BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING

MONDAY, MARCH 9, 2020
2:30 P.M.

2180 Milvia Street, 6th 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: February 24, 2020**
2. **Review and Approve Draft Agendas:**
   a. 3/24/20 – 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. **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, March 30, 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 March 5, 2020.

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.
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BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING MINUTES

MONDAY, FEBRUARY 24, 2020
2:30 P.M.

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

Committee Members:

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

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

Public Comment: 6 speakers.

Review of Agendas

1. **Approval of Minutes: February 10, 2020**
   Action: M/S/C (Wengraf/Hahn) to approve the minutes of 2/10/20.
   Vote: All Ayes.

2. **Review and Approve Draft Agendas:**
   a. 3/10/20 – 6:00 p.m. Regular City Council Meeting
   Action: M/S/C (Hahn/Wengraf) to approve the agenda of the 3/10/20 regular meeting with the revisions noted below.
   Vote: All Ayes.
   - *Ceremonial Items: Nolan Coleman; Tibetan Association of Northern California*
   - *Item Added – Lease Caltrans Property at University and West Frontage Road (Arreguin)*
   - *Item 12 Oppose S.2059 (Arreguin) – Councilmembers Bartlett, Wengraf, and Davila added as co-sponsors*
   - *Item 13 Support of AB 1839 (Arreguin) – Councilmembers Bartlett, Harrison, and Wengraf added as co-sponsors; supplemental material submitted*
   - *Item 15 Allocation of U1 – Agenda updated to reflect item being from the Land Use, Housing, and Economic Development Committee*
   - *Item 16 Bus Rapid Transit (Robinson) Mayor Arreguin added as co-sponsor*
   - *Item 19 Vision Zero (City Manager) – moved to Consent Calendar*
   - *Item 20a/b Smoke Free (Housing Advisory Commission) – referred to the Health, Life Enrichment, Equity, and Community Committee*
   - *Item 21 Cannabis Tax (Homeless Commission) – moved to Consent Calendar*

   Policy Committee Track Items
   - *Item 22 Fair Chance Ordinance (Arreguin) – scheduled for 3/10 Action Calendar*
   - *Item 23 Tennant Opportunity (Arreguin) – referred to the Land Use, Housing, and Economic Development Committee*
   - *Item 24 Update Definition (Arreguin) – Councilmember Wengraf added as co-sponsor; scheduled for 3/10 Consent Calendar*
   - *Item 25 City Council Salary (Davila) – revised item submitted; scheduled for 3/10 Action Calendar.*

- *Item 26 Resource Center (Bartlett) – Councilmember Davila and Mayor Arreguin added as co-sponsors; scheduled for 3/10 Consent Calendar*
- *Item 27 Support for People of Tibet (Robinson) – Mayor Arreguin and Councilmembers Davila and Bartlett added as co-sponsors; scheduled for 3/10 Consent Calendar*
- *Item 28 Allocating Car Fees (Robinson) – referred to Budget and Finance Committee*

Order of Items on the Action Calendar
Item 17 Electric Bike Share
Time Critical - Lease Caltrans Property
Item 22 Fair Chance Ordinance
Item 25 City Council Salary
Item 18 Disposition of Property – 1631 Fifth St

3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
   - Selected Item 22 regarding Fair Chance Access to Housing Ordinance

4. **Adjournments In Memory –** None

Scheduling

5. **Council Worksessions Schedule –** no action

6. **Council Referrals to Agenda Committee for Scheduling –** no action

7. **Land Use Calendar –** no action

Referred Items for Review

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: M/S/C (Hahn/Arreguin) to move the item with a positive recommendation that the City Council consider the materials at the March 17, 2020 special meeting, and without comment from the Committee regarding the content of the materials.
Vote: All Ayes.

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

No action taken.

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. 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

Unscheduled Items

11. **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
Action: Continued to next meeting and moved to Referred Items for Review.

Items for Future Agendas

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

Adjournment

Action: M/S/C (Wengraf/Hahn) to adjourn the meeting.
Vote: All Ayes.

Adjourned at 3:31 p.m.

I hereby certify that the forgoing is a true and correct record of the Agenda & Rules Committee meeting held on February 24, 2020

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Rose Thomsen
Deputy 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, March 24, 2020
6:00 PM

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

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON
DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.

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

Preliminary Matters

Roll Call:

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

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

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

Consent Calendar

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

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

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

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

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

Consent Calendar

1. Calling for a Consolidated General Municipal Election for November 3, 2020
From: City Manager
Recommendation:
1. Adopt a Resolution: a) Calling for a General Municipal Election to be consolidated with the Presidential General Election to be held in Berkeley on November 3, 2020; b) Requesting that the Alameda County Board of Supervisors consolidate the City of Berkeley General Municipal Election with the Presidential General Election; c) Authorizing certain procedural and contractual actions; and d) Establishing policies for the filing of candidate statements of qualification.
2. Adopt a Resolution establishing policies and timelines for filing ballot measure arguments.
Financial Implications: See report
Contact: Mark Numainville, City Clerk, (510) 981-6900

2. Minutes for Approval
From: City Manager
Recommendation: Approve the minutes for the council meetings of February 4, 2020 (special closed, special and special-worksession), February 11, 2020 (special closed and regular) and February 25, 2020 (regular).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900

Consent Calendar

3. Amendment: FY 2020 Annual Appropriations Ordinance
From: City Manager
Recommendation: Adopt first reading of an Ordinance amending the FY 2020 Annual Appropriations Ordinance No. 7,682-N.S. for fiscal year 2020 based upon recommended re-appropriation of committed FY 2019 funding and other adjustments in the amount of $28,565,263 (gross) and $15,378,568 (net).
Financial Implications: See report
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

4. Donation to the Animal Shelter from the Stephen and Mary Birch Foundation
From: City Manager
Recommendation: Adopt a Resolution accepting a donation from the estate of Stephen and Mary Birch in the sum of $5,000.
Financial Implications: Animal Shelter Donation Fund - $5,000 (Donation)
Contact: Erin Steffen, City Manager's Office, (510) 981-7000

5. Renewal of the North Shattuck Business Improvement District (NSBID)
From: City Manager
Recommendation: Adopt a Resolution declaring intent to reestablish the NSBID for the ten-year period beginning July 1, 2020 (FY21) and ending June 30, 2030, setting a public hearing for May 26, 2020 on reestablishment of the District, and directing the City Clerk to conduct all necessary proceedings for reestablishment of the NSBID.
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

6. Contract: Sonya Dublin Consulting as the External Evaluator for Public Health Division, Tobacco Prevention Program
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with Sonya Dublin Consulting as the External Evaluator for Health, Housing and Community Services Public Health Division's Tobacco Prevention Program, in an amount not to exceed $93,600, for a term ending June 30, 2021.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

7. Contract: Lind Marine for Removal of Derelict and Abandoned Vessels at the Berkeley Marina
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract with Lind Marine for the removal and disposal of derelict and abandoned vessels at the Berkeley Marina in an amount not-to-exceed of $104,400; and authorize a contingency in the amount of $38,600.
Financial Implications: Various Funds - $143,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

8. Contract No. 31900160 Amendment: Affordable Painting Services, Inc. for Additional Painting of Various Park Buildings
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 31900160 with Affordable Painting Service, Inc. for additional painting of various Park buildings by increasing the construction contract amount by $210,000 for a not-to-exceed amount of $305,000.
Financial Implications: Marina/Capital Improvement Budget - $210,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

9. Contract No. 31900202 Amendment: Bay Area Tree Specialists for As-Needed Tree Services
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 31900202 with Bay Area Tree Specialists for as-needed tree services, increasing the amount by $300,000 for an amended total not-to-exceed amount of $500,000.
Financial Implications: Parks Tax Fund and Fire Fuel Abatement Fund - $300,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

10. Contract No. 32000019 Amendment: ERA Construction Inc. for Additional Concrete Repair Work in Parks and Along Pathways
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32000019 with ERA Construction Inc. for additional concrete repair work on City parks and pathways by increasing the construction contract amount by $300,000 for a not-to-exceed amount of $375,000.
Financial Implications: Parks Tax Fund - $300,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

11. Contract: Ghilotti Construction Company, Inc. for Berkeley Rose Garden Pergola Reconstruction and Site Improvements Project
From: City Manager
Recommendation: Adopt a Resolution: 1. Approving the plans and specifications for the Berkeley Rose Garden Pergola Reconstruction and Site Improvements Project, Specification No. 19-11294-C; and 2. Waiving an inconsequential defect and accepting the bid of the lowest responsive and responsible bidder, Ghilotti Construction Company, Inc.; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with Ghilotti Construction Company, Inc., for the Berkeley Rose Garden Pergola Reconstruction and Site Improvements Project at 1200-1201 Euclid Avenue, Berkeley, CA 94708, in an amount not-to-exceed $3,491,917, which includes a contract amount of $3,174,470 and a 10% contingency in the amount of $317,447.
Financial Implications: Various Funds - $3,491,917
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

12. Contract: Vol Ten Corporation DBA Delta Charter for Recreation Division Bus Transportation for Day Camp and Summer Programs
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Vol Ten Corporation DBA Delta Charter to provide bus transportation services for Recreation Division Day Camp and summer programs for a not-to-exceed total amount of $585,000 over a five year period, beginning June 1, 2020 and ending June 1, 2025, contingent upon annual budget appropriations.
Financial Implications: Various Funds - $585,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

13. Lease Agreement with 200 Marina Blvd, LLC for the Doubletree Hotel
From: City Manager
Recommendation: Adopt first reading of an Ordinance 1) authorizing the City Manager to execute the Ground Lease with 200 Marina Blvd, LLC, the owner of the Doubletree Hotel located at the Berkeley Marina for a 60-year term effective from May 14, 2020 through December 31, 2080; and 2) approving a related Capital Improvement Agreement that 200 Marina Blvd, LLC contribute $3 million to Marina street improvements.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

14. Contract No. 31900071 Amendment: Bigbelly Solar Compacting Trash and Recycling Receptacles
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 31900071 for nineteen additional Bigbelly Solar, Inc. Solar Compacting Trash and Recycling Receptacles for Department of Public Works Zero Waste Division; increasing the original contract amount by $162,568 for an amended total not-to-exceed amount of $233,868. The contract term remains August 1, 2018 to June 30, 2023.
Financial Implications: Measure D Fund - $162,568
Contact: Phillip Harrington, Public Works, (510) 981-6300

Consent Calendar

15. Funding for the East Bay Communities and East Bay Municipal Utility District Joint Exercise of Powers Agreement and Defendants' Side Agreement for the Control of Wet Weather Overflows and Bypasses and Consent Decree Compliance
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to make payments to the Administrative Agency and Financial Agent (East Bay Municipal Utility District) for administering duties in accordance with the terms and conditions of the Joint Exercise of Powers Agreement (JPA) and the Defendants' Side Agreement (DSA) to control the wet weather overflows and bypasses for the 5-year period from FY 2020 through FY 2024 in an amount not to exceed $1,000,000.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, (510) 981-6300

16. Summary Vacation of Sewer Easement at 2009 Addison Street
From: City Manager
Recommendation: Adopt a Resolution to summarily vacate a sewer easement at 2009 Addison Street.
Financial Implications: None
Contact: Phillip Harrington, Public Works, (510) 981-6300

Council Consent Items

17. BAHIA's 45th Anniversary Celebration: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds
From: Councilmember Kesarwani (Author)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed $250 per Councilmember, including $250 from Councilmember Kesarwani, to support BAHIA and its 45th anniversary celebration with funds relinquished to the City's General Fund. The relinquishment of funds from Councilmember Kesarwani's discretionary Council Office Budget, and all other Councilmembers who would like to contribute, supports this non-profit's ability to serve the community and celebrate 45 years of distinguished bi-lingual education.
Financial Implications: Councilmember's Discretionary Fund - $250
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

18. Resolution in Support of Senate Bill 54 and Assembly Bill 1080: The California Circular Economy and Plastic Pollution Reduction Act
From: Councilmember Harrison (Author)
Recommendation: Adopt a Resolution affirming Berkeley's support for Senate Bill 54 and Assembly Bill 1080, The California Circular Economy and Plastic Pollution Reduction Act. Send a letter in support to Assemblymember Gonzalez and Senator Allen.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Council Consent Items

19. Support for SB-1160 (Stern) Public Utilities: Electrical and Communication Infrastructure: Undergrounding
From: Councilmember Wengraf (Author)
Recommendation: Write a letter to Senator Stern in support of SB-1160 and send copies to Senator Nancy Skinner, Assembly Member Buffy Wicks and Governor Gavin Newsom
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

20. General Plan Redesignation and Rezone of The Rose Garden Inn at 2740 Telegraph Avenue (APN 054-1716-002-00), 2744 Telegraph Avenue (APN 054-1716-003-00), and 2348 Ward Street (APN 054-1716-031-00)
From: City Manager
Recommendation: Conduct a public hearing and upon conclusion:
1. Adopt a Resolution amending the General Plan land use designations of portions of parcels that comprise The Rose Garden Inn from Low Medium Density Residential to Avenue Commercial;
2. Adopt first reading of an Ordinance amending the Zoning Map for portion of parcels that comprise the Rose Garden Inn from Restricted Two-Family Residential District (R-2) to General Commercial District (C-1); and
3. Certify that the reclassification of General Plan land use designations and rezoning are categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Classes 1, 3, 5, and 31
Financial Implications: See report
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

21. Zoning Ordinance Amendments for Family Daycare Homes to comply with Senate Bill 234
From: City Manager
Recommendation: Conduct a public hearing and, upon conclusion:
1. Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Title 23 (Zoning Ordinance) to comply with Family Daycare Home regulations recently enacted by Senate Bill 234 (SB 234); and
2. Adopt a Resolution amending Resolution 67,985-N.S., the Planning Department Fee Schedule, to reflect the requirement that no permit fees may be charged for Family Daycare Homes pursuant to SB 234.
Financial Implications: See report
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Action Calendar – New Business

22. Placing Charter Amendment Measure on the November 3, 2020 Ballot to Establish a Police Board and Director of Police Accountability
From: City Manager
Recommendation:
1. Adopt a Resolution submitting an amendment to the City Charter to add Article XVIII to establish a Police Board and Director of Police Accountability to a vote of the electors at the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.
Financial Implications: General Fund - $300,000-$500,000
Contact: Dave White, City Manager's Office, (510) 981-7000

Action Calendar – New Business

23. Renaming Shattuck Avenue 'East'
From: City Manager
Recommendation: Adopt a Resolution renaming the two block portion of Shattuck Avenue 'East' from Center Street to University Avenue, including the eastern facing block faces of Shattuck Square and Berkeley Square to one of six names recommended by the Public Works Commission (PWC) and affirming the western segment of Shattuck Avenue, including the western facing block faces of Shattuck Square and Berkeley Square will be known as Shattuck Avenue.
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

