchasing Manual is the full AR 3.4, and includes the complete policy and procedures. The City Purchasing Manual can be found online at Groupware – Finance: Purchasing Manual.

### **POLICY**

It is the policy of the City Manager that all City purchases, with only specified and approved exceptions, shall be made through a competitive process. Regardless of the value of the purchase, more than one documented quotation, bid, or proposal is strongly encouraged. The City Council periodically sets or adjusts cost levels of purchases for Council review and approval, and the parameters for the formally documented competitive processes.

Responsibility for City Purchases rests with designated positions for implementation of this policy:

1. The City maintains a centralized General Services office through which all purchases of goods and services are processed. Each Department originates requests for procurement.
2. Departments are responsible for requesting the type and quality of product or service required. Sole and single source contracts are discouraged, but may be utilized if approved as provided in the Purchasing Manual. The FUNDS system maintains lists of vendors cross-referenced to commodities and services.
3. The General Services Division is ultimately responsible for determining the means of purchase and the appropriate vendor. All purchases made will be of a quality consistent with the ultimate use intended and will be based on best value to the City of Berkeley, not necessarily on the lowest obtainable price.
4. Only the City Manager has the authority to enter into a contract/agreement, except purchase orders, with a vendor. The authority to enter into a Purchase Order has been delegated to the General Services Manager.
5. A comprehensive list of City restrictions on procurement are addressed in Section I of the manual. In addition to those restrictions prescribed by law the following are prohibitions requested by City Council.

- 
- A) On January 29, 2008 Council requested the City Manager prohibit purchases from Chevron Corporation whenever possible.
  - B) On October 28, 2008 Council requested the City Manager research limiting the purchase of bottled water. In response, the City Manager directed staff to eliminate as much as possible the purchasing of individual bottles of water. Bottled water can still be purchased for emergency preparedness and for field events where health and safety are a concern. For all other events, carafes and tap water should be used.

## PROCEDURE

See the current version of the City Purchasing Manual, available online at [Groupware – Finance: Purchasing Manual](#), for complete information and procedures. The following is the table of contents for the Purchasing Manual:

- I. General Procedures, Responsibilities and Requirements
- II. Purchasing Requirements by Price
- III. Purchasing Procedures
- IV. Glossary of Terms
- V. Frequently Asked Questions (FAQs)
- VI. Requirement on Contracting with Certain Entities (Forms & Council Actions)
- VII. Council Guidelines on Purchasing Services and Goods
- VIII. How to Guide
- IX. Reports (In Development)
- X. Forms

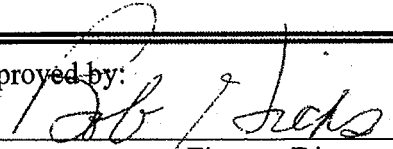
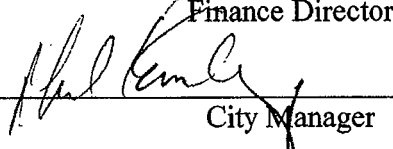
## DEFINITIONS

1. **Procurement:** Procurement refers to the process of managing activities associated with an organization's need to obtain the goods and services required for its operation. To ensure that the correct amount of the product or service is received at the appropriate time, specific steps are taken in the procurement process, including: value assurance; determining which commodities or services are best; choosing the right suppliers and vendors; negotiating the best prices; and awarding contracts. For General Services to conduct the procurement process responsibly, its functions include spend analysis, sourcing, supplier implementation, transaction management, category management, and supplier performance management.
2. **Purchasing:** The processing of a purchase order. The key steps in the process are: departments place and approve requisitions; General Services or departments find the item (sourcing); General Services issues the purchase order (PO); and General Services sends PO to vendor. Upon fulfillment of the order, the City is invoiced and the vendor is paid.

3. Purchasing Requisition (PR): A purchasing requisition is a document that instructs General Services to spend a designated and approved amount from a specific department/division budget account for needed goods or services.
4. Purchase Order (PO): A purchase order is used for the purchase of goods. The PO represents a contractual agreement that is enforceable under law. To have an enforceable contract there must be agreement of the parties, which consists of an offer by one party, acceptance of that offer by the other party, and mutual consideration.
5. Blue-Backed Contract: A blue backed contract is used for the purchase of services. A blue-backed contract represents a contractual agreement that is enforceable under law. To have an enforceable contract there must be agreement of the parties, which consists of an offer by one party, acceptance of that offer by the other party, and mutual consideration.

**Attachments:**

1. Purchasing Thresholds: Ordinance No. 6,875 – N.S.
2. Purchasing Thresholds: Ordinance No. 7,035 – N.S.

|                                                                                                                   |                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>RESPONSIBLE DEPARTMENT:</b><br/>Finance Department</p> <p><b>TO BE REVIEWED/REVISED:</b><br/>Every year</p> | <p>Approved by:</p> <p><br/>_____<br/>Finance Director</p> <p><br/>_____<br/>City Manager</p> |
|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

ATTACHMENT 1

ORDINANCE NO. 6,875-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 7.18.010B REGARDING EXPENDITURES FOR SPECIFIC IMPROVEMENTS, INCLUDING PLAY AREA IMPROVEMENTS AND EQUIPMENT WHICH EXCEED \$200,000; AMENDING SECTION 7.18.010C REGARDING EXPENDITURES FOR THE PURCHASE OF SUPPLIES, EQUIPMENT, AND MATERIALS WHICH EXCEED \$100,000; AND AMENDING SECTION 7.18.020A REGARDING EXPENDITURE LIMITATIONS IN CASE OF EMERGENCY

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

Section 1. That Berkeley Municipal Code Section 7.18.010 is amended as follows:

**Section 7.18.010 Expenditures pursuant to Chapter Article XI, Sections 67 and 67.5.**

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, which exceed the amount of \$25,000 shall require Council approval.

B. Expenditures for specific improvements (public projects), including play area improvements and equipment in public parks which exceed the amount of \$200,000 shall require Council approval pursuant to Article XI, Section 67 of the Charter of the City of Berkeley.

C. Expenditures for the purchase of supplies, equipment, and materials which exceed the amount of \$100,000 shall require Council approval.

Section 2. That Berkeley Municipal Code Section 7.18.020A is amended as follows:

**Section 7.18.020 Expenditures pursuant to Charter Article XI, Section 67.4 Emergencies.**

A. Expenditures pursuant to Article XI, Section 67.4 of the Charter of the City which exceed the amount of \$100,000 shall require Council approval; and expenditures for public construction projects and playground improvements and equipment which exceed the amount of \$200,000 shall require Council approval.

B. Notwithstanding subsection A of this section, in the event of a declared emergency under Chapter 2.88, the expenditure limitation under Article XI, Section 67.4 of the Charter of the City shall be an amount not exceeding the amount appropriated by the Council in the most recent appropriation ordinance for the fund from which an expenditure is made and for the purpose authorized for such fund.

C. Whenever purchases are made pursuant to this section, the City Manager shall promptly inform the Council as to the nature and amount.

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 Old City Hall, 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.

\*\*\*\*\*



ATTACHMENT 2

ORDINANCE NO: 7,035-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 7.18.010 REGARDING EXPENDITURES FOR SERVICE CONTRACTS TO INCREASE CITY MANAGER'S AUTHORITY

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

Section 1. That Berkeley Municipal Code Section 7.18.010 is amended to read as follows:

Section 7.18.010 Expenditures pursuant to Chapter Article XI, Sections 67 and 67.5.

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, which exceed the amount of \$50,000 shall require Council approval.

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

At a regular meeting of the Council of the City of Berkeley held on April 22, 2008, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Wozniak and Bates.

Noes: Spring and Worthington.

Absent: None.

At a regular meeting of the Council of the City of Berkeley held on May 6, 2008, this Ordinance was adopted by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Wozniak and Bates.

Noes: Spring and Worthington.

Absent: None.

ATTEST: [Signature] Deanna Despain, Deputy City Clerk

[Signature] Tom Bates, Mayor

Date signed: [Signature]

# CITY OF BERKELEY

## ADMINISTRATIVE REGULATIONS

**SUBJECT: Attendance and Payment of Expenses Associated with Conferences, Meetings, Seminars, Trainings, and Workshops**

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### PURPOSE

To establish policies and procedures for City staff to obtain approval to attend conferences, meetings, seminars, trainings, and workshops; and to establish procedures for the City's direct payment of authorized expenses incurred by an individual for attendance at an approved event or meeting. Obtaining approval of an Attendance & Travel (A&T) Request for an event or meeting, along with associated expenses, ensures that appropriate supervisors and Department Directors have determined an employee's attendance at an event or meeting benefits the City, and that expenses are consistent and in line with the department's adopted budget.

This Administrative Regulation (AR) also complements **Resolution No. 66,295, City Council Expenditure and Reimbursement Policies** for the Mayor and Council (Attachment B); and **Resolution No. 63,413, Establishing Travel and Training Reimbursement Policy for Board and Commission Members** of the Rent Stabilization Board, Board of Library Trustees, and members of other boards or commissions (Attachment C).

### POLICY

It is the policy of the City Manager to authorize Department Directors and Supervisors to approve an employee's request to attend, and to receive payment for expenses associated with conferences, meetings, seminars, training, and workshops.

### Table of Contents

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## I. APPROVALS

**Note: Employee Must Submit and Obtain Approval for A&T Request before incurring any allowable expenses**

City Approval to attend and incur authorized expenses for an eligible event is based on the following factors:

- A. Expectation that the City will derive a specific benefit from staff attendance.
- B. Employee submission of the authorized A&T Request form (the current version in Groupware), and receipt of approval from her/his Supervisor &/or Department Director in advance of an authorized event, including approval for all associated expenses.
- C. All expenditures and reimbursements for the Mayor and Council must adhere to Resolution No. 66,295 and be approved by the City Auditor.
- D. For routine and, or, recurring meetings an A&T Request must be submitted, approved, and on file in the department in advance of the initial date, and must be renewed annually for each fiscal year.
- E. Department Directors are to complete and submit an A&T Request; no other signature is required for approval.
- F. Exceptions to use of the A&T Request form are: Mayor, Council, and Legislative Assistants (when allowed under Resolution No. 66,295); and members of the Rent Stabilization Board, and Board of Library Trustees. Resolution No. 66,295 or Resolution No. 63,413 governs their approvals, expenditures, and related matters.
- G. Expenditures are provided for in the adopted budget for the employee's department. For specific procedures, see item III. Allowable Expenses.

## II. EXPENDITURES BASICS

Expenditures must be documented in accordance with all related City ARs and other associated policies, using current forms (published in Groupware), including and not limited to:

- AR 3.4 Purchasing Manual: Employees and Mayor/Council must make full use of the City's Procurement procedures and submit purchase requisitions to generate payment for registration prior to travel. Note: Expenses for Board/Commission members and other non-staff or elected officials eligible to attend an event pursuant to the standards in Resolution No. 63,413 must have payments processed by the designated board or commission Secretary, using FN-024 Payment Vouchers through Accounts Payable.
- AR 3.14 FN-024 Voucher Processing
- AR 7.2 Use of Private Vehicles and Mileage Reimbursement
- Auto Record for Mileage Reimbursement: for further details, see AR 7.2 and Transportation: Private Vehicle, below.