Council Action Items

24. Adopt a Resolution to Upgrade Residential and Commercial Customers to a 100% Greenhouse Gas Emissions-Free Electricity Plan and to Upgrade Municipal Accounts to a 100% Renewable Plan *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: Councilmember Harrison (Author), Mayor Arreguin (Author), and Councilmember Robinson (Co-Sponsor)
Recommendation: Adopt a Resolution: a. Changing the service plan for current and new Berkeley residential Bright Choice accounts, except those enrolled in the California Alternate Rates for Energy Program, Family Electric Rate Assistance and Medical Baseline Allowance Program accounts, and all commercial East Bay Community Energy Bright Choice accounts to the Brilliant 100 (100% greenhouse gas-free) electricity service plan, effective [ ] for residential customers and [ ] for commercial customers. Customers will not lose the option of changing their plan or opting out of EBCE entirely; b. Opt up municipal East Bay Community Energy accounts to Renewable 100 (100% renewable and 100% greenhouse gas-free) electricity service, and refer the estimated increased cost of $100,040 to the June 2020 budget process; and, c. Providing for yearly Council review of the City's default residential, commercial and municipal plans.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

25. Inclusionary Units in Qualified Opportunity Zones*(Reviewed by the Land Use, Housing and Economic Development Committee)*
From: Councilmember Harrison (Author); Councilmember Bartlett (Author); Councilmember Davila (Author); and Councilmember Hahn (Author)
Recommendation: Adopt an ordinance amending Berkeley Municipal Code chapter 22.20.065 requiring onsite inclusionary units in new rental developments in Qualified Opportunity Zones (QOZs)
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Action Calendar – Policy Committee Track Items

26. Budget Referral: $153,000 to Fund Berkeley Youthworks Participants Commensurate with the Berkeley Minimum Wage
From: Councilmember Davila (Author)
Recommendation:
1. Adopt a Resolution guaranteeing that City of Berkeley Youthworks participants will not be exempt from the Berkeley Minimum Wage Ordinance.
2. Budget Referral: Refer to the FY 2020-21 budget process the allocation of $153,000 for the purpose of funding Youthworks participants at the local minimum wage, which is scheduled to increase in July 2020 to $15.59 per hour plus the Consumer Price Index.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Information Reports

27. FY 2020 Mid-Year Budget Update
From: City Manager
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

28. LPC NOD: 1399 Queens Road/#LMIN2019-0003
From: City Manager
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

29. Audit Recommendation Status - 911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale
From: City Manager
Contact: Andrew Greenwood, Police, (510) 981-5900

30. Children, Youth and Recreation Commission FY2020 Work Plan
From: Children, Youth, and Recreation Commission
Contact: Stephanie Chu, Commission Secretary, (510) 981-6700

31. Civic Arts Grants Program
From: Civic Arts Commission
Contact: Jennifer Lovvorn, Commission Secretary, (510) 981-7530

32. Council Referral – Commemorative Tree Program
From: Parks and Waterfront Commission
Contact: Roger Miller, Commission Secretary, (510) 981-6700

Public Comment – Items Not Listed on the Agenda

Adjournment

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

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

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West Branch – 1125 University
North Branch – 1170 The Alameda
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COMMUNICATION ACCESS INFORMATION:
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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.

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Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.
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Rashi Kesarwani
Councilmember District 1

CONSENT CALENDAR
March 24, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Rashi Kesarwani

Subject: BAHIA's 45th Anniversary Celebration: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed $250 per Councilmember, including $250 from Councilmember Kesarwani, to support BAHIA and its 45th anniversary celebration with funds relinquished to the City's General Fund. The relinquishment of funds from Councilmember Kesarwani's discretionary Council Office Budget, and all other Councilmembers who would like to contribute, supports this non-profit's ability to serve the community and celebrate 45 years of distinguished bi-lingual education.

FINANCIAL IMPLICATIONS

Up to $250 is available from contributing Councilmember's and the Mayor's Office Budget discretionary funds.

BACKGROUND

BAHIA (Bay Area Hispano Institute for Advancement) was established in 1975 as a nonprofit pre-school by and for Latinx families to address the need for a nurturing, high level bilingual (Spanish-English) educational environment where children can grow to become successful life-long learners. Acknowledging that strength grows from a respect for culture, language, and diverse learning experiences, BAHIA has been committed to fostering positive collaborations within the community to strengthen the well-being of parents and children and to nurturing students to become successful bi-lingual learners.

Since that time, BAHIA has evolved and grown exponentially. In addition to being awarded contracts from the California Department of Education to provide child-care services to lower-income families and to administer a program for school-age children, they also have added a toddler program. They currently run three distinct programs: Centro VIDA, BAHIA school-age program, and La Academia de BAHIA that service more than 150 children ranging in ages from 2- 10-years-old. Their successful programming has facilitated their fundraising efforts as they expanded their site and added additions to house their growing enrollment. Multiple community awards granted over the years speak to their achievements as an institutional pillar within Berkeley and

the Latinx community. Today, BAHIA is still the only Latinx nonprofit providing full-time private bilingual, culturally diverse programs in Berkeley that also addresses the City's need for child-care centers serving lower-income families and working students.

On April 25, 2020, BAHIA will be celebrating 45 years of service to families and the Berkeley community. All friends and supporters are welcomed to join them in honoring their achievements.

ENVIRONMENTAL SUSTAINABILITY
No impact.

CONTACT PERSONa
Councilmember Rashi Kesarwani, Council District 1 510-981-7110

Attachments:
1: Resolution

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

BAHIA's 45th ANNIVERSARY CELEBRATION: RELINQUISHMENT OF COUNCIL OFFICE BUDGET FUNDS FROM GENERAL FUNDS AND GRANT OF SUCH FUNDS

WHEREAS, BAHIA (Bay Area Hispano Institute for Advancement) was established in 1975 as a nonprofit by and for Latinx families to address the need for a nurturing, high-level bilingual (Spanish-English) educational environment where children can grow to become successful life-long learners; and

WHEREAS, BAHIA works with families to help prepare children for future success by nurturing their childhood as a time for learning, creativity, and exploration; and

WHEREAS, BAHIA acknowledges that strength grows from a respect for culture, language, and diverse learning experiences; and

WHEREAS, BAHIA is committed to fostering positive collaborations with the community to strengthen the well-being of children and families; and

WHEREAS, BAHIA has been awarded contracts from the California Department of Education to provide childcare services to lower-income families, and multiple achievement awards acknowledging their service to the community, all facilitating their successful growth and expansion of their programs and site; and

WHEREAS, BAHIA remains the only Latinx nonprofit providing full-time private bilingual programming in Berkeley addressing the City's needs by providing a bilingual, culturally diverse child care center for lower-income families and working students; and

WHEREAS, BAHIA, is celebrating 45 years of magnificent service to the community during its anniversary gala on April 25th, 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished from the Mayor and Councilmembers from their Council Office Budgets, up to $250 per office, shall be granted to BAHIA to fund this anniversary celebration and enable continued distinguished bilingual service to the Berkeley community.

Kate Harrison
Councilmember District 4

CONSENT CALENDAR
March 24, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Kate Harrison

Subject: Resolution in Support of Senate Bill 54 and Assembly Bill 1080: The California Circular Economy and Plastic Pollution Reduction Act

RECOMMENDATION

Adopt a resolution affirming Berkeley's support for Senate Bill 54 and Assembly Bill 1080, The California Circular Economy and Plastic Pollution Reduction Act. Send a letter in support to Assemblymember Gonzalez and Senator Allen.

BACKGROUND

Californians throw away 123,000 tons of plastic bags each year, with much of it finding its way into regional and international waterways.[1] Each year, 18 billion pounds of plastic are added to the oceans, with existing waste rapidly accumulating.[2]Only nine percent of plastic is recycled.[3]

The problem is only projected to worsen. Plastic production is projected to increase by 40% in the next ten years alone.[4] As one of the world's largest economies,[5] California has disproportionate power to change this trend. California can have a positive impact on the world's oceans by reducing plastic pollution.

In 2014, the state legislature passed Senate Bill 270, mandating that grocery stores, convenience stores, and self-service retail stores provide reusable bags instead of single-use plastic bags. However, this bill contained exemptions, including for thicker plastic bags that qualify as reusable because they can be used more than 125 times.[6] Some studies have suggested, however, less than one percent of consumers reuse these thicker bags in practice.[7] Over a hundred localities in California have passed plastic bag

[1] https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific
[2] http://dbw.parks.ca.gov/pages/28702/files/Changing%20Tide%20Summer%202018%20HQ%20(1).pdf
[3]https://www.nationalgeographic.com/news/2017/07/plastic-produced-recycling-waste-ocean-trash-debris-environment/
[4] https://www.theguardian.com/environment/2017/dec/26/180bn-investment-in-plastic-factories-feeds-global-packaging-binge
[5] https://www.cbsnews.com/news/california-now-has-the-worlds-5th-largest-economy/
[6] https://www.sfchronicle.com/politics/article/California-banned-plastic-bags-So-why-do-stores-14872852.php
[7] https://saveourshores.org/help-ban-plastic-bags/

bans of their own,[8] but hundreds more have not, and only statewide action can ensure a unified approach in combating plastic waste and pollution.

In 2019, State Senator Ben Allen and Assemblymember Lorena Gonzalez introduced Senate Bill 54[9] and Assembly Bill 1080,[10] respectively, to the state legislature. The identical bills would set binding goals stipulating that all single-use plastic packaging and products sold or distributed in California be reduced or recycled by 75 percent by 2030 and that such packaging and products be recyclable or compostable on and after 2030. The bills also require producers to source reduce single-use packaging and priority single-use products to the maximum extent feasible and instruct California's Department of Resources Recycling and Recovery to develop incentives and policies to encourage in-state manufacturing using recycled material generated in California.[11]

These bills would have multi-pronged effects. Reduced plastic waste and pollution would not only significantly ameliorate worsening environmental conditions and help California achieve its environmental goals but would also provide financial benefits in decreasing the costs associated with handling and processing plastic waste. Furthermore, building the recycling infrastructure needed to achieve these goals would create green jobs that would both benefit the environment and provide badly needed employment to Californians across the state. In enacting SB 54 and AB 1080, California would be taking another step forward in its role as a national and global leader on environmental issues.

FISCAL IMPACTS OF RECOMMENDATION
No impact. Clerk time necessary to send letters.

ENVIRONMENTAL SUSTAINABILITY
No impact.

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

ATTACHMENTS
1: Resolution
2: Letters

[8] https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific
[9] http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB54
[10] http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1080
[11] https://www.cawrecycles.org/sb-54-ab-1080-bill-page

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

RESOLUTION IN SUPPORT OF SENATE BILL 54 AND ASSEMBLY BILL 1080

WHEREAS, Californians throw away 123,000 tons of plastic bags each year; and

WHEREAS, only nine percent of plastic is recycled, with the vast majority instead discarded; and

WHEREAS, 18 billion pounds of plastic are added to the oceans each year; and

WHEREAS, plastic production is projected to increase by 40% in the next ten years; and

WHEREAS, Senate Bill 270, which restricted plastic bag distribution in favor of reusable bag use, nevertheless provided exemptions for certain thicker bags which produce more waste; and

WHEREAS, Senate Bill 54, introduced by Senator Ben Allen, and Assembly Bill 1080, introduced by Assemblymember Lorena Gonzalez, would require that all single-use plastic packaging and products sold or distributed in California be reduced or recycled by 75 percent by 2030, that such packaging and products be recyclable or compostable on and after 2030, that producers source reduce single-use packaging and priority single-use products to the maximum extent feasible, and that California's Department of Resources Recycling and Recovery develop incentives and policies to encourage in-state manufacturing using recycled material generated in California; and

WHEREAS, the stipulations of these bills would reduce plastic waste and pollution, thus benefiting the environment and helping California achieve its environmental goals as well as decreasing costs associated with handling and processing plastic waste; and

WHEREAS, building the recycling infrastructure needed to achieve these goals would create green jobs that would both benefit the environment and provide employment to Californians in need; and

NOW THEREFORE, BE IT RESOLVED that the Berkeley City Council expresses its support for California State Senate Bill 54 and Assembly Bill 1080, and the California Legislature to pass and Governor Gavin Newsom to sign into law the aforementioned Bills; and

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

March 24, 2020

The Honorable Ben Allen
California State Senate
State Capitol, Room 4076
Sacramento, CA 95814

RE: Senate Bill 54, The California Circular Economy and Plastic Pollution Reduction Act
Support from the Berkeley City Council

Dear Senator Allen:

We, the Berkeley City Council, wish to express our support for Senate Bill 54.

With 18 billion pounds of plastic being added to the oceans each year, and plastic production projected to increase by 40% over the next decade, it is imperative that California fulfil its role as a leader on the environmental forefront and act to prevent additional plastic waste and pollution.

Senate Bill 54, as well as Assembly Bill 1080, would take important steps to regulate the production and distribution of plastic bags to maximize recyclability and compostability, thereby reducing environmental impacts, decreasing costs, and creating green jobs that would benefit Californians.

We thank you for introducing Senate Bill 54 and for your leadership on environmental issues and hope that the bill be enacted in the near future.

Sincerely,

Berkeley City Council

CC: The Honorable Assemblymember Buffy Wicks
The Honorable Senator Nancy Skinner
The Honorable Governor Gavin Newsom

March 24, 2020

The Honorable Lorena Gonzalez
California State Assembly
State Capitol, Room 2114
Sacramento, CA 95814

RE: Assembly Bill 1080, The California Circular Economy and Plastic Pollution Reduction Act
Support from the Berkeley City Council

Dear Assemblymember Gonzalez:

We, the Berkeley City Council, wish to express our support for Assembly Bill 1080.

With 18 billion pounds of plastic being added to the oceans each year, and plastic production projected to increase by 40% over the next decade, it is imperative that California fulfil its role as a leader on the environmental forefront and act to prevent additional plastic waste and pollution.

Assembly Bill 1080, as well as Senate Bill 54, would take important steps to regulate the production and distribution of plastic bags to maximize recyclability and compostability, thereby reducing environmental impacts, decreasing costs, and creating green jobs that would benefit Californians.

We thank you for introducing Assembly Bill 1080 and for your leadership on environmental issues and hope that the bill be enacted in the near future.

Sincerely,

Berkeley City Council

CC: The Honorable Assemblymember Buffy Wicks
The Honorable Senator Nancy Skinner
The Honorable Governor Gavin Newsom

Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
March 24, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf

Subject: Support for SB-1160 (Stern) Public utilities: electrical and communication infrastructure: undergrounding

RECOMMENDATION

Write a letter to Senator Stern in support of SB-1160 and send copies to Senator Nancy Skinner, Assembly Member Buffy Wicks and Governor Gavin Newsom.

FINANCIAL IMPLICATIONS

None

BACKGROUND

The CPUC's Rule 20A undergrounding program directs the conversion of overhead electrical facilities to below ground for municipal or other applicant-identified projects. This bill would require the commission to revise Tariff Rule 20A to authorize and fund the undergrounding of electrical and communication infrastructure within high fire-threat districts and the wildland-urban interface.

A significant area of the City of Berkeley is in the CPUC's Tier 2 and Tier 3 High Fire Threat District, making Berkeley highly susceptible to wildfire. According to nationally recognized Hazard Mitigation Expert Charles Scawthorn, 26,000 Berkeley residents live in this designated area. Egress and ingress throughout Berkeley's hillside of narrow and windy streets would be impeded if utility poles and/or wires fall down and block escape and rescue in an earthquake or wildfire. Additionally, utility wires have proven responsible for igniting at least eleven of Northern California's most destructive wildfires.

Undergrounding in High Fire Threat Districts is critical to reducing wildfire risk, increasing egress and ingress, and supporting local resiliency efforts after disasters. Further, it will protect the environment against the extreme greenhouse gases produced by fire smoke, protect human health, and protect local economies so communities can thrive.

ENVIRONMENTAL SUSTAINABILITY
Passage of this bill could result in a reduction of wildfires and therefore greenhouse gases.

CONTACT PERSON
Councilmember Wengraf Council District 6 510-981-7160

Attachments:
1: SB 1160
2: Letter

SENATE BILL No. 1160

Introduced by Senator Stern

February 20, 2020

An act to amend Section 320 of the Public Utilities Code, relating to public utilities.

legislative counsel's digest

SB 1160, as introduced, Stern. Public utilities: electrical and communication infrastructure: undergrounding.

Under existing law, the Public Utilities Commission has jurisdiction over public utilities, including electrical corporations. Under existing law, the Legislature has declared that it is the policy of this state to achieve, whenever feasible and not inconsistent with sound environmental planning, the undergrounding of all future electric and communication distribution facilities that are proposed to be erected in proximity to designated state scenic highways and that would be visible from those highways if erected above ground. The commission's existing Tariff Rule 20A undergrounding program requires electrical corporations to convert overhead electric facilities to underground facilities when doing so is in the public interest for specified reasons.

This bill would require the commission to revise Tariff Rule 20A to authorize and fund the undergrounding of electrical and communication infrastructure within high fire-threat districts and the wildland-urban interface.

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

Because a violation of an order, decision, rule, direction, demand, or requirement of the commission implementing the provisions of this bill would be a crime, this bill would impose a state-mandated local program.

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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:

SECTION 1. Section 320 of the Public Utilities Code is amended to read:

320. *(a) (1)* The Legislature hereby declares that it is the policy of this state to achieve, whenever feasible and not inconsistent with sound environmental planning, the

undergrounding of all future electric and communication distribution facilities ~~which~~ *that* are proposed to be erected in proximity to any highway designated a state scenic highway pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code and ~~which~~ *that* would be visible from ~~such~~ *those* scenic highways if erected above ground. The commission shall prepare and adopt by December 31, 1972, a statewide plan and schedule for the undergrounding of ~~all such~~ *those* utility distribution facilities in accordance with ~~the aforesaid~~ *that* policy and the rules of the commission relating to the undergrounding of facilities.

~~The~~ *(2) The* commission shall coordinate its activities regarding the plan with local governments and planning commissions concerned.

~~The~~ *(3) The* commission shall require compliance with the plan upon its adoption.

~~This section~~ *(4) This subdivision* shall not apply to facilities necessary to the operation of any railroad.

(b) (1) The Legislature further finds and declares that it is the policy of the state to underground electrical and communication infrastructure located within high fire-threat districts and the wildland-urban interface.

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(2) The commission shall revise Tariff Rule 20A to authorize and fund the undergrounding of electrical and communication infrastructure within high fire-threat districts and the wildland-urban interface.

(3) For purposes of this subdivision, "high fire-threat district" means the areas identified as tier 2 (elevated) or tier 3 (extreme) fire risk on the fire-threat map maintained by the commission.

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

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March 24, 2020

The Honorable Henry Stern
California State Senate
State Capitol, Room 5080
Sacramento, CA 95814

RE: SB 1160 (Stern) Public utilities: electrical and communication infrastructure: undergrounding. Support from the Berkeley City Council.

Dear Senator Stern:

The City Council of the City of Berkeley officially expresses our support on SB 1160 (Stern) Public utilities: electrical and communication infrastructure: undergrounding. This bill would require the CPUC to revise Tariff Rule 20A to authorize and fund the undergrounding of electrical and communication infrastructure within high fire-threat districts and the wildland-urban interface.

A significant area of the City of Berkeley is in the CPUC's Tier 2 and Tier 3 High Fire Threat District, making Berkeley highly susceptible to wildfire. According to nationally recognized Hazard Mitigation Expert Charles Scawthorn, 26,000 Berkeley residents live in this designated area. Egress and ingress throughout Berkeley's hillside of narrow and windy streets would be impeded if utility poles and/or wires fall down and block escape and rescue in an earthquake or wildfire. Additionally, utility wires have proven responsible for igniting at least eleven of Northern California's most destructive wildfires.

Undergrounding in High Fire Threat Districts is critical to reducing wildfire risk, increasing egress and ingress, and supporting local resiliency efforts after disasters. Further, it will protect the environment against the extreme greenhouse gases produced by fire smoke, protect human health, and protect local economies so communities can thrive. The investment is worth it.

The Berkeley City Council thanks you for your leadership on this important policy topic.

Sincerely,

Berkeley City Council

CC: Senator Nancy Skinner
Assembly Member Buffy Wicks
Governor Gavin Newsom

Kate Harrison
Councilmember District 4

ACTION CALENDAR
March 24, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison, Mayor Arreguín, and Councilmember Robinson

Subject: Adopt a Resolution to Upgrade Residential and Commercial Customers to a 100% Greenhouse Gas Emissions-Free Electricity Plan and to Upgrade Municipal Accounts to a 100% Renewable Plan

POLICY COMMITTEE

Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee

RECOMMENDATION

Adopt a Resolution:

a. Changing the service plan for current and new Berkeley residential *Bright Choice* accounts, except those enrolled in the California Alternate Rates for Energy Program, Family Electric Rate Assistance and Medical Baseline Allowance Program accounts, and all commercial East Bay Community Energy *Bright Choice* accounts to the *Brilliant 100* (100% greenhouse gas-free[1]) electricity service plan, effective [ ] for residential customers and [ ] for commercial customers. Customers will not lose the option of changing their plan or opting out of EBCE entirely;

b. Opt up municipal East Bay Community Energy accounts to *Renewable 100* (100% renewable and 100% greenhouse gas-free) electricity service, and refer the estimated increased cost of $100,040 to the June 2020 budget process; and,

c. Providing for yearly Council review of the City's default residential, commercial and municipal plans.

POLICY COMMITTEE RECOMMENDATION

On February 6, 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action:

[1] For example, large hydroelectric facilities are greenhouse gas-free but are not considered renewable under state law.

Action: M/S/C (Harrison/Robinson) to approve recommendations b and c, as revised in the supplemental report submitted by Councilmember Harrison, with a Positive Recommendation.
Revised recommendation:
b. Opt up municipal East Bay Community Energy accounts to renewable 100 (100% renewable and 100% greenhouse gas-free) electricity service, and refer the estimated increased cost of $100,040 to the June 2020 budget process; and,
c. Providing for yearly Council review of the City's default residential, commercial and municipal plans.
Vote: All Ayes.

Action: M/S/C (Robinson/Harrison) to approve recommendation a, as revised in the supplemental report submitted by Councilmember Harrison, and send the item back to the City Council with a Positive Recommendation.
Revised recommendation:
a. Changing the service plan for current and new Berkeley residential Bright Choice accounts, except those enrolled in the California Alternate Rates for Energy Program, Family Electric Rate Assistance and Medical Baseline Allowance Program accounts, and all commercial East Bay Community Energy Bright Choice accounts to the Brilliant 100 (100% greenhouse gas-free) electricity service plan, effective [ ] for residential customers and [ ] for commercial customers. Customers will not lose the option of changing their plan or opting out of EBCE entirely
Vote: Ayes – Robinson, Harrison; Noes – Davila; Abstain – None.

BACKGROUND

A. Plan Options

Community Choice Aggregators (CCAs) like East Bay Community Energy ("EBCE") were authorized by Assembly Bill 117 and Senate Bill 790.[2] The legislation gives local government agencies: (1) authority to procure power for their communities with the goal of procuring less carbon intensive energy at competitive prices and (2) an opportunity to have elected municipal leaders oversee procurement and energy-related policy-making instead of private shareholders.

By joining EBCE in 2018, the City has already realized substantial greenhouse gas emission reductions. To fully realize the benefits of CCAs and meet the City's climate

[2] Migden, Chapter 838, Statutes of 2002; Leno, Chapter 599, Statutes 2011.

action goals, climate emergency and fossil free goals, Berkeley has to continue reducing greenhouse gas (GHG) emissions and electrify at an emergency pace.

This resolution establishes EBCE's *Brilliant 100* (100% carbon-free) electricity service plan, and enrolls new residential customers as of [ ] and commercial accounts as of [ ] in *Brilliant 100* as the default plan.[3] *Brilliant 100,* already selected by the cities of Hayward and Albany, currently costs the same as standard PG&E rates and does not contain any energy products that create greenhouse gasses.[4] Berkeley's city-wide default at enrollment was EBCE's *Bright Choice*, featuring a minimum of 85% GHG-free electricity at a price discounted from Pacific Gas & Electric's ("PG&E") rates.[5]

The City could move closer towards eliminating the vast majority of its electricity-based GHG inventory[6] by upgrading residents and businesses to a carbon-free plan.[7] This brings the City closer to its goal in the Climate Action Plan of reducing emissions by 33% by 2020. Residential and commercial electricity accounts for a respective 3% and 7% of 2016 city-wide emissions. These percentages have likely contracted since 2016 following the adoption of *Bright Choice* as the default in 2018. In 2018, PG&E offered 86% carbon-free electricity, of which 34% was generated by nuclear power.[8]

According to EBCE's 2019 data concerning prices and power mix, the average price increase for a residential customer due to the upgrade is estimated to be $0.63/month and for a small business $2.63/month.[9] However, due to anticipated increases to the Power Charge Indifference Adjustment (PCIA) in 2020, the cost of this upgrade could

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[3] *See* East Bay Community Energy, Rates, https://ebce.org/residents/ & https://ebce.org/businesses/

[4] Carbon- and GHG-free energy sources are those that do not emit carbon/GHG emissions, such as solar, wind, geothermal, hydropower, and nuclear. However, not all GHG-free sources are renewable (e.g., hydroelectric) or safe (e.g., nuclear). Renewable energy is relatively reliable and inexhaustible and can be produced locally without the environmental impact of large hydroelectric and nuclear generation. In addition, renewable energy offers substantial economic benefits to workers and communities. For these reasons, state governments often prioritize renewable production. While renewable energy sources such as wind and solar are not consistently available throughout the day and cannot be directly dispatched, rapid advances in battery storage technology are ameliorating those issues.

[5] *Id.*

[6] The latest available City of Berkeley data is from 2016. *See* 2018 Berkeley Climate Action Plan Update, Office of Energy and Sustainable Development, December 6, 2018, https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-06_WS_Item_01_Climate_Action_Plan_Update_pdf.aspx.

[7] In 2018, *Bright Choice* featured 90% GHG-free content and PG&E's standard product featured 86% GHG-free content. *See* https://www.energy.ca.gov/sites/default/files/2019-12/2018_PCL_East_Bay_Community_Energy.pdf. .

[8] See 2018 PG&E Power Content Label, https://www.energy.ca.gov/sites/default/files/2020-01/2018_PCL_PG_and_E.pdf.

[9] *See* Figure 4.

be more in the future. Customers enrolled in low-income programs like CARE, FERA[10] and Medical Baseline[11] would not be subject to the upgrade and would continue to receive percentage-based discounts on PG&E's transmission and distribution bill while being enrolled in the greener plan.

In addition, this legislation would upgrade Berkeley's municipal accounts to *Renewable 100,* which contains only renewable sources of energy, from *Brilliant 100* for a relatively small premium. By doing so, the city will be supporting California's burgeoning solar and wind energy sector, which has the potential to further offset electricity generated from natural gas and nuclear throughout the state.

Beyond moving closer towards eliminating all electricity-related emissions, upgrading to cleaner energy plans in Berkeley will help realize significant, future long-term benefits, including mitigating the impact of increased electricity consumption as the community transitions towards all-electric buildings and vehicle charging infrastructure.[12] In other words, maximizing the climate benefits of building, vehicle and other mobility transportation electrification requires the cleanest possible electric supply.

EBCE customers have had the option to voluntarily enroll in greener plans but to date very few have done so. As of January 2020 only 1,551 Berkeley residents out of a total of 54,765 eligible customers upgraded from *Bright Choice.*[13] Upgrading customers while continuing to allow people to opt back down will yield substantially more benefits than the best marketing campaign aimed at encouraging customers to opt-up individually.

Market-based solutions to the climate emergency have and will likely continue to fail to deliver the necessary emergency reductions. Direct local government intervention is imperative in order to halt Berkeley's ongoing contribution to global emissions.

B. The Climate Emergency

Fossil fuel extraction and combustion is the primary cause of the present climate emergency threatening the well-being of all living things. According to scientists and

[10] CARE and FERA are state discount programs administered by PG&E that help eligible customers pay their energy bills. PG&E eligibility requirements for CARE and FERA shown in the Appendix, p. 15.

[11] The Medical Baseline Program assists residential customers who have special energy needs due to qualifying medical conditions. The program includes a lower rate on monthly energy bills and extra notifications in advance of a Public Safety Power Shutoff. *See* PG&E Medical Baseline Program overview, https://www.pge.com/en_US/residential/save-energy-money/help-paying-your-bill/longer-term-assistance/medical-condition-related/medical-baseline-allowance/medical-baseline-allowance.page.

[12] 2018 Berkeley Climate Action Plan Update, p. 10.