- 
- City Council Resolution No. 66,295 City Council Expenditure and Reimbursement Policies.
  - City Council Resolution No. 63,413 Establishing Travel and Training Reimbursement Policy for Board and Commission Members.

In addition:

- Statement of Expense forms and receipts, for reconciliation of an advance &/or reimbursement of expenses incurred, must be submitted to Finance – Accounts Payable within 60 calendar days (30 days for Council/Commission, unless revised) after conclusion of the event. Statement of Expense forms and receipts submitted after this date may not be processed, and individuals assume full, personal responsibility for the costs they incurred.
- Advances or reimbursements to an employee are restricted to expenses for that employee only – they may not cover the expenses of any other employee. Exception to this restriction is for reimbursements only of expenses for Mayor and Council and their Legislative Assistants.

See item V. Advance Payments and Reconciliation.

### III. ALLOWABLE EXPENSES

Expenditures should adhere to the following guidelines. In the event that expenses are incurred that exceed these guidelines, the cost borne or reimbursed by the City will be limited to those that fall within these guidelines, unless approved by an appropriate, designated authority. Proof of payment for all expenses must be provided when reconciling the Statement of Expense form, except as indicated.

- A. **Registration:** Registration fee charged for an authorized conference, meeting, seminar, training or workshop is allowable. Employees should register in a timely manner to take advantage of registration discounts. Payments can be made by Purchase Orders (PO). See also: Payments by Check Using a Purchase Order, below.
- B. **Transportation:** Employees must use the most economical mode and class of transportation reasonably consistent with scheduling needs, coordination with other employees traveling together, and cargo space requirements, and following the most direct and time-efficient route incorporating these factors. If an employee chooses a more expensive mode of travel based on personal criteria, reimbursement will be for the lesser cost of transportation.
  1. **Public Transit** should be used for travel to events and meetings outside the City of Berkeley and in other locations, where accessible by transit. Receipts are not required for these expenses.
  2. **Fleet Vehicle:** see AR 7.1 Use of Fleet Vehicles for details.
  3. **Private Vehicle:** see AR 7.2 Use of Private Vehicles & Mileage Reimbursement for details. If use of a private vehicle is authorized, mileage is reimbursed at IRS

rates currently in effect, in addition to parking fees, bridge and road tolls, which are also reimbursable.

- Unless an alternative is proposed by a department and acceptable to Accounts Payable, expenses for approved use of a private vehicle should be submitted with other expenses associated with attendance at an authorized event or meeting on the Statement of Expense.
4. **Rental Vehicle** charges may be reimbursed under this provision with Department Director approval. Rental fees, receipted fuel expenses, and authorized parking fees, **bridge and road tolls will be reimbursed**.
  5. **Air/Train** fares for reimbursement under this policy should be the most economical and reasonable amount available after the Attendance and Travel Request is approved.
  6. **Travel to/from Airports: Employees will be reimbursed for the most economical and appropriate means**; if there's any question about this, obtain department approval before incurring the expense.
  7. **Taxi or Shuttle** fares may be reimbursed with receipts.
- C. **Lodging:** Cost of accommodations will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay.
1. When travel status is more than twelve (12) hours; or when the location is more than 50 miles from the employee's worksite and residence based on odometer, MapQuest or other reliable documentation; or when an event begins before 8:00am or ends after 5:00pm and a documented evening event requires the employee's attendance.
  2. If lodging is associated with a conference, employees should register in a timely manner to take advantage of discounts or conference rates. Lodging expenses that exceed the group rate published by the conference sponsor must be approved by an appropriate, designated authority.
  3. For non-conference lodging, travelers must request government rates, when available and must be authorized by Department Director.
  4. Costs to upgrade rooms from the basic accommodations provided are not reimbursable, unless authorized by the Department Director.
- D. **Meals: Meals are reimbursable only if travel status is over twelve hours or requires overnight lodging.**
1. **Meal expenses**, including non-alcoholic beverages, tax, and tips, are reimbursable up to a total per diem of \$51: the amounts per meal are \$10 breakfast; \$15 lunch; \$26 dinner; and receipts are not required. Expenses above the authorized amounts are the responsibility of the employee.
  2. **Breakfast &/or evening meetings with meals**, which are scheduled before conferences or meetings commence, or after they adjourn, and that require the employee's attendance, will be considered for reimbursement when

documentation is submitted reflecting the requirement of the employee's attendance for the meeting and location.

3. **Meals included with registration or lodging that are taken at additional expense** will only be considered for reimbursement at the authorized per diem by approval of the Department Director when documentation is submitted reflecting the necessity of this expense, such as:
  4. **Meals during approved travel time** to/from an event or meeting destination may be reimbursable with approval by the employee's Department Director, at the authorized amount for the individual meal(s) (see Meal expenses, above).
  5. **NOTE:** Business meals with other employees, commissioners or elected officials of the City of Berkeley are specifically NOT reimbursable. Exceptions for Mayor and Council must be reviewed and approved by the City Auditor. City funds may also NOT be used for expenses related to holiday activities or other office parties or events, unless exempted by AR 3.3.
- E. **Other Travel Related Expenses:** Expenses for which City staff or officials receive reimbursement from another agency are not reimbursable.

#### IV. PAYMENTS BY CHECK USING A PURCHASE ORDER

Generally, General Services – Procurement will process a PO within three working days, and a check could be issued in the next AP check run. It is the department responsibility to notify Procurement staff when the requisition is approved to ensure timely processing of the PO in order to issue the check promptly. Departments may have internal procedures that require additional time, and employees are expected to familiarize themselves with these internal deadlines.

- A. Expenses for registration should be paid by check using a Purchase Order (PO). This includes online registration when "pay by check" is an option.
- B. Use of an employee's credit card or personal check for registration is only permitted and eligible for reimbursement when time does not permit issuing a City check for payment, and is approved by the Department Director.
- C. Resolution No. 66,295 or Resolution No. 63,413 governs any exceptions for Mayor and Council, or for the Rent Stabilization Board or Board of Library Trustees.
- D. Expenses for accommodations, if lodging is included in the event package, should be paid with the registration fee using a Purchase Order (PO).

#### V. ADVANCE PAYMENTS & RECONCILIATION

An approved A&T Request is required for any request for an advance. Advances are extended only to employees in classifications that are not included on the list of **Classifications NOT eligible for advances**. Advances are limited to approved air/train fare and lodging only.

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In addition:

- Registration or meals, and other transportation expenses may not be advanced to any employee.
- Advances to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- Departments must maintain a Tracking Worksheet that documents employees' advance requests and reconciliations. These Worksheets must be submitted to the Auditor's Office by the 10<sup>th</sup> working day of each calendar quarter (January, April, July, October), along with copies of correspondence to those employees who have advance reconciliations outstanding. The Auditor's Office will review departmental travel advance worksheets on a sample basis.
- If an advance is issued to an employee and the employee does not attend the event, whether due to personal circumstances, the event being cancelled, or the City intervened to cancel the employee's attendance, the employee must seek recovery of charges and remit the full refunded amount to the City.

**A. Requesting an Advance**

1. Requests for an advance must be submitted to Finance – Accounts Payable at least 10 working days before the event start date. Employees are expected to familiarize themselves with any additional internal deadlines or procedures their departments may require.
2. Requests for an advance must include:
3. Approved Attendance and Travel Request, with documentation showing dates and time, and rates offered for travel and accommodations, including meals provided with the event.
4. Completed FN-024 Payment Voucher (current version on Groupware) with required signatures of approval and all specified back-up documentation. See AR 3.14 for details.

**B. Reconciling an Advance**

1. Each travel advance must be reconciled before an employee can request another; employees are not eligible for multiple advances.
2. Attendance must be documented in the form of a receipt, sign in sheet, or certificate of attendance.
3. Employees must submit a Statement of Expense and receipts to appropriate department staff within 60 calendar days of conclusion of the event (30 days for Council/Commission, unless revised). Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred. If an employee fails to reconcile an advance within this timeframe, the City may take disciplinary action.

4. When an advance exceeds the expenses incurred, the employee is responsible for paying the difference by cash or check payable to the City of Berkeley for the balance at the time of reconciliation. Payment is submitted to the City Treasury and a copy of the CR edit report must be attached to the employee's Statement of Expense, in addition to all required original receipts.
5. When an advance is less than the expenses incurred, departments submit an FN-024 Payment Voucher payable to the employee for the difference, along with the employee's Statement of Expense and original receipts for expenses incurred.

## VI. EXPENSE REIMBURSEMENT

See Allowable Expenses, above, for expenses that qualify for reimbursement, and the acceptable rates and limitations for those expenses. To obtain reimbursement of approved expenses incurred:

- A. Employees must submit a completed FN-024 Payment Voucher, and Statement of Expense, and receipts to appropriate department staff within 60 calendar days after conclusion of the event. Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred.
- B. Reimbursements to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- C. Tips, except where documented, are not reimbursable.
- D. Reimbursements are processed by FN-024 Payment Voucher (see AR 3.14) and must include:
  1. Authorized signature/s (see AR 3.12).
  2. Attendance and Travel Request approved by Supervisor &/or Department Director.
  3. Documentation of attendance at the event or meeting (receipt, certificate, sign-in sheet).
  4. Statement of Expense, completed with all required original receipts.
  5. Auto Record for Mileage Reimbursement, if use of a private vehicle was authorized (see AR 7.2 for details and instructions) and these are the only expenses for reimbursement associated with the event.

## VII. OTHER EXCEPTIONS

Any exception not already identified within other sections of this AR must be submitted to, and approved by the employee's Department Director. For Mayor, Council, Legislative Assistants, Rent Stabilization Board or Board of Library Trustees, exceptions must be approved as set forth in the appropriate Resolution.



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Employees may request an exception to the reimbursement rules when original receipts, or other proof of payment such as a canceled check, cannot be provided to verify expenses. The Supervisor and Department Director (or designee) must approve requests for an exception that require the "Approval of Payment Exception" portion of the Statement of Expense and state the necessity for the exception. In addition, the Finance Director must also approve any payment exceptions.

**VIII. DEFINITIONS** (related to Attendance at Conferences, Workshops, Training, Seminars, Meetings)

**Advance**: Payment to an employee with an approved Attendance & Travel Request to purchase air/train travel and qualifying lodging reservations and incur expenses associated with attending the forthcoming event or meeting. See procedures for Requesting an Advance, and Reconciling an Advance.

**Event: Conference**: A gathering of persons associated with a professional, membership or support organization for discussing matters of common concern, which may include presentations, programs and exhibits related to municipal government &/or related functions.