[13] *See* Figure 6.

engineers, transitioning society to less greenhouse gas (GHG) intensive, cleaner forms of energy is fundamental to decarbonization.[14]

Fortunately, in the last decade electricity generation in California has become much less GHG intensive. Evolving political and market-based developments suggest that the carbon content of electric energy will continue to drop in coming years.[15]

The City of Berkeley is working to achieve its Climate Action Plan goals of reducing greenhouse gas (GHG) emissions 33% below 2000 levels by 2020 and 80% by 2050. According to the Berkeley Office of Energy and Sustainable Development, the latest and best available data suggest that Berkeley's 2016 community-wide GHG emissions, including emissions from transportation, building energy use, and solid waste disposal, are approximately 15% below 2000 baseline levels. Therefore the City is approximately 18% behind its 2020 goal.[16]

Figure 1: 2016 Community GHG Emissions Inventory

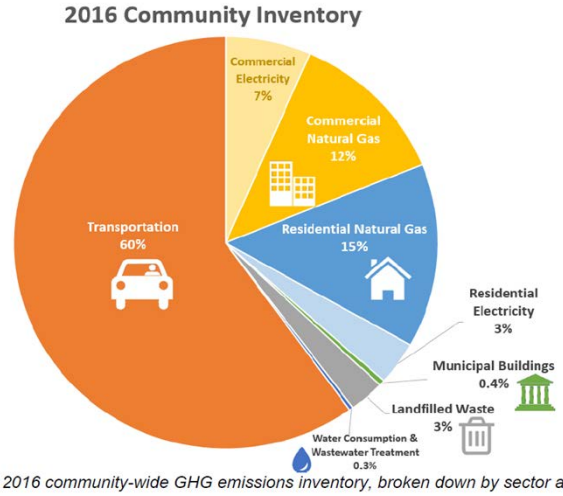


Figure 1: Pie chart of 2016 community-wide GHG emissions inventory, broken down by sector and fuel.

As can be seen in Figure 2, without accelerated efforts, the OESD reports that the City will continue to be below its target. Current state and local programs will not result in

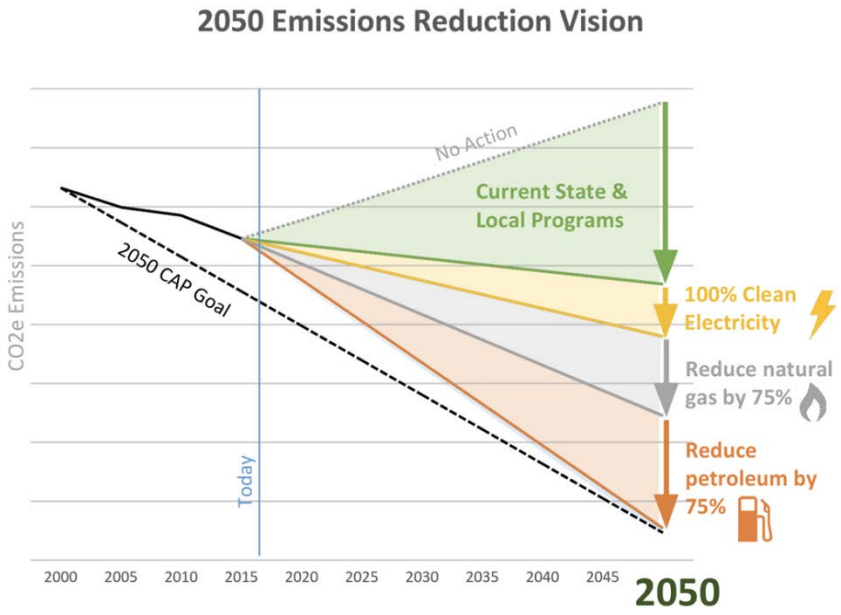
[14] IPCC Press Release, Summary for Policymakers of IPCC Special Report on Global Warming of 1.5ºC approved by Governments, 8 October 2018, http://www.ipcc.ch/pdf/session48/pr_181008_P48_spm_en.pdf

[15] *See* SB-100 California Renewables Portfolio Standard Program: emissions of greenhouse gases, 2018, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB100.

[16] In part, this is due to an 18% increase in population in that same time period.

80% GHG reduction by 2050. To reach the 80% goal, 100% GHG-free electricity, along with 75% reductions in natural gas and petroleum usage are needed.

Figure 2: City of Berkeley Strategies to Achieve 80% GHG reduction by 2050 (2017)[17]



C. EBCE Overview

This resolution builds upon existing City initiatives by positioning customers to take advantage of electricity service with the lowest emissions and best environmental profile. This will ensure that a large majority of residential and commercial buildings and e-vehicles are powered with zero-carbon electricity service.

Until June 2018, the default procurer of electricity in Berkeley was Pacific Gas and Electric Company (PG&E). The City then joined neighboring jurisdictions in establishing and designating the community choice aggregator known as EBCE as the default residential and commercial provider of electricity in Berkeley.[18] In other words, EBCE, instead of PG&E, buys the energy on the market or creates new energy sources on behalf of customers. However, EBCE still relies on PG&E to transmit and deliver its

[17] 2017 Berkeley Climate Action Plan Update, Office of Energy and Sustainable Development, December 7, 2017, https://www.cityofberkeley.info/Clerk/City_Council/2017/12_Dec/Documents/2017-12-07_WS_Item_01_Climate_Action_Plan_Update.aspx;

[18] A third category of electric service customer (primarily commercial) known as Direct Access are exempted from both PG&E and EBCE entirely for electricity generation services.

energy over the grid to customers. Therefore, customers receive bills with separate charges that include EBCE electricity supply and PG&E transmission, delivery and other fees, such as for natural gas.

Berkeley and other Alameda County jurisdictions helped form EBCE[19] because the new agency offered significant advantages, including oversight by local jurisdictions instead of private shareholders, and delivery of less carbon intensive energy at competitive prices. EBCE can reinvest profits into expanding carbon-free options for Alameda County including through the Local Business Development Plan, which allocates funds for local renewable capacity expansion and electrification.[20]

Customers retain the option to rejoin PG&E at any time by opting out of EBCE.[21]. The City of Berkeley currently boasts an impressive opt out rate of under 2% across accounts, meaning fewer than 2% of Berkeley customers have returned to PG&E since initial enrollment.

EBCE currently offers customers three energy options: *Bright Choice* (minimum 85% carbon-free), *Brilliant 100* (100% carbon-free) and *Renewable 100* (100% renewable and carbon-free). By comparison, in 2018, PG&E's standard service option was 86% carbon-free, although this included a significant amount of nuclear power; as PG&E continues to lose customers and curtail its natural gas usage, nuclear energy will become a larger percentage of their total generation at least until 2024 when Diablo Canyon is scheduled to begin closing.

The EBCE Board is currently considering whether to accept PG&E allocations of nuclear and other carbon-free energy. Among the options being considered is the integration of nuclear energy into the *Bright Choice* service plan. EBCE staff noted in a recent presentation that under this scenario, customers could avoid paying directly for nuclear energy generation[22] by opting up from *Bright Choice*: "Any individual customer or entire city can opt-up to Brilliant 100 or Renewable 100 to eliminate nuclear generation from their power mix."[23] The City of Berkeley has a long-standing policy on

[19] The City of Alameda is not a member-jurisdiction of EBCE because it is served by its own municipal utility. The cities of Newark and Pleasanton decided to join EBCE in 2019 and are scheduled to begin service in 2021.

[20] East Bay Community Energy, Local Business Development Plan, https://ebce.org/local-development-business-plan/.

[21] PG&E requires a one year waiting period to return to EBCE once a customer has opted out to PG&E.

[22] The "exit fee" charged to customers of CCAs in PG&E's service area do pay for a portion of PG&E's nuclear generation.

[23] Nick Chaset, East Bay Community Energy Executive Committee, PG&E Carbon-Free Allocations (Informational item), November 20, 2019, https://ebce.org/wp-content/uploads/Item-5-PGE-Carbon-Free-Allocations.pdf.

nuclear energy, including a statement of “oppos[ing] the nuclear fuel cycle as a whole.”[24]

[24] Nuclear Free Berkeley Act, BMC 12.9.

Figure 3: Comparison of EBCE v. PG&E Service Options and Respective Power Content*[25]

	Percent of Total Retail Sales (kWh)				
Specific Purchases	East Bay Community Energy			PG&E Standard Rate	PG&E Solar Choice
	Bright Choice	Brilliant 100	Renewable 100		
Renewable	41%	45%	100%	39%	100%
- Biomass/ Biowaste	0%	0%	0%	4%	0%
- Geothermal	1%	0%	0%	4%	0%
- Eligible hydroelectric	0%	0%	0%	3%	0%
- Solar electric	15%	20%	50%	18%	100%
- Wind	25%	25%	50%	10%	0%
Large Hydroelectric	21%	55%	0%	13%	0%
Natural Gas	0%	0%	0%	15%	0%
Nuclear	0%	0%	0%	34%	0%
Unspecified Sources of Power **	38%	0%	0%	2%	0%
Total	100%	100%	100%	100%	100%

* As reported to the California Energy Commission's Power Source Disclosure Program for EBCE and PG&E's 2018 Power Mix.

[25] East Bay Community Energy 2018 Power Content Label, September 10, 2019, https://ebce.org/wp-content/uploads/ebce_PCL_091019_PRINT-small_compressed.pdf. See also, PG&E 2018 Power Mix, https://www.pge.com/pge_global/common/pdfs/customer-service/other-services/alternative-energy-providers/community-choice-aggregation/EBCE_PowerGenerationMix.pdf.

**Unspecified sources are not traceable to a specific facility, such as electricity traded through open market transactions. Unspecified sources of power are typically a mix of all types, and may include renewables. For Bright Choice, EBCE states that the primary source of its unspecified generation is the North West Hydro system, which is carbon-free large hydroelectric power.

Currently, *Bright Choice* is priced 1.5% below PG&E's standard rate; *Brilliant 100* is priced at parity with PG&E's standard rate, and *Renewable 100* is an additional penny per kWh. This pricing is subject to change due to anticipated increases to the PCIA in 2020.

The EBCE Board will have to choose from among various steps to mitigate potential PCIA-related financial losses, including raising rates. EBCE's Board and staff have indicated that they will likely preserve some discount in the *Bright Choice* option.

If, for example, financial reserves are used to subsidize rates over the next year, EBCE staff indicate that *Bright Choice* could potentially be priced at 0.25-0.50% below PG&E and Brilliant 100 could be 3%-4% above PG&E. These estimates are largely consistent with PCIA estimates made by neighboring jurisdictions such as San Francisco. If EBCE reserves are not used, the *Brilliant 100* percentage amount above PG&E rates could be greater.

Although the outcome of the PCIA is far from certain, under a worst-case scenario, EBCE estimates that the cost of *Brilliant 100* could increase up to 6% on average above PG&E's standard rate, as compared to the current price parity with PG&E. At the same time, the CPUC may act to reduce the impact of any PCIA increase through rate smoothing policies.

Figure 4: Marginal Cost of Upgrading EBCE Default Service from *Bright Choice* (February 2020)

	Bright Choice	*Brilliant 100*	*Renewable 100*

	Total Electricity Cost ($/kWh)	Average Monthly Bill ($)	Marginal Electricity Cost over *Bright Choice* ($/kWh)	Average Monthly Bill ($)	Marginal Monthly Cost over *Bright Choice* ($)	Marginal Electricity Cost over *Bright Choice* ($/kWh)	Average Monthly Bill ($)	Marginal Monthly Cost cover *Bright Choice* ($)
Residential[26]	0.24675	88.58	0.00176	89.21	0.63	0.01176	92.80	4.22
Commercial (typical small business A1X)	0.24749	375.79	0.00173	378.42	2.63	0.01173	393.49	17.7

The default plan is the plan into which all EBCE customers are automatically enrolled unless they decide to opt up to another EBCE plan, or opt out of the EBCE program entirely. In 2018 the EBCE Board of Directors, composed of elected officials from each of the participating jurisdictions, established *Bright Choice* as the default product for residential and commercial customers. However, the cities of Piedmont, Hayward, and Albany decided to establish alternative defaults for their residents (except CARE and FERA) and businesses.[27] The Berkeley City Council, working in coordination with EBCE staff and the EBCE Board, may revise customer rate plans at any time. A change in customer rate plans does not bind customers; customers retain the choice to opt back down, or opt out, at any time.

[26] See East Bay Community Energy, Rates.

[27] East Bay Community Energy Board of Directors, Item 4 Approval of Minutes from February 7, 2018, February 20, 2018, https://ebce.org/wp-content/uploads/Item-4-EBCE_BOD_Draft-minutes_2_7_18-1.pdf; Hayward decided to keep their CARE and FERA customers at Bright Choice, while Albany and Piedmont decided to opt their CARE and FERA customers to *Brilliant 100*.

Figure 5: Default Enrollment Service for Jurisdictions Participating in EBCE

Jurisdiction	Residential Customers	Commercial Customers	Customers in FERA, and Medical Baseline Allowance Programs
Albany	Brilliant 100	Brilliant 100	Brilliant 100
Hayward	Brilliant 100	Brilliant 100	Bright Choice
Piedmont	Renewable 100	Bright Choice	Brilliant 100
All other jurisdictions, including Berkeley	Bright Choice	Bright Choice	Bright Choice

D. Current Berkeley Electricity Usage and GHG Impact

As of January 2020, total Berkeley annual load (electricity demand), is estimated at approximately 156,130,054 kWh. The overwhelming majority of Berkeley's residential EBCE customers are currently *Bright Choice* customers.

Figure 6: Current Distribution of Berkeley EBCE Service Plans

	# of Total Customers	% of total
Bright Choice	52,113	97.06%
Brilliant 100	577	1.07%
Renewable 100	1,002	1.87%
Total Customers	53,692	100%

As seen in Figure 7, *Bright Choice* participation results in approximately 18,844 metric tons of carbon dioxide emissions each year. These emissions are equivalent to 4,001

passenger vehicles driven for one year and would require 24,609 acres of forests to sequester.[28] These 72,363 acres of forest are more than 2 times Berkeley's land area.

Figure 7: Carbon impact of *Bright Choice* Use in Berkeley

Per Hour 2018 Emissions from *Bright Choice*	Annual Total CO_{2e}
101 lb-CO2e/MWh	18,844 metric tons

E. EBCE vs. Regional CCAs

The vast majority of county-wide EBCE customers are also *Bright Choice* customers. As compared to the Clean Power Alliance CCA in Southern California, EBCE has fewer customers on 100% GHG-free service plans. However, EBCE has a much higher percentage of 100% GHG-free service customers and a much lower opt out rate than the first CCA in the state, Marin Clean Energy (MCE). Silicon Valley only has the two greener plans, with no equivalent to EBCE's *Bright Choice.* A transition across EBCE's service area to 100% GHG-free energy will support regional efforts to reduce emissions. In 2018, *Brilliant 100* featured 55% large hydroelectric power and 45% renewable sources.[29]

[28] U.S. Environmental Protection Agency, Greenhouse Gas Equivalencies Calculator, https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator.

[29] *See*: https://www.energy.ca.gov/sites/default/files/2019-12/2018_PCL_East_Bay_Community_Energy.pdf

Figure 8: Comparison of CCAs for Residential Rates

	Service Plans as Percentage of Accounts and Costs						Opt Out % of total eligible res. accounts	Minimum Renewable Portfolio Standards Eligible Power[30]
	Tier 1 Mixed Carbon and Carbon-free		Tier 2 100% Carbon-Free		Tier 3 100% Renewable			
	% of total res. accounts	Price for E-1 ($/kWh)	% of total res. accounts	Price for E-1 ($/kWh)	% of total res. accounts	Price for E-1 ($/kWh)		
EBCE*	85%	$0.25[31]	9%	$0.24851	1%	$0.26	4%	40%
Clean Power Alliance**	29%	$0.20[32]	54%	$0.20	17%	$0.21	3.8%	36%
MCE	98%	$0.26[33]	N/A	N/A	2%	$0.27	14%	60%

* As of January 2020. Percentages may not add to 100 due to rounding.
**CPA equivalent flat residential rate is called “Domestic”.

F. The Impact of Enrolling Residential and Commercial Accounts in *Brilliant 100*: GHG-free Electricity Currently Priced at PG&E’s Standard Rate

If adopted today, the result of this Resolution would be that residential customers who decide to stay with the new default plan will pay an additional $0.00176 per kilowatt hour, or an average of an additional $0.63 per average monthly bill compared to the current *Bright Choice* default.[34] For small business customers, the average increase is estimated at $2.63/month. Based on current pricing, customers will pay the *same rate* as they would for PG&E generation service, but would benefit from a maximum of 15% percent less carbon-intensive energy with no nuclear or natural gas.

[30] CalCCA, CCA: Power in Numbers, https://cal-cca.org/cca-impact/.
[31] See East Bay Community Energy, Rates.
[32] Clean Power Alliance, SCE and CPA Joint rate comparisons, https://www.sce.com/sites/default/files/inline-files/SCE%20and%20CPA%20Joint%20Rate%20Comparison%20Effective%20January%201%202019%20%281%29.pdf.
[33] Marin Clean Energy, PG&E Joint Rate Comparisons, https://www.pge.com/pge_global/common/pdfs/customer-service/other-services/alternative-energy-providers/community-choice-aggregation/mce_rateclasscomparison.pdf for rates as of July 1, 2019.
[34] EBCE monthly bill data figures represent an average; some customers will fall below and some above the mean figure depending on their monthly energy usage.

As a result of the Resolution, customers receiving subsidies through the California Alternate Rates for Energy Program (CARE), Family Electric Rate Assistance (FERA), and Medical Baseline Allowance Programs will not be upgraded and will continue to receive their monthly discounts through PG&E under their current plan. This discount is already applied to the transmission and distribution charges on other customers' electricity bills pursuant to state law.

Based on current pricing, small business commercial customers that decide to stay with the new default plan would pay an additional $ 0.00173 per kilowatt hour, or an average of an additional $2.63 per average monthly bill compared to the current *Bright Choice* default.[35] These customers will pay the *same rate* as they would for PG&E generation service, but would benefit from a maximum of 15% percent less carbon-intensive energy with no nuclear or natural gas.
Upon the effective date of the policy outlined in the Resolution, pending approval by the EBCE Board of Directors, eligible customers will be automatically upgraded to *Brilliant 100*.[36] However, customers may stay in *Bright Choice by opting down or* opt out at any time with a fee of $5 for residential customers and $25 for commercial customers.

G. Municipal *Renewable 100*: 100% Renewable Electricity at a Small Premium Above PG&E's Standard Rate

Berkeley's municipal accounts represent about 2% of city-wide electricity usage.[37] The City's municipal accounts are currently enrolled in carbon-free energy through *Brilliant 100*. Short of directly building the generation facilities with City resources, the most effective way for Berkeley to support carbon-free energy is to opt its municipal accounts to those sources poised for dramatic growth in the Bay Area and California: solar and wind. The City of Berkeley is well positioned to pay the 4% premium for *Renewable 100*, estimated at $100,040 per year.

Economic and environmental advantages to investing in exclusively renewable electricity through *Renewable 100* include:

[35] EBCE monthly bill data figures represent an average; some customers will fall below and some above the mean figure depending on their monthly energy usage.
[36] At a time operationally feasible.
[37] 11,834,276 kWh in 2018. *See* Fosterra, 100% Renewable Default Option Study for EBCE Communities, February 2018, https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/EC2018-2-28_Item%205b_EBCE%20100%20GHG%20Opt%20In%20Study.docx.pdf.

- *Renewable 100* represents an important investment in green energy and enrolling the municipal accounts in this plan represents an important commitment to combatting climate change.
- The cost to the City is minimal. Other such cities, such as 1/3 of those in Los Angeles County have opted their municipal accounts to the greenest plan. Locally, the cities of Dublin and Piedmont have opted their municipal accounts up to *Renewable 100*.
- The construction of new renewable energy provides an opportunity for significant new well-paid green jobs, including new jobs across California and potentially within Alameda County. Alameda County is well positioned for construction of new solar generation, but not hydroelectric.
- An investment in the renewable sector will help to stimulate critical research and investment in advanced battery technology that can even the playing field between variable renewables and natural gas, nuclear and hydroelectric.[38]

Alternatives Considered

Enrolling residential and commercial customers in *Brilliant 100* represents the most reasonable, equitable and feasible step towards reducing GHG emissions. Upgrading service to *Renewable 100*, a plan that is currently on average $4.22 (4%) per month more expensive than PG&E basic residential rate for residential customers and $17.70 more expensive for the average small business, without sustained public outreach and engagement, would represent an undue burden and would not further reduce greenhouse gas emissions (although it would move generation away from hydro-electric). In addition, there is uncertainty about ongoing California Public Utility Commission regulatory proceedings to determine potential increases to fees PG&E can charge to customers who have left PG&E, including those in EBCE, to pay for long-term contracts already entered into by PG&E.[39] An unfavorable CPUC decision could lead to rate hikes, particularly for those enrolled in the more expensive *Renewable 100,* especially inequitable for low-income residents. Opt downs and opt ups would also be more likely to increase.

[38] Lauren Sommer, "Why 100 Percent Clean Energy in California is Gonna Be Tricky," KQED, September 10, 2018, https://www.kqed.org/science/1930972/why-100-percent-clean-energy-in-california-is-gonna-be-tricky; See also, Emma Foehringer Merchant, "IRENA: Global Renewable Energy Prices Will Be Competitive with Fossil Fuels by 2020," Green Tech Media, January 16, 2018, https://www.greentechmedia.com/articles/read/irena-renewable-energy-competitive-fossil-fuels-2020.

[39] Known as the Power Charge Indifference Adjustment (PCIA) fee.

However, because the energy sector, including the renewable industry, is rapidly evolving and as EBCE increases its capital reserves the Board may decide to modify rate structures, this item also calls for yearly Council review of the default plan with respect to power mix sustainability and cost in order to determine whether further adjustment of the default or another community-wide change in service plan is warranted.

FINANCIAL IMPLICATIONS

Using 2016 data, upgrading Berkeley municipal accounts to *Renewable 100* will cost the City approximately $100,040 more annually.

Applying current rates, residential customers keeping the new *Brilliant 100* upgraded service plan, would see a $0.63 per average monthly bill increase compared to the current *Bright Choice* default.

Appling current rates, small business commercial customers keeping the new *Brilliant 100* upgraded service plan, would see a $2.63 per average monthly bill increase compared to the current *Bright Choice* default.

ENVIRONMENTAL SUSTAINABILITY

Reducing carbon emissions at an emergency and equitable pace is directly in line with the goals of the Climate Action Plan and the Berkeley Energy Commission's Fossil Free Report.

CONTACT PERSON

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ATTACHMENTS

1. Appendix: 2019-2020 CARE and FERA Income Eligibility
2. Resolution

2019-2020 CARE and FERA Income Eligibility[40]

CARE Income Guidelines
(good until May 31, 2020)

Number of People in Household	Total Gross Annual Household Income*
1–2	$33,820 or less
3	$42,660 or less
4	$51,500 or less
5	$60,340 or less
6	$69,180 or less
7	$78,020 or less
8	$86,860 or less
Each Additional Person, add	$8,840

FERA Income Guidelines
(good until May 31, 2020)

Number of People in Household	Total Gross Annual Household Income*
1–2	Not Eligible
3	$42,661–$53,325
4	$51,501–$64,375
5	$60,341–$75,425
6	$69,181–$86,475
7	$78,021–$97,525
8	$86,861–$108,575
Each Additional Person, add	$8,840–$11,050

[40] PG&E, CARE (California Alternate Rates for Energy), https://www.pge.com/en_US/residential/save-energy-money/help-paying-your-bill/longer-term-assistance/care/care.page.

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

ESTABLISHING EAST BAY COMMUNITY ENERGY'S BRILLIANT 100 AS THE ELECTRICITY SERVICE PLAN FOR EXISTING BRIGHT CHOICE RESIDENTIAL AND COMMERCIAL ACCOUNTS AND AS THE DEFAULT FOR NEW ACCOUNTS AND RENEWABLE 100 FOR MUNICIPAL ACCOUNTS

WHEREAS, Fossil fuel extraction and combustion is a primary cause of the present climate emergency that threatens the well-being of all living things; and

WHEREAS, transitioning society to less greenhouse gas (GHG) intensive forms of energy, namely cleaner electricity, is fundamental to decarbonization; and

WHEREAS, according to City data from 2016, Berkeley's residential electricity sector accounts for 3% of city-wide emissions, the commercial electricity sector accounts for 7% of city-wide emissions, and another 27% and 60% of emissions are attributed respectively to natural gas appliances and fossil fuel-powered transportation that can be phased out through electrification fueled by 100% GHG-free electricity; and

WHEREAS, the City of Berkeley has committed to a policy of decarbonization, including through Measure G (Resolution No. 63,518-N.S.) in 2006, calling for the City to reduce greenhouse gas emissions by 33% below 2000 levels by 2020, and 80% by 2050, the 2009 Berkeley Climate Action Plan (Resolution No. 64,480-N.S.), the Berkeley Climate Emergency Declaration (Resolution No. 68,486-N.S.), and the Fossil Free Referral; and

WHEREAS, Berkeley's Climate Action Plan identifies Community Choice Aggregation (CCA) agencies such as East Bay Community Energy (EBCE), which procure cleaner electric power from low-carbon sources on behalf of electricity customers, as a key strategy to meet local clean energy goals and greenhouse gas reduction targets; and

WHEREAS, on November 1, 2016, the City of Berkeley City Council adopted Resolution No. 67,730-N.S. authorizing Berkeley's participation in Alameda County's Community Choice Aggregation program known as East Bay Community Energy (EBCE) and subsequently appointed representatives to its Board of Directors; and

WHEREAS, on February 7, 2018, the EBCE Board of Directors established an 85% carbon free default service plan known as Bright Choice for the City of Berkeley and other participating jurisdictions; and

WHEREAS, on April 24, 2018, the City Council adopted Resolution No. 68,404-N.S., selecting the *Brilliant 100* (100% GHG-free) electric service plan for all municipal accounts; and

WHEREAS, EBCE began serving commercial accounts in June 2018 and residential accounts in November 2018, both at the Bright Choice service plan; and

WHEREAS, Cities have the authority to request service plan changes for the accounts within their jurisdiction and set the default service plan for new accounts within their

jurisdiction for eligible residential and commercial customers, and the City Councils of other EBCE participating jurisdictions such as Albany, Piedmont and Hayward selected default service plans featuring 100% GHG-free electricity for their customers at the time of initial enrollment in EBCE service; and

WHEREAS, EBCE's *Brilliant 100* service plan currently costs the same as the standard Pacific Gas & Electric rates and features 100% GHG-free electricity; and

WHEREAS, given the present climate emergency and the fact that the City of Berkeley is behind its Climate Action Plan targets, upgrading the service plan for residential and commercial customers while retaining protections for price sensitive groups to cost-effective GHG-free default electric services will likely yield more GHG savings than the best marketing campaign aimed at encouraging customers to opt-up individually; and

WHEREAS, it is in the public interest to position city-wide residential and commercial customers to take advantage of electricity service with the a lower emissions factor, better environmental profile and competitive cost by replacing *Bright Choice* with *Brilliant 100* as the service plan for existing accounts and the default plan for new accounts; and

WHEREAS, EBCE's *Renewable 100* service plan is currently priced at an approximately 4% premium to the standard Pacific Gas & Electric rate and features 100% GHG-free and 100% renewable electricity;

WHEREAS, customers receiving subsidies through the California Alternate Rates for Energy Program, Family Electric Rate Assistance, and Medical Baseline Allowance Programs will continue to receive their monthly discounts through the PG&E portion of their bill; and

WHEREAS, residential and commercial customers may request to opt down to Bright Choice or opt out of *all EBCE service* at any time; and

WHEREAS, because the energy sector, including the renewable industry, is rapidly evolving and the EBCE Board may decide to modify rate structures, it is prudent for the Berkeley City Council to reassess the default rate at regular intervals; and

WHEREAS, while Berkeley's municipal sector electricity is already 100% carbon-free, it is in the public interest to upgrade municipal accounts from *Brilliant 100* to *Renewable 100* in recognition of the importance of supporting California's expanding solar and wind energy sector, which has the potential to overtime offset electricity generated from natural gas and nuclear, for a relatively small premium, particularly as storage technology becomes more affordable.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby requests that existing residential and commercial *Bright Choice* accounts, except those enrolled in the California Alternate Rates for Energy Program, Family Electric Rate Assistance and Medical Baseline Allowance Program, be upgraded to the

Brilliant 100 electricity plan and *Brilliant 100* to be the default service plan for new accounts, effective [ ] for residential and [ ] for commercial customers, and establishes yearly Council review of the plan serving the majority of its constituents with respect to power mix sustainability and cost in order to determine whether further adjustment of the residential and commercial account service plans are appropriate.

BE IT FURTHER RESOLVED that the City Council authorizes and directs the City Manager to select *Renewable 100* as the electricity product for the City of Berkeley's municipal accounts.

Kate Harrison
Councilmember District 4

ACTION CALENDAR
March 24, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmembers Harrison, Bartlett, Davila, and Hahn

Subject: Inclusionary Units in Qualified Opportunity Zones

RECOMMENDATION

Adopt an ordinance amending Berkeley Municipal Code chapter 22.20.065 requiring onsite inclusionary units in new rental developments in Qualified Opportunity Zones (QOZs).

POLICY COMMITTEE RECOMMENDATION

On February 20, 2020, the Land Use, Housing, and Economic Development Committee adopted the following action: M/S/C (Arreguin/Harrison) to move the item with a positive recommendation as revised in the materials submitted by the author and further revisions discussed at the meeting. Vote: Ayes – Harrison, Arreguin; Noes – None; Abstain – Droste; Absent – None.