**Event: Workshop, Training Session, or Seminar**: A usually brief intensive educational program for a relatively small group of people that focuses on techniques and skills in a particular field.

**Meeting: Non-Routine Meeting**: A formally arranged gathering for a common purpose that the City will derive a specific benefit from staff attendance.

**Meeting: Routine or Recurring Meeting**: A gathering that occurs in predictable intervals for a common purpose, where attendance is part of the employee's usual role and responsibilities.

**Overnight Stay**: Out-of-town accommodations (room and specified meals) required for an employee to attend an approved event or eligible meeting (see Allowable Expenses for details).

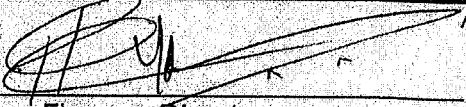
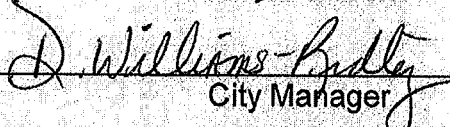
**Payment Documentation**: Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original receipts, cancelled checks (copies of front and back), proof of credit card charge and payment (receipt and copy of statement), and printed online payment confirmation with name and amount. Photocopies of receipts are not acceptable.

**Point of Origin**: Location, if other than Worksite, from which authorized travel may originate or to which travel may conclude, related to attendance at an approved event and calculation of expenses for reimbursement.

**Worksite**: Main office or work location where an employee usually performs her/his regular job duties with the City of Berkeley.

**IX. ATTACHMENTS/LINKS**

- A. Classifications NOT eligible for advances
- B. Resolution 66,295 (Mayor/Council Departments)
- C. Resolution 63,413 (Rent Board/Library Trustees)
- D. Attendance & Travel Request
- E. Statement of Expense
- F. AR 7.2 Use of Private Vehicles & Mileage Reimbursement
- G. Auto Record for Mileage Reimbursement
- H. FN-024 Payment Voucher

|                                                      |                                                                                                                       |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| <b>RESPONSIBLE DEPARTMENT:</b><br>Finance Department | Approved by: <br>Finance Director |
| <b>TO BE REVIEWED/REVISED:</b><br>Every year         | <br>City Manager                  |

## Attachment A

| JOB CODE | REP UNIT | CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE | JOB CODE | REP UNIT | CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE |
|----------|----------|-------------------------------------------------------|----------|----------|-------------------------------------------------------|
| 1350     | M        | Accounting Manager                                    | 1374     | Z1       | Economic Development Manager                          |
| 1317     | M        | Animal Services Manager                               | 2923     | M        | Economic Development Project Mgr.                     |
| 1213     | Z1       | Assistant City Attorney                               | 1417     | Z1       | Emergency Services Manager                            |
| 1118     | Z1       | Assistant City Manager                                | 1402     | Z1       | Employee Relations Officer                            |
| 8174     | Z1       | Assistant Fire Chief                                  | 1426     | M        | Energy Officer                                        |
| 1801     | Z1       | Assistant to the City Manager                         | 1348     | M        | Equipment Superintendent                              |
| 1301     | Z1       | Audit Manager                                         | 1121     | Z5       | Executive Director of Rent Board                      |
| 1323     | Z1       | Budget Manager                                        | 1344     | M        | Facilities Maintenance Superintendent                 |
| 1306     | M        | Building and Safety Manager                           | 8155     | B        | Fire Apparatus Operator EMT                           |
| 1320     | Z1       | Capital Improvement Programs Manager                  | 8167     | B        | Fire Captain EMT                                      |
| 1107     | Z1       | City Attorney                                         | 1105     | Z1       | Fire Chief                                            |
| 1102     | Z1       | City Auditor                                          | 8158     | B        | Fire Lieutenant EMT                                   |
| 1120     | Z1       | City Clerk                                            | 8164     | B        | Fire Lieutenant Training EMT                          |
| 1101     | Z1       | City Manager                                          | 8160     | B        | Fire Prevention Inspector I EMT                       |
| 1315     | M        | Customer Services Manager                             | 8161     | B        | Fire Prevention Inspector II EMT                      |
| 2303     | Z2       | Deputy City Attorney II                               | 1418     | Z1       | Fire Prevention Manager                               |
| 2311     | Z2       | Deputy City Attorney III                              | 1321     | M        | General Services Manager                              |
| 1366     | Z1       | Deputy City Auditor for Payroll Mgmt.                 | 1377     | M        | Hazardous Materials Manager                           |
| 1219     | Z1       | Deputy City Clerk                                     | 1223     | Z1       | Health Officer                                        |
| 1103     | Z1       | Deputy City Manager                                   | 1224     | Z1       | Health Officer (Cert)                                 |
| 1227     | Z1       | Deputy Director of Finance                            | 1363     | M        | Housing Authority Manager                             |
| 1229     | Z1       | Deputy Director of Health & Human Services            | 1352     | M        | Housing Services Manager                              |
| 1211     | Z1       | Deputy Director of Library Services                   | 1380     | Z1       | Human Resources Manager                               |
| 1228     | Z1       | Deputy Director of Parks, Recreation & Waterfront     | 1221     | Z1       | Information Systems Manager                           |
| 1230     | Z1       | Deputy Director of Planning                           | 1354     | M        | Land Use Planning Manager                             |
| 1205     | Z1       | Deputy Director of Public Works                       | 1803     | Z5       | Library Building Project Manager                      |
| 1209     | Z1       | Deputy Director of Public Works (Reg)                 | 1466     | Z2       | Library Financial Manager                             |
| 1204     | Z1       | Deputy Fire Chief                                     | 1465     | Z5       | Library Network Administrator                         |
| 8182     | B        | Deputy Fire Marshal EMT                               | 1373     | M        | Manager of Economic Development                       |
| 1203     | Z1       | Deputy Police Chief                                   | 1310     | M        | Manager of Engineering                                |
| 1123     | Z1       | Director of Community Development                     | 1368     | M        | Manager of Environmental Health                       |
| 1104     | Z1       | Director of Finance                                   | 1360     | M        | Manager of Health Promotion                           |
| 1125     | Z1       | Director of Health and Human Services                 | 1339     | M        | Manager of Mental Health Services                     |
| 1126     | Z1       | Director of Housing                                   | 1362     | M        | Manager of Program Planning and Administration        |
| 1108     | Z1       | Director of Human Resources                           | 8186     | Z1       | Paramedic Program Supervisor                          |
| 1127     | Z1       | Director of Information Technology                    | 8111     | B        | Paramedic Supervisor I                                |
| 1115     | Z1       | Director of Library Services                          | 8113     | B        | Paramedic Supervisor II                               |
| 1112     | Z1       | Director of Parks, Recreation & Waterfront            | 1327     | M        | Parking Services Manager                              |
| 1124     | Z1       | Director of Planning                                  | 1332     | M        | Parks Superintendent                                  |
| 1111     | Z1       | Director of Public Works                              | 1326     | M        | Planning Manager                                      |

| JOB CODE | REP UNIT | CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE | JOB CODE | REP UNIT | CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE |
|----------|----------|-------------------------------------------------------|----------|----------|-------------------------------------------------------|
| 1307     | M        | Disability Programs Manager                           |          |          |                                                       |
| 8148     | E        | Police Captain                                        | 1353     | M        | Revenue Collection Manager                            |
| 1110     | Z1       | Police Chief                                          | 2716     | Z2       | Senior Human Resources Analyst                        |
| 8145     | F        | Police Inspector                                      | 1325     | M        | Seniors Program Administrator                         |
| 8147     | F        | Police Lieutenant                                     | 1314     | M        | Solid Waste and Recycling Manager                     |
| 1473     | Z1       | Police Review Commission Officer                      | 2316     | Z2       | Staff Attorney II                                     |
| 8142     | F        | Police Sergeant                                       | 2317     | Z2       | Staff Attorney III                                    |
| 2458     | Z1       | Psychiatrist Supervisor                               | 1404     | M        | Supervising Civil Engineer                            |
| 1322     | M        | Public Safety Business Manager                        | 1476     | M        | Supervising Systems Analyst                           |
| 1312     | M        | Public Works Maintenance Superintendent               | 1340     | M        | Supervising Traffic Engineer                          |
| 1475     | M        | Real Property Administrator                           | 2712     | Z2       | Training Officer                                      |
| 2890     | M        | Recycling Program Manager                             | 1369     | M        | Waterfront Manager                                    |
|          |          |                                                       |          |          |                                                       |

**RESOLUTION NO. 66,295–N.S.**

**CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES**

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, the Councilmember Office Budget Relinquishment and Grant Policy generally falls under the purview of the existing City Expenditures and Expense Reimbursement for Mayor and Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 63,412–N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

**CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS**

**I. City Expenditures for Mayor and Council**

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

## **II. Reimbursement of Actual and Necessary Expense of Office**

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

### **A. Authorized Activities.**

Travel, meals and/or other food, incidentals, and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

### **B. Unauthorized Expenses**

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related

- expenses), or other recreational and cultural events;
- 5. Alcoholic beverages;
- 6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
- 7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

### C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. Reimbursement for travel must not exceed the rates available through the League program as published by the California Department of General Services.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services shall be considered the most economical and reasonable for purposes of reimbursement under this policy.
6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than

the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or government rates as published by the Federal General Services Agency, whichever is greater. Where no conference rate is published, the reimbursement will be based on the government rate or the median rate listed on priceline.com or similar service, whichever is greater.
8. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9.
9. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
12. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. The City in accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds may reimburse such purchases.

**D. Cash Advance Policy for Airfare and Hotel Only (per A.R, 3.9)**

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity
3. The benefit to the residents of the City.
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).



Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

**E. Expense Report Content and Submission Deadline**

1. A Statement of Expense must be completed, signed and submitted to the City Auditor for review and forwarding to the Finance Department for payment. The Statement of Expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their Statement of Expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

**F. Audits of Expense Reports**

All expenses are subject to verification by the City Auditor of compliance with this policy.

**G. Reports**

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

**H. Compliance with Laws**

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

**I. Violation of This Policy**

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

\*\*\*\*\*

The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Tom Bates, Mayor

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

## **Councilmember Office Budget Relinquishment and Grant Policy**

### Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.  
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.  
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

### Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

| Recipient                                                                                                                                       | Purpose                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)                                                                       | Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                                                              |
| BUSD and other public agencies operating in Berkeley                                                                                            | Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                        |
| Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).                                      | City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed. |
| Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits) | To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.                                                                                                         |

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.

RESOLUTION NO. 63,413-N.S.