BACKGROUND

Qualified Opportunity Zones (QOZs), urban areas associated with the 2017 Trump tax cuts, [1] are an ideal place to begin to require inclusionary on-site units. The stated goal of QOZs is to revitalize low-income communities[2] and incentivize investment there by delaying capital gains taxes, entirely circumventing federal taxes on profits made in QOZs. Requiring units affordable to lower-income households to be built in QOZs will slow pricing these households out of their own communities and partially offset the reduced services and program funding resulting from the avoided federal tax revenues.

[1] https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html
[2] Defined as areas with a median income of less than 80% AMI or a poverty rate above 20%.

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QOZ investors are given significant financial benefits and thus can include on-site units while still realizing a profit. Investments in QOZs can increase investor's returns by 70% according to the Congressional Research Service, [3] through three distinct mechanisms:

- Regardless of date of investment, earnings in a QOZ are tax free.

- Ten years after an initial investment into a QOZ, the investor can sell the real estate and not owe any taxes on the profits.
- Capital gains from the asset sold to invest in the fund are deferred. Investments held in the fund for longer than seven years exclude 15% of the deferred gain from the original asset. If held for more than five years, 10% is deferred.[4] The deadline to receive a 15% exclusion of the deferred gain was December 2019, but investors have until 2021 to receive the 10% exclusion and until 2026 to receive the 5%.

Because 90% of capital gains income in the U.S. accrues to the wealthiest 10% (and 70% to the wealthiest 1%), the overwhelming majority of these tax benefits will flow directly to the richest investors[5].

Many states also have additional tax breaks at the state level for Opportunity Zone projects. California is one of four states that does not have state tax breaks,[6] but any project that invests in a California Opportunity Zone still receives the same federal benefits. The California Economic Forum estimates that $1.32 billion will be invested in California Opportunity Zones; one investment fund has accumulated $50 million to invest in off-campus student housing near California universities, such as U.C. Berkeley[7].

Qualified Opportunity Zones were established through the 2017 Tax Cuts and Jobs Act, signed into law on December 22, 2017. To become a QOZ, the Governor's Office nominates census tracts and their status is verified by the Internal Revenue Service. Opportunity Zones are "economically distressed communities,"[8] a designation which is vague but generally refers to census tracts with high poverty rates, or census tracts immediately adjacent to tracts with high poverty rates.

To receive the tax benefit, the fund investing in the QOZ (referred to as a Qualified Opportunity Fund) must either invest in a new building (i.e., purchase vacant property, or tear down an existing building to build a new one) or make "substantial improvements"

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[3] https://www.novoco.com/sites/default/files/atoms/files/crs_tax_incentives_for_ozs_112018.pdf
[4] https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions
[5] "Displacement Zones: How Opportunity Zones Turn Communities Into Tax Shelters for the Rich." Strategic Actions for a Just Economy 2019. *Executive Summary,* page 4.
[6] https://www.novoco.com/resource-centers/opportunity-zone-resource-center/guidance/state-tax-code-conformity-personal-income
[7] https://qozmarketplace.com/student-housing-opportunity-zone-fund/
[8] https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions

upon an existing property.[9] Property is only substantially improved when its value doubles over the period of 30 months, not including appreciation.[10]

Though touted as a way to invest in under-resourced communities, most QOZs are in rapidly growing areas, with 75% of the tracts experiencing significant economic growth between 2001 and 2015[11] and 64% of tracts seeing a significant increase in new businesses during the same period.[12] Also, in the Bay Area, QOZs are often in gentrifying areas, reflecting a national pattern: almost 70% of all neighborhoods in America that gentrified between 2000 and 2017 either are in a Qualified Opportunity Zone or are adjacent to one.[13][14] The Urban Institute found that Governors were more likely to designate tracts as Opportunity Zones if they were already experiencing gentrification, and that lobbying from land speculators had a large influence on the tracts that were selected.[15] Locating in a QOZ will greatly increase the profits of already-planned projects.

Berkeley Opportunity Zones

Five census tracts in Berkeley have been designated as Qualified Opportunity Zones, including Downtown, the Adeline Corridor, South Berkeley between Sacramento and Shattuck, and part of West Berkeley between University and Dwight, San Pablo and 5th Street.[16] The tracts in Berkeley are almost all low-income and predominantly communities of color; 18,000 people reside there. They are as follows:

[9] https://www.forbes.com/sites/anthonynitti/2019/04/22/irs-releases-latest-round-of-opportunity-zone-regulations-where-do-we-stand-now/#487aacd12772
[10] "Displacement Zones." *Understanding Opportunity Zones,* page 7.
[11] https://www.opportunityzonelaw.com/single-post/2018/07/03/Five-Keys-from-the-Novogradac-2018-Opportunity-Zones-Workshop
[12] Ibid.
[13] https://ncrc.org/oz/
[14] Home value increases in zip code 94704 (which includes census tract 4229) saw a 4.1% increase in home values in the past year, compared to a Citywide increase of 3.1% according to Zillow.
[15] "Adeline Corridor Plan – Multifamily Financial Feasibility Modeling." Item 3. January 29, 2020. Planning Commission Adeline Corridor Specific Plan Subcommittee.
[16] https://opzones.ca.gov/oz-map/

Berkeley Opportunity Zone Demographics

Tract Number	Population [17]	Bordering Streets	Poverty Rate	Average Income	Average Income as a % of AMI[18]	% of units occupied by renters[19]
4232	3,004	University to Dwight; San Pablo to 5th St	19.2%	$81,453	100%	75%
4229	5,463	University to Dwight; Oxford to MLK	47.3%	$52,250	65%	97%
4235	3,501	Dwight to Ashby; Fulton to MLK	20.9%	$62,386	77%	67%
4239.01	1,954	Southern end of Adeline Corridor	13.9%[20]	$90,882	112%	61%
4240.01	4,151	Ashby to City Limits; Sacramento and Adeline	18.1%	$60,809	75%	73%

This legislation is an opportunity to realize a portion of the benefits of QOZs locally. The City of Berkeley may itself establish a Qualified Opportunity Fund[21] to further the goals in

[17] As of 2018 American Community Survey
[18] Compared to the Area Median Income of $80,912.
[19] Compare to Alameda County average of 47%.
[20] This poverty rate is too low to qualify as a QOZ but is adjacent to qualifying tracts.
[21] "Berkeley Qualified Opportunity Fund." March 19, 2019 Berkeley City Council meeting.

the West Berkeley Plan and the draft Adeline Corridor Plan, including the construction and preservation of affordable housing.[22] The East Bay Community Foundation in particular is examining how to use these tax cuts to build wealth rather than extract it in these tracts.[23] However, without sufficient regulation there is no guarantee that the private entities taking advantage of QOZs will further these goals as well. Requiring inclusionary units establishes clear affordable housing goals for all projects in QOZs.

Inclusionary Housing in Berkeley

The Berkeley Housing Trust Fund (HFT) was established in 1990 to pool money from a variety of sources (including developer in-lieu fees) into a single fund for the purpose of constructing affordable housing.[24] Under a State court case, from 2009[25] to 2017, Berkeley was required to offer project applicants the option of either building affordable units onsite or paying the in-lieu fee. Thus, pursuant to BMC 23C.12, all owner-occupied new projects in Berkeley with five or more units are currently required to *either* set aside 20% of their units as affordable, pay an in-lieu fee to the HFT, or some combination of both. BMC 22.20 has similar provisions for rental housing, and the chapter permits the City Council to adopt resolutions that vary requirements for in-lieu fees. The inclusionary requirement was set at 20% to ensure proposed developments were economically feasible (i.e., profitable) and purposefully set below the 26% level that the 2015 nexus study found would be needed to fully offset the increased demand for low-income housing generated by each 100 units of new market-rate housing.[26]

AB 2502 and subsequently 1505 (known as the "Palmer Fix") gave jurisdictions such as Berkeley the authority to require onsite units, construct units off-site or dedicate land in the zone[27] but does not require that developers be given an option to pay an in-lieu fee. The decision to charge in-lieu fees, require inclusionary units, or leave the decision to developers is now set according to prevailing market forces and the desires of local policymakers. The California Supreme Court has upheld requiring affordable units as an extension of a municipality's police powers.[28] The City Attorney has confirmed that the City has broad authority to impose onsite inclusionary housing requirements under state and federal law and that this requirement can be applied in a legally permissible manner.

This QOZ ordinance would now require on-site affordable housing in the zones. It would apply only to developments with 10 or more units, which at 20% would require

[22] "Referral Response: Opportunity Zone Priorities." January 23, 2020.
[23] https://www.ebcf.org/inclusive-economy-ebcf-opportunity-zones/
[24] https://www.cityofberkeley.info/ContentDisplay.aspx?id=6532
[25] http://www.reubenlaw.com/palmer_case_shakes_up_inclusionary_housing_rules_for_rental_projects/
[26] "Affordable Housing Nexus Study." Item 1 at July 14, 2015 Berkeley City Council meeting
[27] These alternatives may not be required in a Charter city.
[28] https://harvardlawreview.org/2016/03/california-building-industry-assn-v-city-of-san-jose/

two or more affordable units. Projects under 10 units would continue to will still have the option to either include onsite affordable housing or pay the in-lieu fee.[29]

Requiring developers in QOZs to build affordable housing on-site has several advantages over relying on the traditional preference for in-lieu fees.

- Constructing affordable housing projects using in-lieu fees requires land to be acquired[30] and capital to be accrued over many years and results in delays in production that market-rate developers may not face.
- Building affordable units in primarily market-rate developments instead promotes integration of housing throughout the City. Attachment 2 demonstrates that 100% affordable projects are more concentrated in particular neighborhoods than where below market rate units are either already built or planned.
- We are far from achieving our goals for low-income housing. Berkeley has achieved only 15% of its low-income housing target[31] but 65% of the target set for very low-income housing.[32] , According to the 2019 Housing Pipeline Report, of the 56 market-rate developments currently in the pipeline, only 11 projects (20% of the 56) provided any low-income units onsite; the balance paid fees in lieu of providing low-income units.[33]

A similar trend can be seen in the projects built in areas that are now in a Qualified Opportunity Zone. Of the 23 projects, 11 had no onsite affordable units, and seven that took advantage of the state density bonus (see Attachment 3) built very low-income units but no low-income units.

[29] Managing a single affordable unit in a small (under 10 unit) project is an administrative burden to building owners and City administration, and thus small projects.

[30] Or scarce public land to be utilized.

[31] https://abag.ca.gov/our-work/housing/rhna-regional-housing-need-allocation

[32] The state density bonus provides varying degrees of bonus, depending on the percentage of the base project and the affordability levels of units, as well as for the type of occupancy such as for seniors and students. The type and degree of bonus is at the developer's discretion. Typically projects in Berkeley provide only very-low income units (30%-50% of AMI).

[33] According to the 2019 Housing Pipeline Report, of the 56 market-rate developments currently in the pipeline:
- 24 elected to utilize the density bonus and pay fees in lieu of the other 10% of affordable units.
- An additional 21 did not take advantage of the state density bonus and paid in-lieu fees for all or substantial proportion of the remaining local requirement

- Since the passage of Measure O, much more funding for non-profit built affordable housing is available. It is critical, given the displacement occurring in Berkeley, to consider requiring some on-site units instead of providing the option of in-lieu fees.

Conformance with Adeline Corridor Specific Plan

The draft Adeline Corridor Plan already "calls for an ambitious combination of on-site affordable units included in otherwise market rate projects and new 100% affordable housing projects built on public land."[34] The Adeline Corridor falls entirely within Qualified Opportunity Zones (see Attachment 3 – census tracts 4235, 4239.01, and 4240.01),[35] and thus this legislation takes an idea already contained within and reasonably consistent with the draft plan – affordability through on-site affordable units – and expands it to other areas of the City already designated by the federal government as low-income areas requiring investment.

The draft plan calls for a series of Tiers of affordable housing incentive standards, wherein a higher percentage of affordable units corresponds to a higher height limit, floor-area ratio, and higher density. [36] Taking advantage of Tiers 2, 3 or 4[37] requires that a project include units on-site rather than pay an in-lieu Affordable Housing Mitigation Fee. Projects in the Adeline Corridor are of course encouraged to go beyond and build more affordable housing if feasible, but the requirements set forth in this item are consistent with the incentives in the Plan.

However, similar incentives do not currently exist in the Downtown or Southwest Berkeley, the other two areas designated as Opportunity Zones in Berkeley. By setting similar requirements for all five census tracts, we ensure the same affordability standards in all QOZs, not just those overlapping with the Adeline Corridor.

Feasibility and Profitability in Berkeley

Real estate Project developers typically expect a yield on costs (i.e., profits) of at least 5.5% to be considered potentially feasible. Street Level Advisors, a consultant retained

[34] Draft Adeline Corridor Specific Plan, Chapter 4.4: "Affordability Levels and Tenant Types in New Housing."

[35] See Attachment 4

[36] The draft zoning regulations for the Adeline Corridor is currently being discussed by a subcommittee of the Planning Commission. A full draft of the zoning chapter was discussed in November 2019 is available on the Planning Commission webpage at: https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2019_11_21_PC_Adeline_GP%20Zoning%20Report%20Final.pdf.

[37] Corresponding to 20%, 35% and 50% of the project at the Tier 1 density required as on-site affordable housing with half of those units affordable at Low Income and half as Very Low Income levels.

by Berkeley, estimates that typical project investors could be willing to invest in a QOZ project with an even lower yield of only 5.3%.[38]

The estimated feasibility analysis already conducted for the proposed Adeline Corridor Zoning by the consulting firm Street Level Advisors shows a yield on cost for every Tier, and even for current zoning standards without a state density bonus, is all above 5.3%.[39] In other words, the slight change from in-lieu to on-site affordable housing proposed in this ordinance for projects in Opportunity Zones are economically feasible even for projects with 50% affordability of base units (i.e. 25% of total units, Tier 3).

Street Level Advisors asserts that the tax benefits from Qualified Opportunity Zones will likely not be essential to project feasibility. There has not yet been a demonstrable increase in new projects in Berkeley's QOZs since passage of the tax code[40] and evaluating property sales in the zones requires a site by site analysis. However, feasibility reports are generally concerned with upfront costs to build projects. Qualified Opportunity Zone tax benefits can assist with upfront costs with the initial tax deferment, but the bulk of their benefit is to the long-term profitability of a project. The step-up tax exclusion system and the tax exemption at point of sale all make projects significantly more *profitable* even if they do not have large effects on the *feasibility* of projects. Projects that are already feasible and decide to take advantage of Opportunity Zones can afford to provide more in affordable housing because they are feasible (as discussed above) and they are significantly more profitable. The California Legislative Analyst's Office indicated that QOZs will not on their own incentivize affordable housing construction.[41] The City of Berkeley has a responsibility to capture some of the foregone federal tax revenues resulting from the Trump tax cuts to promote affordable housing.

FINANCIAL IMPLICATIONS

Will reduce contributions to the Affordable Housing Trust Fund.

REVIEW OF EXISTING PLANS

As discussed above, this item conforms to the draft Adeline Corridor Specific Plan, which streamlines zoning in exchange for more inclusionary onsite units. Zoning in the Downtown Plan, West Berkeley Plan, and CSA (the other zones covered by Qualified Opportunity Zones) do not have any such incentives or requirements, though they will all receive the same tax benefits under federal QOZ legislation.

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[38] "Adeline Corridor Plan – Multifamily Financial Feasibility Modeling." Item 3. January 29, 2020. Planning Commission Adeline Corridor Specific Plan Subcommittee.

[39] *Ibid.* Table 3.

[40] Tracking the flow of investment in QOZs is very difficult; there is no centralized tracking mechanism for these funds. The tracking mechanism for activities and holdings in the funds and socio-economic impacts of the funds originally suggested by Senator Booker was removed from the tax code. See SAJE, page 9.

[41] https://lao.ca.gov/Publications/REport/4038

Berkeley policy has required 20% of all new units in buildings 4 units or more be affordable for many years, established after the 2015 Affordable Housing Nexus Study identifying that 25.55% of new rental households would require assistance[42]. To ensure project feasibility, the Council set a slightly lower rate of 20%. However, projects were given the option to pay a fee instead of building the affordable units. This item does not change this policy of 20% but rather ensures that the City actually receives the 20% affordable units that we have theoretically been receiving for years.

ALTERNATIVES CONSIDERED

One alternative is to simply let the Adeline Corridor Plan with its various incentives provide more affordable housing. However, when this QOZ legislation provides tax relief in more locations beyond the Corridor, we may see development flee the Corridor in favor of one of these other Zones, which do not have the same affordability protections built in. Projects in all five of these census tracts will be hugely profitable and we have a responsibility to gain community benefits from all five.

Another alternative is to wait for more data on the effects of QOZs. However, the program will be short-lived (until 2027); the fear is that by the time we understand their full effect, it will be too late to regulate them. We are currently in the window to take advantage of this tax relief. Waiting to understand the full effects of gentrification will do nothing to protect the Berkeley residents experiencing it.

ENVIRONMENTAL SUSTAINABILITY

The Qualified Opportunity Zones in Berkeley are along major transit corridors (Shattuck, Adeline, and San Pablo). Last year, Berkeley researchers concluded that infill housing along transit corridors is one of the most impactful policies municipalities can adopt to combat climate change.[43]

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

ATTACHMENTS

1: Berkeley Municipal Code 22.20.065
2: 2019 Housing Pipeline Report, highlighted with projects that are in Qualified Opportunity Zones as currently defined
3: Comparative map of Qualified Opportunity Zones and the Adeline Corridor
4: Heat map of nonprofit affordable units and private below market rate units in Berkeley

[42] “Affordable Housing Nexus Study.” Item 1 at July 14, 2015 Berkeley City Council meeting
[43] https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf

AMENDING CHAPTER 22.20.065 OF THE BERKELEY MUNICIPAL CODE TO REQUIRE ON-SITE INCLUSIONARY HOUSING UNITS IN QUALIFIED OPPORTUNITY ZONES

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

Section 1. That Berkeley Municipal Code Section 22.20.065.B is hereby amended to read as follows:

22.20.065.B. Definitions.

1. "Density Bonus Project" means a Development project that receives a density bonus pursuant to Government Code Section 65915.

2. "Density Bonus Units" means additional units to which an applicant for a Density Bonus Project is entitled and constructs pursuant to Government Code Section 65915.

3. "Income" means combined annual gross income from all sources.

4. "Low-income Household" shall mean a household whose income is no more than 80% of AMI.

5. Low-income Unit" means any dwelling unit that is rented, for the life of the Development project in which it is located, at a price affordable to a Low-Income Household of an appropriate size for the dwelling unit, and restricted to households with an income not exceeding 80% of AMI.

6. "Qualifying Units" means those below market-rate units in a Density Bonus Project that entitle the applicant to a density bonus pursuant to Government Code Section 65915.

7. “Qualified Tract” means a census tract designated as a Qualified Opportunity Zone under Internal Revenue Code §1400Z-2.

87. "Very Low-Income Household" shall mean a household whose income shall be no more than 50% of AMI.

98. "Very Low-Income Unit" means any dwelling unit that is rented, for the life of the Development project in which it is located, at a price affordable to a Very Low Income Household of an appropriate size for the dwelling unit, and restricted to households with an income not exceeding 50% of AMI.

109. For purposes of this Section, affordable rents shall be determined in accordance with the provisions of Health and Safety Code section 50105, 50052.5(b)(2), and 50052.5(h), and California Code of Regulations Chapter 25 Section 6918.

110. Tenant-paid utility costs will be deducted from gross rent to determine the rent paid by the tenant. Utility costs will be based on the Berkeley Housing Authority Section 8 utility allowance, or future equivalent standard.

121. Minimum bedroom size will be 70 square feet, consistent with Berkeley's Housing Code (19.40.010.A, Uniform Housing Code Chapter 5, Section 503.2).

Section 2. That Berkeley Municipal Code Section 22.20.065.C is hereby amended to read as follows:

The City Council may by resolution adopt an affordable housing impact fee ("Fee"), which shall be imposed on the development of new rental housing in Berkeley, subject to limitations set forth in this Chapter and any additional limitations set forth in the Resolution. All such Fees shall be managed consistent with Government Code Sections 66000 et seq. Up to 10 percent of Fees may be used to pay for administration of the Fee or the Housing Trust Fund or any successor fund with the same purpose, and the remainder shall be deposited in the City's Housing Trust Fund or any successor fund with the same purpose.

1. All Fees shall be paid, at the issuance of a Certificate of Occupancy, except as set forth in this subdivision or in the City Council Resolution that adopts the Fee.

2. No later than the date the first building permit is issued for a Development project that is subject to the Fee, the applicant may elect to avoid the Fee by providing, for the life of the project, a number of units equal to 20% of the total units in the project at rental rates affordable to Low-Income and Very Low-Income Households and pay a proportionately reduced Fee as calculated in Section 22.20.065.D. Subject to administrative regulations promulgated pursuant to subdivision H, 40% of the Very Low-Income units in Development projects that have not obtained final approval under Title 23 as of September 20, 2016, shall be reserved for holders of Berkeley Housing Authority Section 8 vouchers and 40% shall be reserved for holders of City of Berkeley Shelter + Care certificates. In all such cases the applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all such dwelling units and other information as required for determining compliance with this Section. All such units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the market rate units in the project; and be comparable with the design or use of market rate units in terms of appearance, materials and finish quality. The owner of any units produced under this option must report to the City annually on the occupancy and rents charged for the units.

3. In making its election under the preceding paragraph, an applicant for a Development project subject to this Section may provide less than 20% of the

total units in the project as Low-Income and Very Low-Income Units and pay a proportionately reduced Fee as calculated in Section 22.20.065.D.

4. The fee shall not apply to projects in Qualified Tracts of 10 or more units. All such projects shall provide a number of units equal to 20% of the total units in the project at rental rates affordable to Low and Very Low households and shall not pay the in-lieu Fee. The applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all such dwelling units and other information as required for determining compliance with this Section. All such units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the market rate units in the project; and be comparable with the design or use of market rate units in terms of appearance, materials and finish quality. The owner of any units produced under this option must report to the City annually on the occupancy and rents charged for the units. Notwithstanding the regulations of this paragraph, the applicant may pay the fee to satisfy the requirements of this chapter with respect to fractional units.

54. In projects providing more than one below market rate unit (meaning the combination of Low-income Units and Very Low-Income Units), at least 50% of the units shall be affordable to Very Low-income Households. When there is an uneven number of units provided under this ordinance, the majority of the below market rate units shall be Very Low-Income units.

65. Units that meet the criteria established for affordable housing rents in the City's Housing Trust Fund guidelines, as amended shall be exempt from the Fee.

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.

Attachment 1

Table 1 – Projects with more than 5 units submitted and pending approval by ZAB or Council.					
#	**Street Name**	**Zoning**	**Total Units**	**Submittal Date**	**Project Status as of 6/19/2019**
3031	Adeline	C-SA	42	7/24/18	Incomplete
2590	Bancroft	C-T	87	6/5/19	Incomplete
2015	Blake	R-4	155	12/20/18	Incomplete
2000	Dwight	R-4	126	4/24/19	Incomplete
1155	Hearst	R-2A	11	2/2/16	Under Appeal, Council tbd
2176	Kittredge	C-DMU	165	2/7/19	Incomplete
2099	MLK	C-DMU	72	5/2/19	Incomplete
2425	Prospect	R-3(H)	17	7/6/18	Incomplete
1835	San Pablo	C-W	95	11/19/18	Incomplete, ZAB & DRC Previews Pending
2371	San Pablo	C-W	14	5/15/19	Incomplete
2720	San Pablo	C-W	40	1/20/16	Complete May 2019; ZAB Preview Fall 2019
1951	Shattuck	C-DMU	156	6/29/18	ZAB Hearing June 2019
2023	Shattuck	C-DMU	48	3/5/19	Complete; ZAB & DRC Previews Fall 2019
2352	Shattuck	C-DMU	237	6/28/18	ZAB Preview May 2019, DRC June 2019
2701	Shattuck	C-SA	57	12/13/16	Under Appeal, ZAB June 2019
2650	Telegraph	C-1	45	4/18/19	Incomplete
1110	University	C-1	36	3/3/17	Incomplete; on hold per applicant
1486	University	C-1	45	10/28/16	Complete December 2017, then on hold per applicant until May 2019. ZAB & DRC Previews Pending
		Total:	**1,448**		

Note: Proposed #s of affordable units are not reported at this pre-approval stage, as they tend to change significantly.

Table 2 - Approved projects with more than 5 units: No Active Building Permit.

#	Street Name	Zoning	Ext Low <30% AMI	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Applied For?	Subtotals
2009	Addison	C-DMU					0	44	44	2018/2019	ZAB	No	Units in Approved projects, no BP yet applied for: **1,289**
2902	Adeline	C-SA & R-4		4	4	1	9	41	50	2017	Council		
3051	Adeline	C-SA		0	0	0	0	11	11	2016	ZAB		
2028	Bancroft	C-DMU		2			2	35	37	2019	ZAB		
2012	Berkeley Way	C-DMU	53	54	17		124	1	125	2018	SB35		
2211	Harold	C-DMU		0	0	0	0	302	302	2015	Council		
1601	Oxford	R-3		13	21	0	34	3	37	2018	SB35		
1200	San Pablo	C-W		5			5	52	57	2018	ZAB		
1201	San Pablo	C-W		0	0	5	5	22	27	2006	Council		
1740	San Pablo	C-W		4			4	48	52	2018	ZAB		
2100	San Pablo	C-W		0	0	0	0	96	96	2017/2019	ZAB		
2198	San Pablo	C-W		5			5	52	57	2019	ZAB		
2720	San Pablo	C-W		0	3	0	3	15	18	2007	ZAB		
2190	Shattuck	C-DMU		0	0	0	0	274	274	2019	Council		
2701	Shattuck	C-SA		0	0	4	4	20	24	2007	Council		
3000	Shattuck	C-SA		2	2	0	4	19	23	2018	Council		
1040	University	C-W & R-3		27	0	0	27	0	27	2012	ZAB		
1717	University	C-1		3	0	0	3	25	28	2017	ZAB		
2072	Addison	C-DMU					0	55	55	2018/2019	ZAB	10/26/18	Units in Approved projects, BP applied for: **284**
2542	Durant	C-T		0	0	0	0	32	32	2018	ZAB	4/4/19	
2527	San Pablo	C-W		6	5	0	11	57	68	2018	Council	8/17/18	
3020	San Pablo	C-W		2	2	0	4	25	29	2007	ZAB	2/11/15	
2628	Shattuck	C-SA					0	78	78	2019	ZAB	5/9/19	
2556	Telegraph	C-T					0	22	22	2018	ZAB	12/19/18	
		Totals:	**53**	**127**	**54**	**10**	**244**	**1,329**	**1,573**				

Attachment 3

Table 3 – Approved projects with more than 5 units: Building permit issued.

#	Street Name	Zoning	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Issued	Est. Completion Date
1950	Addison	C-DMU	5	0	0	5	106	111	2016	ZAB	11/17/17	2019
2126	Bancroft	C-DMU	5	0	0	5	45	50	2016	ZAB	11/6/17	2019
2580	Bancroft	C-T	11			11	111	122	2018	ZAB	5/21/19	2020
2035	Blake	C-SA	4	0	0	4	78	82	2016	Council	8/10/17	2020
739	Channing	MU-R				0	10	10	2018	ZAB	6/12/18	Unknown
2510	Channing	C-T	3			3	37	40	2018	ZAB	4/5/18	2020
2631	Durant	R-SMU	0	0	0	0	56	56	2016	Council	12/1/17	2020
1500	San Pablo	C-W & R-1A	16	0	0	16	154	170	2016	Council	12/21/17	2020
2747	San Pablo	C-W	3	3	0	6	33	39	2007	ZAB	8/18/17	2020
2748	San Pablo	C-W	23	0	0	23	0	23	2014	ZAB	5/17/18	2019
2539	Telegraph	C-T	6	0	0	6	64	70	2016	ZAB	10/20/17	2019
2597	Telegraph	C-T & R-2	1	0	0	1	9	10	2017	Council	8/9/18	2020
1698	University	C-1	3	0	0	3	33	36	2014	ZAB	10/19/18	2020
2067	University	C-DMU	4	0	0	4	46	50	2016	ZAB	10/10/18	2020
2111	University	C-DMU	6	0	0	6	62	68	2013	ZAB	6/27/18	2020
2131	University	C-DMU	2	0	0	2	19	21	2013	ZAB	6/27/18	2020
2145	University	C-DMU	3	0	0	3	33	36	2013	ZAB	6/27/18	2020
1900	Walnut	C-DMU	7	0	0	7	73	80	2013	ZAB	6/27/18	2020
		Totals:	**102**	**3**	**0**	**105**	**969**	**1,074**				

Attachment 4

Table 4 – Approved projects with more than 5 units: Building Permit Issued after 2014 and now occupied.