ESTABLISHING TRAVEL AND TRAINING REIMBURSEMENT POLICY FOR  
BOARD AND COMMISSION MEMBERS

WHEREAS, AB 1234, a new state law, requires that all cities adopt an expense reimbursement policy before a legislative body member may receive reimbursement for necessary expenses of office; and

WHEREAS, the Rent Stabilization Board and Board of Library Trustees occasionally authorize their Board members to attend specific training seminars and meetings which are designed to facilitate the Board members' performance of their duties; and

WHEREAS, the City Manager will occasionally authorize the use of City funds for a board or commission member from other boards or commissions to attend training programs or conferences designed to improve that official's skill and information level; and

WHEREAS, the Council has adopted an Expenditure and Reimbursement Policy for the Council and Mayor that sets forth those travel and training expenses for which Council will be reimbursed.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the following policy is adopted for reimbursement of board and commission members for travel and training expenses.

**TRAVEL AND TRAINING REIMBURSEMENT FOR BOARDS/COMMISSIONS**

**A. Authorized Activities.**

Travel, meals and lodging incurred in connection with attending educational seminars designed to improve officials' skill and information levels constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled. For members of most of the City's boards and commission, other than the Board of Library Trustees and Rent Stabilization Board, such activities will occur only on rare occasions when approved by the City Manager and determined to be within the City's budget. The member of the body attending the educational event shall provide a brief report of the activity to the legislative body at a public meeting subsequent to the seminar. The Rent Stabilization Board may also receive travel meals and lodging incurred in connection with communicating with representatives of local, regional, state and national government on Board policy positions to the extent permitted by the Board.

**B. Unauthorized Expenses**

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;

3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business. Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

**C. Particular Types of Authorized Expenditures Defined**

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those available through the State of California's website (<http://www.catravelmart.com/default.htm>) shall be considered the most economical and reasonable for purposes of reimbursement under this policy.

6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business which reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question. Travelers must request government rates, when available. In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the IRS per diem rates for a given area are presumed reasonable and hence reimbursable.
8. **Meals.** Meal expenses and associated gratuities should be moderate, taking into account community standards and the prevailing restaurant costs of the area. A helpful source of guidance is Internal Revenue Service per diem rates for meals and incidental expenses, which include adjustments for higher costs locations (*see* Publication 1542 at [www.irs.gov](http://www.irs.gov) or [www.policyworks.gov/perdiem](http://www.policyworks.gov/perdiem)).
9. **Telephone/Fax/Cellular.** Officials will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.

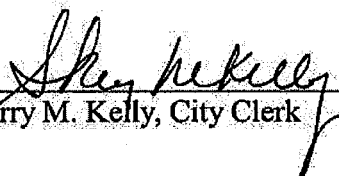
The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2006 by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

Attest:

  
 Sherry M. Kelly, City Clerk

  
 Tom Bates, Mayor

CITY OF BERKELEY  
ADMINISTRATIVE REGULATIONS

A.R. NUMBER: 3.14  
ORIGINAL DATE: 03/01/96  
POSTING DATE: 08/30/07  
PAGE 1 of 7 PAGES

**SUBJECT: FN-024 Voucher Processing**

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**PURPOSE**

This AR establishes criteria and procedures for payments using an FN-024.

**POLICY**

It is the policy of the City Manager that an FN-024 Payment Vouchers (see Groupware – Finance) is limited to making payments for the following purposes.

- A. City Employees, Mayor and Councilmembers, Commissioners<sup>1</sup>, or Library Trustees:
1. Employee travel advances and reimbursements (see AR 3.9 and forms in Groupware – Finance)
  2. Employee reimbursements for authorized use of a private vehicle (see AR 7.2 &/or AR 3.19 in process and form Auto Record for Mileage Reimbursement published in Groupware – Finance)
  3. Mayor and Council reimbursement for authorized expenses<sup>2</sup> (see Resolution 63,412-NS)
  4. Commissioner and Library Trustee<sup>3</sup> payments<sup>Note</sup> (see AR 3.2 for eligibility criteria; and Resolution 63,413-NS)
- B. Refunds
- C. Other Designated Payments:
1. State and Federal taxes
  2. Loan repayment
  3. Various payments associated with payroll and employee benefits
  4. Certain 1-time miscellaneous items under \$5,000
  5. Police Department Special Enforcement Unit Cash Fund (Special Investigative Bureau/SIB)\*

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<sup>1</sup> “Commissioner” includes Rent Stabilization Board Commissioners for reimbursements or other approved payments.

<sup>2</sup> Requires review by the City Auditor; SIB reimbursement payment also requires approval by City Auditor.

<sup>3</sup> These payments to Commissioners (not including Rent Board) and Library Trustees, are for “... authorized payment in lieu of expenses to members of all Council-appointed boards, commissions, committees, task forces and joint subcommittees who meet certain criteria ...” See AR 3.2 for complete details.



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All other goods and services, including subscriptions and membership dues, must be paid by Purchase Order (see AR 3.4 and the online Purchasing Manual). The Director of Finance must approve any exceptions before purchases are made on behalf of the City.

See AR 3.3, Petty Cash Accounts and forms in Groupware – Finance, for reimbursement for purchases \$50 and under.

### **PROCEDURE**

These steps take you through how to make correct entries and complete an FN-024 Payment Voucher; note that WORDS PRINTED LIKE THIS designate a field for your entries on the Voucher form.

- FN-024 Payments
- Payments to City Employees, Elected Officials, or Qualifying Commissioners
- Payments for Refunds
- Other Designated Payments
- Additional Instructions for all FN-024 Payment Vouchers
- Check Printing & Disbursement
- Related items on Groupware – Finance

### **FN-024 Payments**

Use FUNDS\$ GMBA Master Inquiry [FUNDS\$ > 7 > 1 > 2] to confirm all vendor information, including the designated Name on Checks field displayed at the bottom of the FUNDS\$ screen.

1. For an existing vendor/payee: if there are any differences between the data in GMBA Vendor Master file and the remittance information: please notify Finance – General Services: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and use this form to update/correct the vendor information, and submit it to General Services.
2. For any new vendor or payee: an original and signed Vendor Information Application and/or W-9 (as applicable for vendor/payment) must be on file with Finance – General Services. In the interim, fax a copy to General Services; then attach a copy of completed Vendor Application and/or W-9 to the FN-024; the signed original/s must be mailed within 3 days.
  - a. Vendor Information Application: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and have the vendor/payee complete this form.
  - b. Tax Payer ID & Certification Form W-9, or go to <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

### **Payments to City Employees, Elected Officials, Qualifying Commissioners, or Library Trustees**

#### **A. Vendor Information**

1. VENDOR NAME: enter the name of individual, followed by "EMPLOYEE," "MAYOR," "COUNCIL," "COMMISSIONER," "RENT BOARD" or "LIBRARY TRUSTEE," as applicable, and highlight the individual's designation.

- 
2. VENDOR NO.: enter the number for the individual, as found in FUNDS\$ GMBA Vendor Master Inquiry.
  3. ADDRESS: enter the department and division of payee or Commissioner's mailing address.
  4. Payments to employees, Mayor and Council must be picked up from AP: complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.  
Payments to qualifying Commissioners<sup>4</sup> or Library trustees will be mailed. If payment will be picked up rather than mailed out, complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.

NOTE: FN-024s for Mayor/Council official reimbursements, qualifying Commissioner stipends, and Library Trustees must be reviewed by the City Auditor prior to submitting to Accounts Payable for payment processing. SIB payments must be reviewed and approved by the City Auditor.

- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
  1. DESCRIPTION 1: enter conference name, period/s of mileage reimbursement, or Board or Commission meeting date/s.
  2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.
- C. Invoice Information
  1. INVOICE #: enter conference invoice # or date/s. (FUNDS\$ limit of approximately 15 characters)
  2. INVOICE DATE: for advances or reimbursements to an employee, Mayor, Councilmember or Commissioner\*, enter the date of the conference or the last date of the reimbursement period.

### Payments for Refunds

- A. Vendor Information
  1. VENDOR NAME: enter payee name followed by "MISC REFUND" and **highlight** it.
  2. VENDOR NO.: enter the assigned miscellaneous vendor number.
  3. ADDRESS: enter the payee mailing address.
  4. Requests for refunds that include deductions for fees should clearly state the original amount paid to the City, the reason for the deduction, and the balance for the refund owed to payee.
  5. Original receipts must be submitted for a refund. If an original receipt is not available, a completed and signed Customer Request for Refund Without Receipt must be attached.
- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
  1. DESCRIPTION 1: enter nature of purchase or service.

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<sup>4</sup> Including members of the Rent Stabilization Board for reimbursements or other approved payments.

- 
2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for refund is being made.

C. Invoice Information

1. INVOICE #: for refunds, use the receipt number. (FUNDS\$ limit of approximately 15 characters)
2. INVOICE Date: for refunds, enter the original payment date from the original receipt.

**Other Designated Payments** (see list under Policy on 1<sup>st</sup> page)

A. Vendor Information

**FIRST** – For all FN-024 Payments: follow instructions for the initial procedure, above. Then:

1. VENDOR NAME: enter the payee name as it appears in FUNDS\$ GMBA Master Inquiry.
2. VENDOR NO.: enter the vendor # as it appears in FUNDS\$ GMBA Master Inquiry.
3. ADDRESS: when correct information is confirmed or corrected in GMBA, this can be blank.

B. Description & Purpose (FUNDS\$ limits these to approximately 25 characters per description field)

1. DESCRIPTION 1: enter nature of purchase or service.
2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.

C. Invoice Information

1. INVOICE #: enter exactly as it appears on the vendor invoice, with dashes, hyphens, etc; if there is no invoice number, use the statement date as the invoice number (FUNDS\$ has a limit of approximately 15 characters).
2. INVOICE Date: enter the invoice or statement date.

**Additional Instructions for all FN-024 Payment Vouchers**

A. Account Codes & Project Code

1. Prior to submitting an FN-024, departments must confirm the account codes and project code used are active, correct for the expenditure, and have sufficient, unencumbered balances.
2. If needed, departments must process any budget adjustments prior to submitting the FN-024.
3. Accounts Payable will return FN-024s to departments for inactive budget or project codes, and/or improper budget codes, or insufficient funds.

B. Authorized Signatures

Each department must complete an Authorized Signatures Card with the designated staff authorized to approve invoices and FN-024s (see AR 3.12 and the Authorized Signatures Card form on Groupware – Finance). When there are changes in personnel authorized to approve an FN-024, the Authorized Signatures Card must be updated with Accounts Payable. 1.

PREPARED BY: signature of the person responsible for completing the FN-024.

- 
2. **AUTHORIZED DEPT SIGNATURE:** must be signed by authorized personnel, as reflected by the Authorized Signatures Card currently on file with Accounts Payable. FN-024s signed by unauthorized personnel will be returned.
- C. Limitations & Justification for 1-time Miscellaneous Items
1. A 1-time request for payment made on an FN-024, which would otherwise be made using a Purchase Order, means 1-time ever – not once a year or once-in-awhile. 1-time requests are only allowed for payments less than \$5,000.
  2. If a request for payment is being made on an FN-024 that would otherwise be made using a Purchase Order, there must be a justification provided on, or attached to, the FN-024. The Finance Director must approve the justification for use of an FN-024 prior to it being submitted for payment.
- D. Compiling the FN-024 Package: Form & Attachments
1. Place the FN-024 on top, with all required documentation stapled to the upper left-hand corner.
  2. If there is documentation required to be included with payment to the vendor, you must provide copies of this documentation, along with an envelope or mailing label addressed to the vendor. This is in addition to documentation required for Accounts Payable. Attach the documentation (duplicate copies and/or mailing stubs) to the upper right-hand corner.
  3. For payment of two or more items on a single FN-024, list each item separately, with its corresponding amount and account codes, on the FN-024. Attach an adding machine tape that totals the original items, and balances to the total on the FN-024.
  4. Employee reimbursements for authorized use of a private vehicle require an attached corresponding Auto Record for Mileage Reimbursement, available in Groupware. In addition, attach an adding machine tape totaling and balancing to the FN-024 for the period submitted.



### **Check Printing & Disbursement**

1. Checks are usually printed weekly on Thursdays. FN-024s received in Accounts Payable by 5:00pm Monday will be processed for printing that week. Changes to this schedule will be emailed to departmental AP processing personnel and/or posted on the City's intranet.
2. Vendor checks will be mailed; see Compiling the FN-024 Package: Form & Attachments for specific requirements. If payment will be picked up rather than mailed, see instructions below.
3. Employee, Mayor, and Council checks will be available to pick up at Accounts Payable after 4:00pm on Thursday.
4. Pick Up Check at Accounts Payable: If it's been indicated on the FN-024 that a designated person will pick up the check, a City employee may sign for and pick up vendor checks. However, vendors may not pick up checks themselves from Finance – Accounts Payable. If payment will be picked up by an employee, rather than mailed out, complete the line in the upper right hand side of the FN-024 for Pick Up Check at AP: enter and **highlight** the name of authorized person the payment may be released to. This employee will be notified by email when the check is available to be picked up from Finance – Accounts Payable.

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**EXCEPTIONS**

Any exceptions to this AR must be approved in writing by the Director of Finance.

|                                                              |                                                                                                                                   |
|--------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| <p><b>RESPONSIBLE DEPARTMENT:</b><br/>Finance Department</p> | <p>Approved by:<br/><br/>Finance Director</p> |
| <p><b>TO BE REVIEWED/REVISED:</b><br/>Every year</p>         | <p><br/>City Manager</p>                      |

**The following items are related to this AR, and can be found on Groupware – Finance:**

1. FN-024 Payment Voucher – Excel file
2. FN-024 Payment Voucher – PDF file
3. AR 3.12 Authorized Signatures for Invoices and FN-024 Payment Vouchers
4. Authorized Signatures Card
5. Vendor Information Application
6. Tax Payer ID & Certification Form W-9
7. Customer Request for Refund Without Receipt
8. Attendance & Travel Expense Forms – web page with links to individual forms



Fair Campaign Practices Commission

PUBLIC HEARING

February 4, 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; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code 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 FPCC 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.

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 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

Page 2

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, February 4, 2020, at 4:00 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 30, 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 24, 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 30, 2020.

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

**ANNOTATED AGENDA  
SPECIAL MEETING OF THE  
BERKELEY CITY COUNCIL**

**Tuesday, February 4, 2020**

**4:00 P.M.**

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

### **Preliminary Matters**

**Roll Call:** 4:14 p.m.

**Present:** Kesarwani, Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin

**Absent:** Droste

Councilmember Droste present at 4:16 p.m.

### **Action Calendar – Public Hearing**

**1. Amendments to the Berkeley Election Reform Act; Amending BMC Chapter 2.12**

**From:** Fair Campaign Practices Commission

**Recommendation:** Conduct a public hearing and upon conclusion, adopt 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

**Public Testimony:** The Mayor opened the public hearing. 0 speakers.

M/S/C (Droste/Harrison) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Droste) to adopt first reading of Ordinance No. 7,691–N.S. Second reading scheduled for February 25, 2020.

**Vote:** All Ayes.

## Action Calendar – Public Hearings

### 2. Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending 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, Berkeley Municipal Code 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

**Public Testimony:** The Mayor opened the public hearing. 0 speakers.

M/S/C (Droste/Wengraf) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Hahn/Wengraf) to refer a discussion of Officeholder Accounts and Council District (D-13) accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

**Vote:** Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – Davila.

## Action Calendar – Old Business

### 3. City Council Rules of Procedure and Order Revisions *(Reviewed by the Agenda & Rules Committee) (Continued from January 21, 2020. 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

**Action:** 1 speaker. M/S/C (Harrison/Hahn) to adopt Resolution No. 69,283–N.S. as amended in the supplemental material from Councilmember Hahn originally submitted on 12/3/19, retain original proposed language on commission membership, and to direct the City Manager to make any changes necessary to allow the Agenda & Rules Committee to refer items from Boards and Commissions to a policy committee.

**Vote:** Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – Davila.



## Action Calendar – New Business

### 4. 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:** 2 speakers. M/S/Failed (Harrison/Bartlett) to adopt the commission recommendation amended to increase 5 persons to 10 persons.

**Vote:** Ayes – Davila, Bartlett, Harrison; Noes – Kesarwani, Hahn, Wengraf, Robinson, Droste, Arreguin.

**Action:** M/S/Carried (Arreguin/Robinson) to take no action on the commission recommendation.

**Vote:** Ayes – Kesarwani, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – Davila; Abstain – Bartlett, Harrison.

### 5. 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

**Action:** 3 speakers. M/S/C (Hahn/Kesarwani) to take no action and acknowledge the Mayor’s option to implement the practice as needed.

**Vote:** Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila.

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

**From: Homeless Commission**

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

**Financial Implications:** See report

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

**Action:** 0 speakers. M/S/C (Arreguin/Kesarwani) to take no action on the commission recommendation and refer the issue of using cannabis tax revenue for homeless services to the Budget and Finance Committee.

**Vote:** Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – Davila.

## **Adjournment**

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

**Vote:** All Ayes.

Adjourned at 6:41 p.m.

## **Communications**

- None

## **Supplemental Communications and Reports 1**

- None

## **Supplemental Communications and Reports 2**

**Item #2: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12**

1. Supplemental material, submitted by the Attorney's Office
2. Supplemental material, submitted by Councilmember Hahn

## **Supplemental Communications and Reports 3**

**Item #3: City Council Rules of Procedure and Order Revisions**

3. Presentation, submitted by the City Clerk

**Item #4: Utilize Substantial Portion of Cannabis Tax Proceeds to Fund Subsidies under 1000 Person Plan**

4. Carole Marasovic, on behalf of the Homeless Commission



**SOPHIE HAHN**  
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Berkeley, CA 94704  
(510) 981-7150  
shahn@cityofberkeley.info

Supplemental II  
**ITEM 23**  
DECEMBER 3, 2019  
CM Hahn

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** December 3, 2019

**Item Number:** 23

**Item Description:** City Council Rules of Procedure and Order Revisions

**Submitted by:** Councilmember Hahn

This submission has the same effect as the previous submission by Councilmember Hahn, with Hahn's suggested edits now highlighted in yellow, and therefore more clearly discernable. Some additional technical changes were added on this version, to ensure new terms are reflected throughout the documents. All suggested changes from the Clerk's Supplemental 1 submission are shown in the attached document, with Councilmember Hahn's suggested additional changes shown in tracked changes and highlighted in yellow.

The proposed edit on Page 8 allows flexibility for Ad Hoc Subcommittees to consult the parties they deem appropriate to their assigned task, rather than be required to consult with all parties/entities listed.

All other edits in the document are proposed to allow for multiple Authors of an item to be listed as such, where the current proposal allows for only one Author to be listed on any item. Authors are defined as having actual authorship of an item, while Co-Sponsors are defined as strong supporters who are not Authors. Up to 4 Authors and Co-Sponsors are allowed per item, in any combination that includes at least one Author. The first Author listed is defined as the Primary Author and is the sole contact for the City Manager with respect to the item, clarifying current practice.

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# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. ##,###–N.S.  
Effective November 12, 2019

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## I. DUTIES

### A. Duties of Mayor

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

**Commented [NML1]:** Standard current practice per City Charter

### B. Duties of Councilmembers

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

### C. Motions to be Stated by Chair

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

### D. Decorum by Councilmembers

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

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set a limit on the speaking time allotted to Councilmembers during Council discussion.

**Commented [NML2]:** Edit from July 15, 2019 Agenda & Rules Committee meeting

**Commented [NML3]:** SUPP 1 – changed to “a limit” to be more clear that the time is the same for all Councilmembers

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

### E. Voting Disqualification

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

decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to ~~absent~~ ~~recuse~~ themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

Commented [NML4]: Correct terminology

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

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

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

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

Commented [NML5]: Edit from July 15, 2019 Agenda & Rules Committee meeting  
Language is unnecessary here



## II. MEETINGS

### A. Call to Order - Presiding Officer

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

**Commented [NML6]:** Edit from July 15, 2019 Agenda & Rules Committee meeting  
Mayor resume chair upon resuming place on dais  
**Commented [NML7]:** Amended to standardize use throughout the document

### B. Roll Call

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

### C. Quorum Call

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

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

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

**Commented [NML8]:** Moved to more appropriate location below

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

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

The agenda for the regular business meetings shall include the following: Ceremonial 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. ~~Items removed from the Consent Calendar will be moved to the Action Calendar.~~ The Chair will determine the order in which the item(s) will be heard with the consent of Council.

**Commented [NML9]:** Edit from July 15, 2019 Agenda & Rules Committee meeting

**Commented [NML10]:** Items removed from Consent may have many other actions taken and listing this single action is misleading.

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

**Commented [NML11]:** Amended for clarity throughout document

**Commented [NML12]:** Edit from July 15, 2019 Agenda & Rules Committee meeting – changed "a Councilmember" to "the Council"

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious

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

**Commented [NML13]:** Amended to standardize use throughout the document

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

**E. Adjournment**

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

**F. Unfinished Business**

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

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

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 ~~except during recess periods~~; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

**Commented [NML14]:** SUPP 1 – Added for clarity

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

**Commented [NML15]:** Proposed addition regarding starting early for ceremonial items was removed at the July 15, 2019 Agenda & Rules Committee meeting

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

**Commented [NML16]:** Special meetings are as needed and are not factored in to the annual schedule that is adopted, which includes the recess periods.

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

## II. MEETINGS

extend throughout the period of time established by the City Council for the period of recess.

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

### I. Ad Hoc Subcommittees

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Council ~~members~~ may ~~become~~ be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from ~~the~~ residents, related commissions, and other groups as appropriate to the charge or responsibilities of such Subcommittee. 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:

#### 10005

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

Subcommittees shall conduct their meetings in ~~public and in accessible~~ locations that are open to the public 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.

**Commented [NML17]:** The existing definition left a significant gap that did not allow City Manager action on administratively urgent items

**Commented [NML18]:** Edit from July 15, 2019 Agenda & Rules Committee meeting

**Commented [NML19]:** Edit from July 15, 2019 Agenda & Rules Committee meeting

II. MEETINGS

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

~~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.

~~Certain requirements listed above may not apply to a~~ Ad hoc subcommittees ~~may seeking legal advice and assistance from the City Attorney or meeting with the City Manager or his/her designees for purposes of real estate or labor negotiations.~~ convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.

**Commented [NML20]:** Staff proposed language based on discussion at July 15, 2019 Agenda & Rules Committee meeting. This language mirrors the language used for Policy Committees Charter III, Section G

**Commented [NML21]:** Staff proposed language based on discussion at July 15, 2019 Agenda & Rules Committee meeting.

### III. AGENDA

#### A. Declaration of Policy

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

Commented [NML22]: Additional clarification

#### B. Definitions

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

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

Council agenda items are limited to a maximum of three Co-Sponsors (in addition to the Primary Author) four Authors and Co-Sponsors, in any combination that includes at least one Author.

Commented [NML23]: Must have certainty at the time of submission and throughout the process to properly monitor participation in policy committee meetings per the Brown Act. New language for designation of co-sponsors from the July 15, 2019 Agenda & Rules Committee meeting – removed limitation on when co-sponsors could be added and changed it to limit the addition of co-sponsors to discretion of the primary author.

Authors must be listed in the original item as submitted by the Primary Author. Co-Sponsors 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, 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 report's Primary Author that describes the action to be taken on the item, if applicable; ~~(these provisions shall not apply to Mayor and Council items.);~~
- d) Fiscal impacts of the recommendation;
- e) A description of the current situation and its effects;
- f) Background information as needed;
- 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.
- ~~j) If the author of any report believes additional background information beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.~~

**Commented [NML24]:** Required by the Brown Act for all agenda items.

**Commented [NML25]:** SUPP 1 – redundant word deleted

**Commented [NML26]:** Outdated. We publish all materials except for the full administrative record of ZAB appeal.

2. "Author" means the Mayor or other Councilmembers who actually authored an item by contributing to the ideas, research, writing or other material elements.

3. "Primary Author" means the Mayor or Councilmember first Author listed on the item. The Primary Author is the sole contact for the City Manager with respect to the item. Communication with other Authors and Co-Sponsors, if any, is the responsibility of the Primary Author, the Mayor or Councilmember that initiated, authored, and submitted a council agenda item.

34. "Co-Sponsor" means the Mayor or other Councilmembers who wish to indicate their strong support for the item, but are not Authors, and are designated by the Primary Author to be co-sponsors of the council agenda item.

III. AGENDA

4-4. "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.

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2-5. "Packet" means the agenda plus all its corresponding duplicated agenda items.

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3-6. "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:

4-a) A work stoppage or other activity which severely impairs public health, safety, or both;

2-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.

4-7. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier, ~~as uncompleted items.~~

5-8. "Old Business" Items carried over from a prior agenda of a meeting ~~as uncompleted items occurring more than 11 days earlier.~~

Commented [NML27]: Per Open Government Ordinance

C. Procedure for Bringing Matters Before City Council

a)1. Persons Who Can Place Matters on the Agenda.

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

Commented [NML28]: Superseded by policy committee section below

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

Commented [NML29]: Clarification

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

~~1. Items Authored by a Councilmember or the Auditor. As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda Committee shall review the item and may recommend that the matter be referred to a commission, to the City Manager, 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.~~

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~~The author of a "referred" item must inform the City Clerk within 24 hours of the adjournment of the Agenda Committee meeting whether he or she prefers to: 1) hold the item for a future meeting pending modifications as suggested by the Committee; 2) have the item appear on the Council agenda under consideration as originally submitted; 3) pull the item completely; or 4) re-submit the item with revisions as requested by the Agenda Committee within 24 hours of the adjournment of the Agenda Committee meeting for the Council agenda under consideration.~~

**Commented [NML30]:** Current practice

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

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

**Commented [NML31]:** Unecessary. If the item is being submitted for a future meeting, it is a "new" item.

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

**Commented [NML32]:** No longer needed with the policy committee system.

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

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

**Commented [NML33]:** SUPP 1 – change as described in the Supp 1 Cover Memo



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 take the following actions:

- i. Refer the item to a commission for further analysis (Primary Author may decline and request Policy Committee assignment).
- ii. Refer the item to the City Manager for further analysis (Primary Author may decline and request Policy Committee assignment).
- iii. Refer the item back to the Primary Author for adherence to required form or for additional analysis as required in Section III.B.1, (Primary Author may decline and request Policy Committee assignment).
- iv. Refer the item to a Policy Committee.
- v. Schedule the item for the agenda under consideration or one of the next three full Council agendas.

For referrals under Chapter III.C.1.a.iii the Primary Author must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to:

- 1) re-submit the item for a future meeting with modifications as suggested by the Agenda & Rules Committee; or
- 2) pull the item completely; or
- 3) 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; or
- 4) accept the referral of the Agenda & Rules Committee in sub paragraphs i, ii, or iii.

If the Primary Author requests a Policy Committee assignment, the item will appear on the next draft agenda presented to the Agenda & Rules Committee for assignment.

In the event that the City Clerk does not receive guidance from the Primary Author of the referred item within 24 hours of the Agenda & Rules Committee's adjournment, the item will appear on the next draft agenda for consideration by the Agenda & Rules Committee.

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.

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

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

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

i) For a commission item that does not require a companion report from the City Manager, the Agenda Committee may act on an agendaized commission report in the following manner:

a.1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.

b.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.

c.3. Allow the item to proceed as submitted.

ii) For any commission report that requires a companion report, the Agenda Committee may will 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 Committee. A commission

**Commented [NML34]:** Inconsistent with current practices. Staff reports are still in review and are not printed in the Agenda & Rules Committee packet.

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report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.

~~3-d)~~ The Agenda Committee~~Agenda & Rules Committee~~ shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E ~~of the Rules of Procedures and Order~~.

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~~b)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.

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~~e)3.~~ **Submission of Agenda Items.**

~~4-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.

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~~2-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.

~~3-c)~~ **Time Critical Items.** A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or ~~Councilmember~~council member is received by the City Clerk after established deadlines and is not included on the ~~Agenda Committee~~Agenda & Rules Committee's published agenda.

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

~~4-d)~~ The City Clerk may not accept any agenda item after the adjournment of the ~~Agenda Committee~~Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

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

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

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

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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.

**Commented [NML35]:** Per Open Government Ordinance

~~4.~~

~~2-c)~~ After ~~5~~12:00 p.m. ~~seven~~~~one~~ calendar days prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Council-member evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

**e)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. The Agenda & Rules Committee may request a presentation by staff in consultation with the City Manager.~~

**Commented [NML36]:** Reflects current practice, which is much less formal than deleted text.

**Commented [NML37]:** SUPP 1 – Reflects current practice.

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

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

**i.D. Packet Preparation and Posting**

**a)1. Preparation of the Packet.**

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

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**Commented [NML38]:** Inconsistent with OGO

**b)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.

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**e)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:

- ~~i-a) distribute the Agenda Packet to each member of the City Council;~~

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- ~~ii~~-b) post the Agenda Packet to the City's website;
- ~~iii~~-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
- ~~iv~~-d) make the Agenda Packet available to members of the press.

~~d~~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~~-a. A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.5.
  - ~~b~~-b. 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 support~~ing~~ 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.

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

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

- ~~a~~1. Preliminary Matters: (Ceremonial, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
- ~~b~~2. Consent Calendar
- ~~c~~3. Action Calendar
  - ~~1~~-a) Appeals
  - ~~2~~-b) Public Hearings
  - ~~3~~-c) Continued Business
  - ~~4~~-d) Old Business
  - ~~5~~-e) New Business
  - ~~6~~- Referred Items
- 4. Information Reports
- ~~e~~5. Non-Agenda Public Comment
- ~~e~~6. Adjournment Communications
- ~~f~~7. Communications Adjournment

**Commented [NML39]:** Edits to reflect current order

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

The ~~Agenda Committee~~ Agenda & Rules Committee shall have the authority to 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.

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~~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.

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~~3.~~ Removal of confidential materials from a binder is prohibited.

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~~4.~~ Duplication of the contents of a binder by any means is prohibited.

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~~5.~~ Confidential materials shall be retained in the binders for at least two years.

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~~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.

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G. Regulations Governing City Council Policy Committees

**Commented [NML40]:** Regulations from the Policy Committee resolution are inserted in red text; changes to the resolution language are in track changes

**1A. Legislative Item Process**

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

**Full Council Track**

Items under this category are exempt from ~~Agenda Committee~~ 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.

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

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**Commented [NML41]:** Clarification

**Commented [NML42]:** Standard administrative item

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

**Commented [NML43]:** Change made at September 16, 2019 Agenda & Rules Committee; integrated into next paragraph

~~The ~~Agenda Committee~~ 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.~~

**Commented [NML44]:** SUPP 1 – this sentence is unnecessary given the current authority of the Agenda & Rules Committee to refer any 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 Committee~~ Agenda & Rules Committee on a draft City Council agenda ~~(on a #st).~~

**Commented [NML45]:** Clarification

The ~~Agenda Committee~~ Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the ~~Agenda~~



III. AGENDA

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

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

Time Critical Track

A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the Mayor or ~~Council member~~ council member is received by the City Clerk after established deadlines and is not included on the ~~Agenda Committee~~ Agenda & Rules Committee's published agenda.

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

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

**B2. Council Referrals to Committees**

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

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

- a. The quorum of a three-member ~~P~~ policy C ~~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 ~~be~~ be listed as Authors or Co-Sponsors on an item provided that one of the ~~PA~~ Authors or Co-Sponsors 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, who also can not be an Author or Co-Sponsor, will serve as a committee member in place of the non-participating ~~co-author~~ Author or Co-Sponsor.

**Commented [NML46]:** New requirements due to re-evaluation of Brown Act applicability to policy committees

- d. All three members of a Policy Committee may not be ~~co-authors~~ Authors or Co-Sponsors of an item that will be heard by the committee.
- e. Only one ~~co-author~~ Author or Co-Sponsor 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~~ Author who is not a member of the committee is present to participate in the discussion of their item, no other ~~non-committee member~~ 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.

Commented [NML47]: SUPP 1 – added for clarification

Commented [NML48]: SUPP 1 – added for clarification

**C4. Functions of the Committees**

Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
- e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.
- f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.
- f.g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.
- g-h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.

Commented [NML49]: Clarification of authority; reflects Charter

III. AGENDA

~~i. Reports leaving a Policy Committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.~~

~~h.i. Per Brown Act regulations, any such revised or supplemental 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 Committee~~ Agenda & Rules Committee or from the City Council must be agendaized 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 Primary Author's request that the item remain in committee until a date certain (more than one extension may be requested by the Primary Author); or (2) send the item to the ~~Agenda Committee~~ Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

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

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

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

~~The original Council author~~ Primary 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~~ City Clerk by the members of the committee.

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

If a Policy Committee does not take final action by the 120-day deadline, the item is returned to the ~~Agenda Committee~~ Agenda & Rules Committee and appears on the next available Council agenda. The ~~Agenda Committee~~ Agenda & Rules Committee may leave

**Commented [NML50]:** Added for transparency and to avoid violations arising from submission of materials only tangentially related to the agenda items

**Commented [NML51]:** SUPP 1 – added for clarification

**Formatted:** Strikethrough

**Commented [NML52]:** Clarification of authority. Commissions are advisory to the Full Council

**Commented [NML53]:** Clarification of responsibility for shepherding items through process

**Commented [NML54]:** SUPP 1 – added for clarification

**Commented [NML55]:** Inconsistent with Brown Act – review by two committees would result in an illegal serial meeting

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.

Commented [NML56]: Closes "endless loop" loophole

Policy Committees may add discussion topics that are within their purview to their agenda with the concurrence of a majority of the Committee. These items are not subject to the 120-day deadline for action. ~~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.~~

Commented [NML57]: SUPP 1 – This paragraph was reworded for clarity

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

Commented [NML58]: Clarification

The Lead-Primary author/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 item first appeared on the committee agenda.

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**5D. 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:

Commented [NML59]: This will allow two members of a policy committee to co-author an item. The Alternate will substitute for one of the co-authors while the item is heard by the policy committee.

SUPP 1 – comma added after Councilmembers

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-Committee/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.

Commented [NML60]: Clarification

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

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

## IV. CONDUCT OF MEETING

### A. Comments from the Public

Public comment will be taken in the following order:

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

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall stand and 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.

#### 7.1. 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, below.](#)

Commented [NML61]: SUPP 1 – added for clarification

**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.

Commented [NML62]: Reflects existing due process standards

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.

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

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

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

**B. Consent Calendar**

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



IV. CONDUCT OF MEETING

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 Reports for Action Calendar](#) and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of [Mayor or any Councilmember](#) a Report for Information may be acted upon by the Council.

**D. Written Communications**

[Letters](#) [Written communications](#) 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 Any Councilmember](#) may refer a communication to [staff](#) [the City Manager](#) for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

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

**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

Commented [NML63]: SUPP 1 – Clarification and updating of language

Commented [NML64]: Clarification per OGO

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

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

Commented [NML65]: Same as above

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

Commented [NML66]: Current practice. Matches existing language for appeals above.

**F. Work Sessions**

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

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

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

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

**G. Public Discussions**

Commented [NML67]: Unnecessary. A "public discussion" must still occur at a noticed meeting which is regulated by the Brown Act, OGO, and this document.

#### IV. CONDUCT OF MEETING

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

#### H. Protocol

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

## V. PROCEDURAL MATTERS

### A. Persons Authorized to Sit at Tables

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

### B. Decorum

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

**Commented [NML68]:** Clarification that Clerk forwards written communications only, not verbal messages

### C. Enforcement of Decorum

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

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

### D. Precedence of Motions

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

**Commented [NML69]:** SUPP 1 - clarification

~~4.1.~~ To adjourn,

~~5.2.~~ To fix the hour of adjournment,

~~6.3.~~ To lay on the table,

~~7.4.~~ For the previous question,

~~8.5.~~ To postpone to a certain day,

~~9.6.~~ To refer,

~~10.7.~~ To amend,

~~11.8.~~ To substitute, and

~~4-9.~~ To postpone indefinitely.

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

**Commented [NML70]:** Motion to adjourn is not debatable pursuant to Roberts Rules

**E. Roberts Rules of Order**

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

**F. Rules of Debate**

**1. Presiding Officer May Debate.**

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

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

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

**3. Interruptions.**

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

**4. Privilege of Closing Debate.**

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

**5. Motion to Reconsider.**

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

**Commented [NML71]:** Must happen at the same meeting, not just the same day.

**Commented [NML72]:** Inconsistent with Roberts Rules. Requiring a seconder to be on the prevailing side could infringe on a single member's right to reconsider their vote.

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

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

**G. Debate Limited**

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

**Commented [NML73]:** SUPP 1 – changes to b) added for clarification

**H. Motion to Lay on Table**

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

**I. Division of Question**

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

**J. Addressing the Council**

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

**Commented [NML74]:** Exactly restated later in same paragraph

**Commented [NML75]:** Not sure what could be meant by "qualified"

**1. Written Communications.**

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

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

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

**Commented [NML76]:** Described elsewhere and unnecessary here.

**2. Public Hearings.**

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

**3. Public Comment.**

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

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

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



## VI. FACILITIES

### A. Council Chamber Capacity

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

Commented [NML77]: Updated to reflect new locations of meetings and to not be as specific with regards to meeting locations

### B. Alternate Facilities for Council Meetings

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

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

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

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

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

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

### D. Fire Safety

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

### E. Overcrowding

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

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

### Purpose

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

### Objective

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

### Section 1 – Lead Commission

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

#### Board of Library Trustees

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

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

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

### Section 2 – General Policy

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

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

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

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

Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

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1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.

E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the [Agenda Committee](#) [Agenda & Rules Committee](#) to request that the [Primary 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 [A](#) 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:

[3-2.](#) 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-Primary 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.

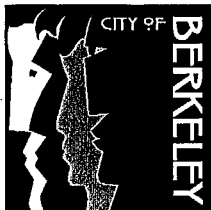
**13. Outcomes and Evaluation**

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**





Cheryl Davila  
Councilmember  
District 2

**RECEIVED AT  
COUNCIL MEETING OF:**

JAN 13 2020

OFFICE OF THE CITY CLERK

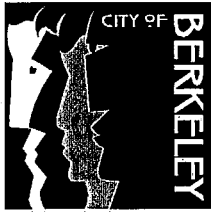
CITY OF BERKELEY

## REVISED AGENDA MATERIAL

**Item Description:** Updating Berkeley Telecom Ordinances and BMC codes

**Submitted by:** Councilmember Cheryl Davila

Updated agenda report action and resolution revising recommended action and formatting.



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

Adopt a resolution directing ~~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 Manager 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.]

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)

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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.)

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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.

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\*\*\*\* 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.**



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)

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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.)

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#### **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!

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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)

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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

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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· 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)

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· 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.

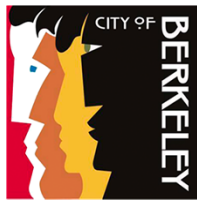
**Right to Know** - Publish on City website, in online local news: Berkeley Daily Planet, Berkeleyside, and local newspapers: Berkeley Voice, Berkeley Times (2019. Update as needed)

\*\*\* **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.

\*\*\*\* 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.**





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

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

IN CALIFORNIA, MILLIONS ARE

### FOOD INSECURE

1 IN 8 CALIFORNIANS

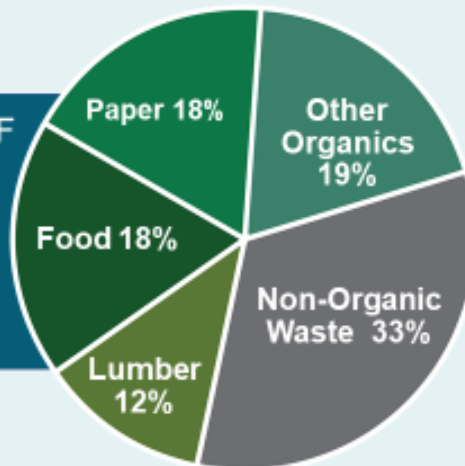
1 IN 5 CHILDREN



CALIFORNIA THROWS AWAY

**MORE THAN 6 MILLION TONS**  
OF FOOD WASTE EVERY YEAR!

CALIFORNIA DISPOSED OF  
APPROXIMATELY  
**27 MILLION TONS** OF  
ORGANIC WASTE IN 2017



California's Waste Stream

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

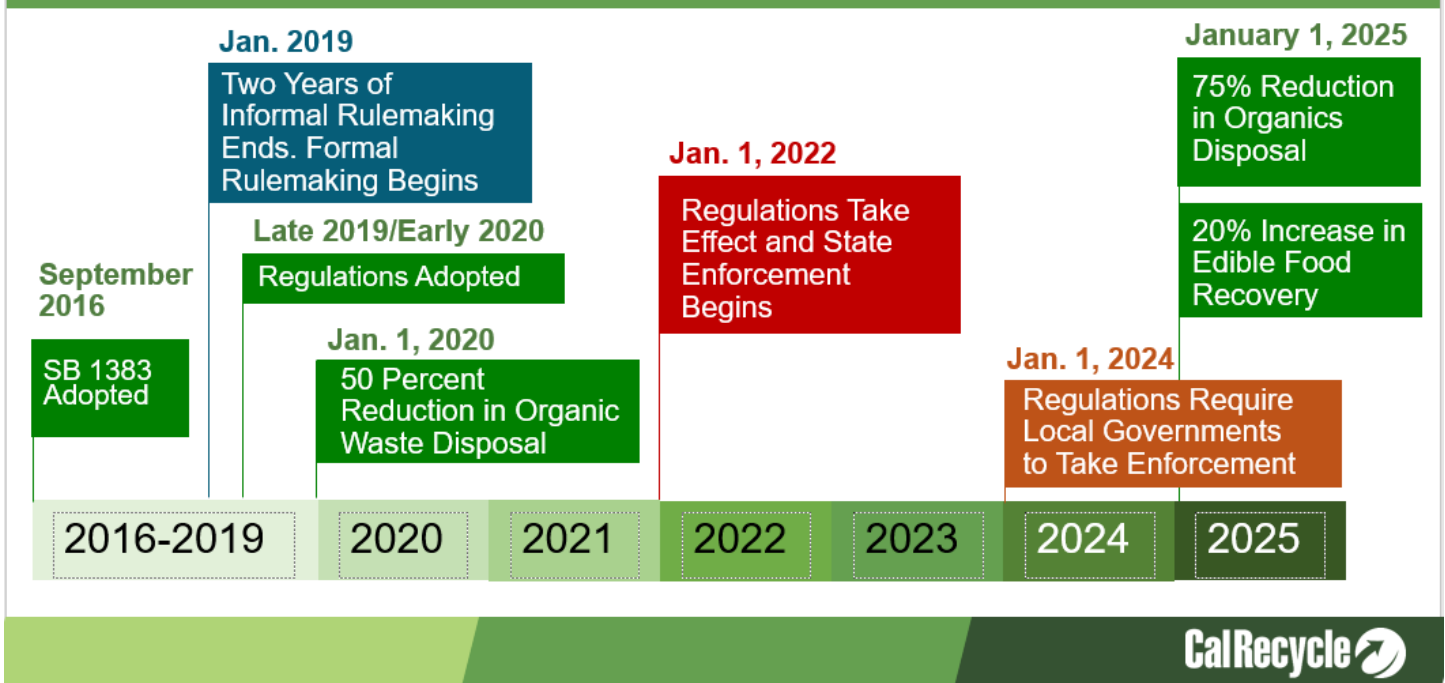
2020	50 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE (11.5 Million Tons Allowed Organic Waste Disposal)
2022	REGULATIONS TAKE EFFECT
2025	75 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE (5.7 Million Tons Allowed Organic Waste Disposal)
2025	20 PERCENT INCREASE IN RECOVERY OF CURRENTLY DISPOSED EDIBLE 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**

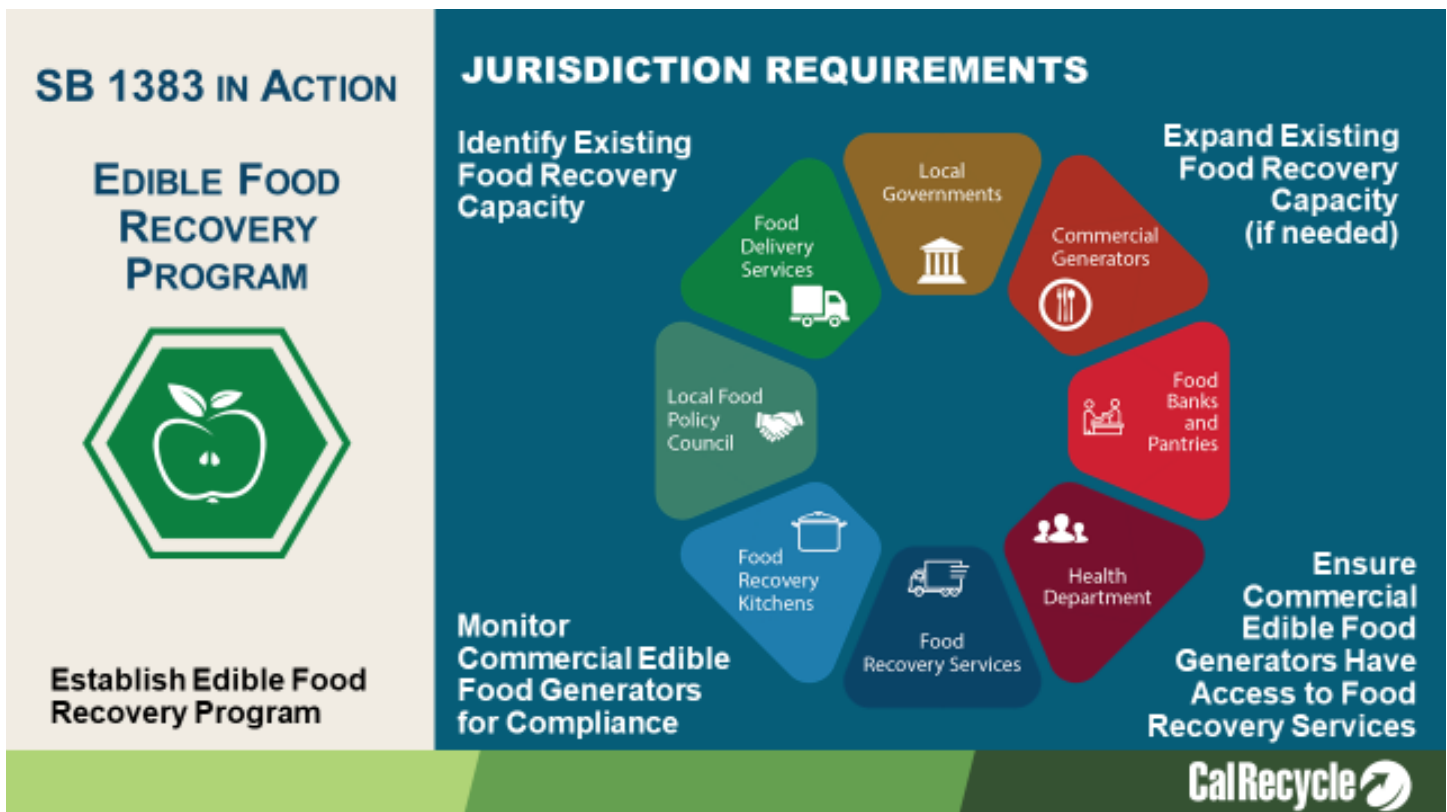


*(Note to presenter: You might customize this slide to reflect the collection system for residential and commercial recycling programs. Remember this law/regulation is about all organic waste so that means the fibers, foodwaste, greenwaste, manure, etc.)*

- 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)*



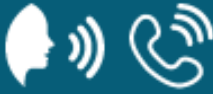

SB 1383 requires that we strengthen our existing infrastructure for edible food recovery and food distribution.

**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.

<p><b>SB 1383 IN ACTION</b></p> <p><b>EDUCATION REQUIREMENTS</b></p> <div style="text-align: center;">  </div> <p><b>Conduct Education and Outreach to Community</b></p>	<p><b>JURISDICTION REQUIREMENTS</b></p> <p>Annually educate all organic waste generators, commercial edible food generators, and self-haulers about relevant requirements</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p style="color: #f0e68c;">Jurisdictions must provide print or electronic communication.</p>  </div> <div style="text-align: center;"> <p style="color: #f0e68c;">Jurisdictions May Supplement with Direct Communication.</p>  </div> </div> <p style="text-align: center; color: #f0e68c;"><b>Appropriate educational material must be provided to linguistically isolated households</b></p>
	


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 and 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

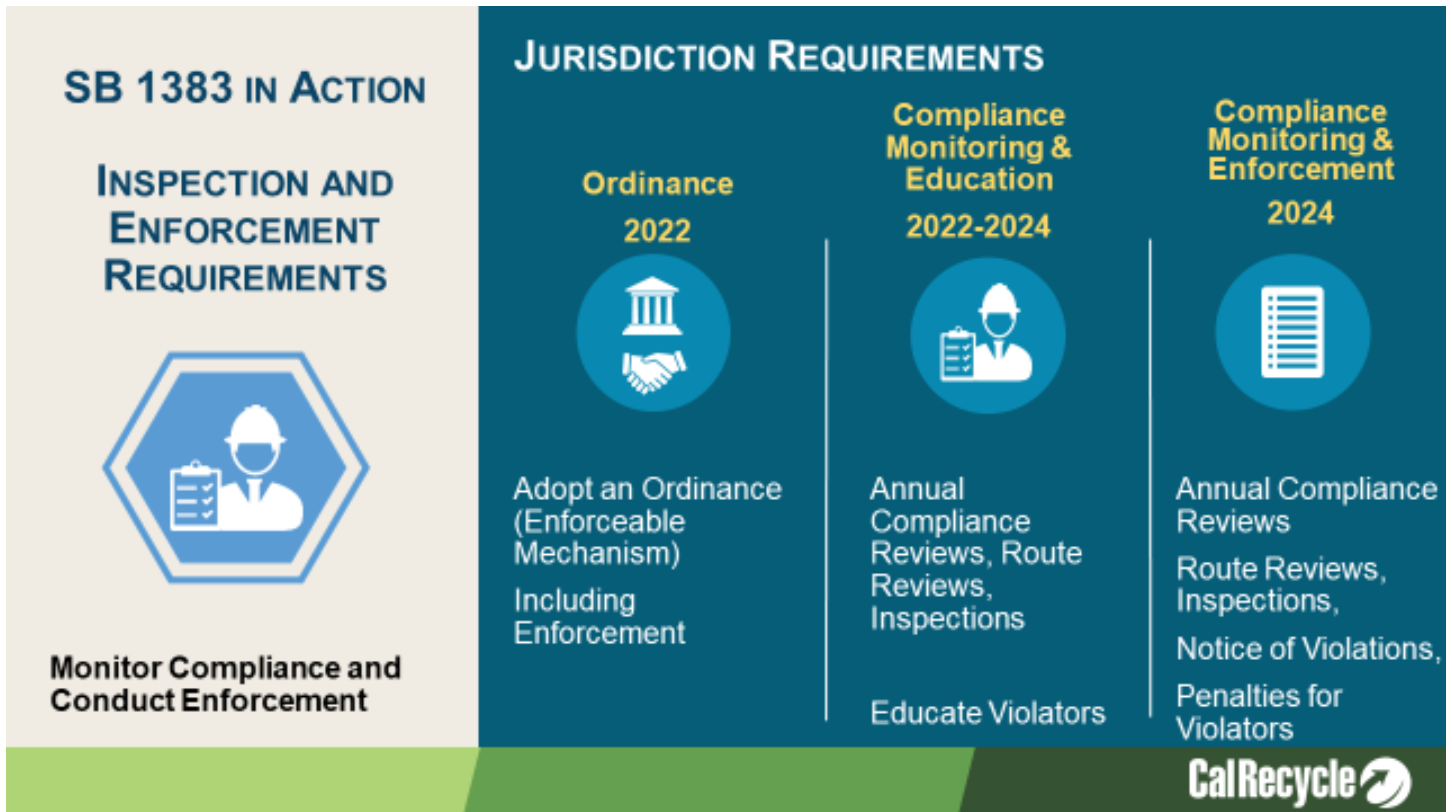


CalRecycle 

#### 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

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*(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



*(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:**

 Organic Collection Services	 Hauler Program	 Contamination Minimization	 Waivers	 Education & Outreach
 Edible Food Recovery Program	 Recycled Organic Waste Procurement	 Recycled Paper Procurement	 Commercial Edible Food Generators	 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

The infographic is divided into two main sections. The left section, on a light beige background, features a circular icon of a classical building with columns, labeled 'STATE ENFORCEMENT', and the CalRecycle logo below it. The right section, on a dark blue background, is titled 'CALRECYCLE OVERSIGHT (BEGINS IN 2022)' and is organized into three vertical columns, each with a circular icon and a list of actions.

STATE ENFORCEMENT	CALRECYCLE OVERSIGHT (BEGINS IN 2022)		
	<p><b>Authorize Waivers</b></p> <ul style="list-style-type: none"> <li>• Low Population</li> <li>• Rural Areas</li> </ul> <p><b>Emergency Circumstances</b></p> <p><b>Oversee and Monitor</b></p> <ul style="list-style-type: none"> <li>• State Agencies and Facilities</li> <li>• Local Education Agencies</li> </ul>	<p><b>Oversee and Monitor for Compliance</b></p> <p><b>Jurisdiction Review</b></p> <ul style="list-style-type: none"> <li>• Conduct joint inspections with jurisdictions</li> <li>• Review Implementation Record</li> </ul>	<p><b>If Violations</b></p> <ul style="list-style-type: none"> <li>• Issue Notices of Violation</li> <li>• May Authorize Corrective Action Plan</li> <li>• Allows up to 24 months to address barriers outside of a jurisdiction's control</li> </ul>

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.



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 **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.**