#	Street Name	Zoning	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Issued	Complete Date
1935	Addison	C-DMU	0	0	0	0	69	69	2013	Council	10/17/14	5/26/17
2002	Addison	C-DMU	0	0	0	0	6	6	2016	ZAB	2/1/18	8/28/18
2024	Durant	C-DMU	0	0	0	0	78	78	2013	Council	7/8/14	12/7/15
2526	Durant	C-T	0	0	0	0	44	44	2014	ZAB	2/18/14	6/30/17
2532	Durant	C-T	0	0	0	0	7	7	2016	ZAB	6/23/17	1/30/19
2107	Dwight	C-DMU	9	0	0	9	90	99	2012	ZAB	12/1/17	3/24/17
2201	Dwight	R-S	7	0	0	7	70	77	2013	ZAB	6/3/15	11/17/16
2227	Dwight	R-3	0	0	0	0	6	6	2013	Council	9/7/15	5/25/18
2001	Fourth	C-W	12	0	0	12	140	152	2014	ZAB	4/1/16	7/31/18
2441	Haste	C-T	0	0	0	0	42	42	2013	ZAB	5/7/14	6/27/16
3132	MLK	C-SA	0	41	0	41	1	42	2007	ZAB	11/20/15	12/7/17
3015	San Pablo	C-W	8	7	0	15	83	98	2007	Council	3/19/14	2/16/16
2598	Shattuck	C-SA & R-2A	4	3	0	7	25	32	2014	Council	5/1/15	5/31/17
2600	Shattuck	C-SA & R-2A	12	12	0	24	99	123	2014	Council	1/1/14	3/17/17
2711	Shattuck	C-SA	0	0	0	0	18	18	2016	ZAB	9/6/17	9/1/18
800	University	C-W	4	0	0	4	54	58	2013	ZAB	7/15/14	12/2/15
824	University	C-W	4	0	0	4	44	48	2015	ZAB	8/20/15	2/6/18
1812	University	C-1	4	0	0	4	40	44	2014	ZAB	6/25/15	3/7/17
1974	University	C-DMU	8	0	0	8	90	98	2014	ZAB	9/29/15	10/3/17
		Totals:	**72**	**63**	**0**	**135**	**1,006**	**1,141**				

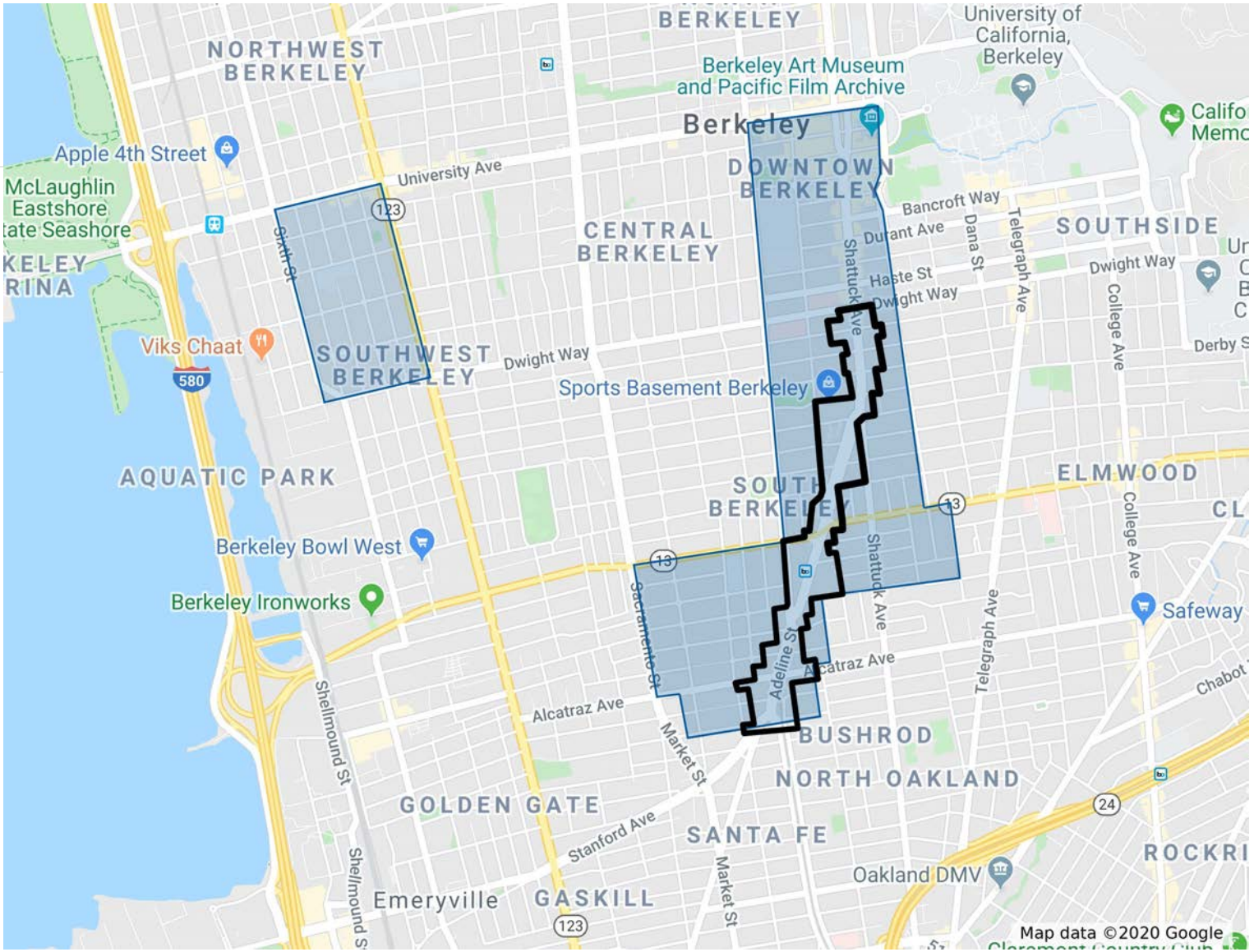
Adeline Corridor vs QOZ

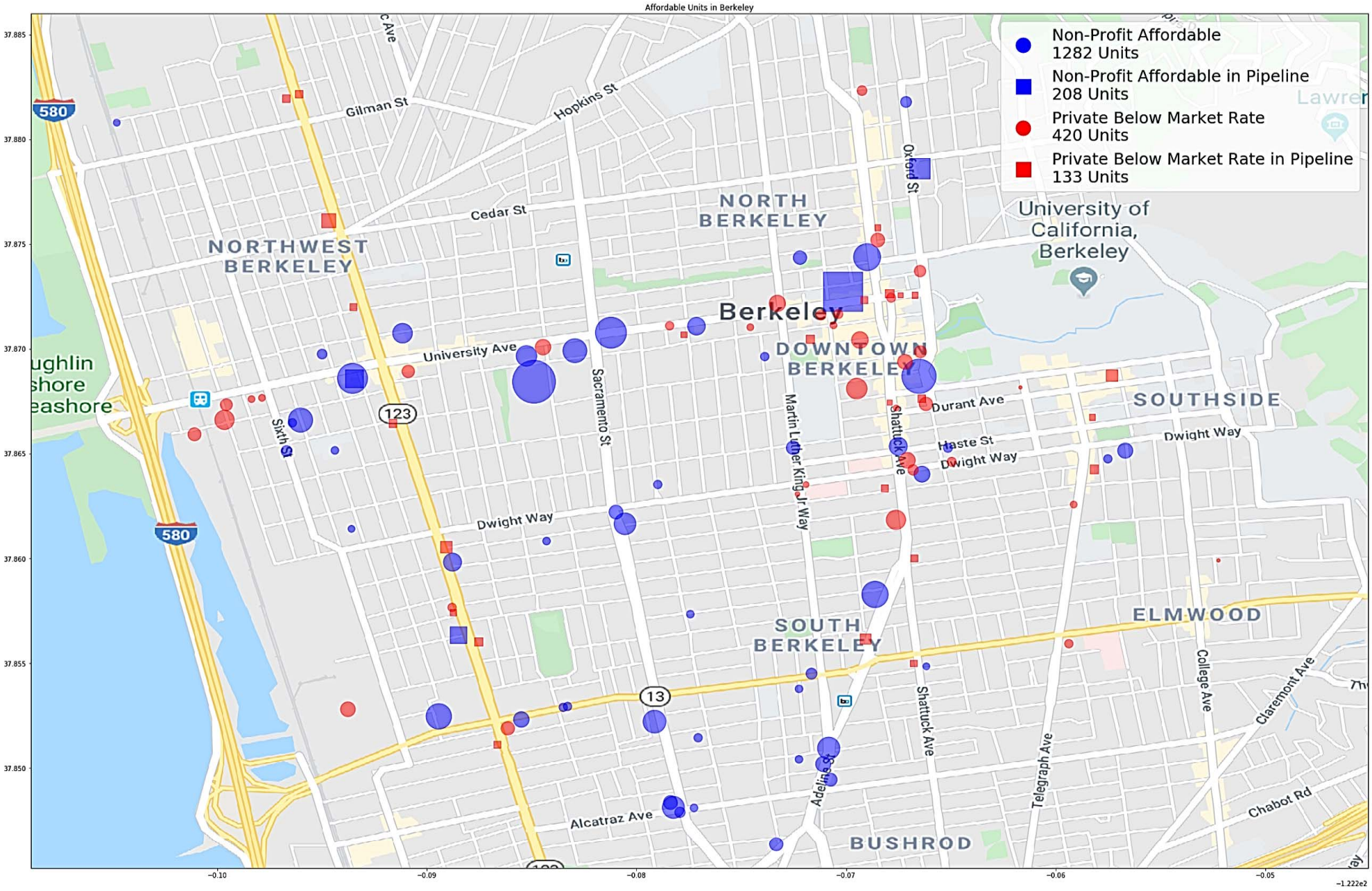
QOZs

- Polygon 1
- Polygon 2

Adeline Corridor

- Line 2
- Line 3
- Line 4




Affordable Units in Berkeley
Non-Profit Affordable
1282 Units
Non-Profit Affordable in Pipeline
208 Units
Private Below Market Rate
420 Units
Private Below Market Rate in Pipeline
133 Units
NORTHWEST BERKELEY
NORTH BERKELEY
Berkeley
DOWNTOWN BERKELEY
SOUTHSIDE
SOUTH BERKELEY
ELMWOOD
BUSHROD
University of California, Berkeley
Gilman St
Hopkins St
Cedar St
University Ave
Dwight Way
Haste St
Durant Ave
Alcatraz Ave
Chabot Rd
Sacramento St
Martin Luther King Jr Way
Shattuck Ave
Oxford St
Telegraph Ave
College Ave
Claremont Ave
Sixth St
580
123
13

Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
March 24, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Budget Referral: $153,000 to Fund Berkeley Youthworks Participants Commensurate with the Berkeley Minimum Wage

RECOMMENDATION

1. Adopt a resolution guaranteeing that City of Berkeley Youthworks participants will not be exempt from the Berkeley Minimum Wage Ordinance.

2. Budget Referral: Refer to the FY 2020-21 budget process the allocation of $153,000 for the purpose of funding Youthworks participants at the local minimum wage, which is scheduled to increase in July 2020 to $15.59 per hour plus the Consumer Price Index.

CURRENT SITUATION AND ITS EFFECTS

YouthWorks is a program operated by the City of Berkeley's Health Housing and Community Services Department with the goal of providing a variety of employment opportunities to allow participants to build their employment skills. The program is open to Berkeley residents aged 14-25, and largely serves young people of color and marginalized youth. The program offers employment, exposure to career options, mentorship, financial management advice, and encouragement for primary school completion and postsecondary education. Youthworks operate on a year-round basis, with a 7-8 week session in the summer and winter.

Currently, YouthWorks participants are compensated at a rate of $14.50 per hour. The City's Health Housing and Community Services Department has not allocated necessary funds to compensate Youthworks participants at a rate commensurate with the scheduled increase in local minimum wage. The Berkeley Minimum Wage will be $15.75 effective July 1, 2020. Youth job training programs should not be exempt from the Berkeley Minimum Wage Ordinance. A budget referral is needed to fund an additional $95,000 for fiscal year 2020 and $58,000 for fiscal year 2021 to fairly compensate participants in the Youthworks programs.

FISCAL IMPACTS OF RECOMMENDATION

$153,000 total from the General Fund: $95,000 for FY 2020 and $58,000 for FY 2021.

ENVIRONMENTAL SUSTAINABILITY

Providing a variety of employment skills and training for our City of Berkeley youth is environmentally sustainable.

CONTACT PERSON

Cheryl Davila
Councilmember District 2

ATTACHMENTS

1. Resolution

BUDGET REFERRAL TO ALLOCATE AN ADDITIONAL $153,000 TO YOUTHWORKS, ENSURING YOUTH JOBS TRAINING PARTICIPANTS ARE PAID AT LEAST THE BERKELEY MINIMUM WAGE

WHEREAS, The Berkeley Minimum Wage is scheduled to increase in July, 2020 to $15.75 per hour; and

WHEREAS, Youthworks is a program managed by the City of Berkeley's Health, Housing, and Community Services (HHCS) Department, with the goal of providing employment opportunities and job training to Berkeley residents aged 14-25 years old; and

WHEREAS, Youthworks primarily services low-income youth and communities of color in Berkeley; and

WHEREAS, Youthworks participants are currently compensated $14.50 per hour; and

WHEREAS, The HHCS requires additional funding of $153,000 to ensure participants in Youthworks will continue to be paid the minimum wage;

THEREFORE BE IT RESOLVED that the Berkeley City Council refer to the budget process the allocation of $95,000 for fiscal YR 2020 and $58,000 for fiscal YR 2021 to fund Youthworks; and

BE IT FURTHER RESOLVED, that Youthworks participants shall not be exempt from the Berkeley Minimum Wage Ordinance, and thus will be compensated fairly for their labor.

Children, Youth, and Recreation Commission

INFORMATION CALENDAR
March 24, 2020

To: Honorable Mayor and Members of the City Council

From: Children, Youth, and Recreation Commission

Submitted by: Elizabeth Echols, Chairperson

Subject: Children, Youth and Recreation Commission FY2020 Work Plan

INTRODUCTION
The Children, Youth, and Recreation Commission has updated its work plan, which outlines Commission objectives for the upcoming fiscal year. This work plan includes making recommendations to City Council to further the goals of 2020 Vision; identify the needs and gaps in services for Berkeley Youth; provide support regarding outreach and marketing of programs; and examine out of school time/afterschool resources for Berkeley youth.

CURRENT SITUATION AND ITS EFFECTS
At a regular meeting on November 18, 2019, the Children, Youth, and Recreation Commission approved the Commission's FY2020 Work Plan, which will be used to guide the Commission's work throughout the year.

M/S/C (Freeman/Capitelli/U) to approve the work plan and submit an Information Report to City Council.

Ayes: Batista, Capitelli, Echols, Freeman, Richards
Noes: None
Absent: Taylor
Leave of Absence: None

BACKGROUND
See attached Work Plan.

ENVIRONMENTAL SUSTAINABILITY
No environmental impacts or opportunities were identified as a result of this recommendation.

POSSIBLE FUTURE ACTION
Based on Commission research and public input, new initiatives and recommendations to City Council may be submitted to City Council at such time deemed necessary.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION
No fiscal impacts identified at this time.

CONTACT PERSON
Steph Chu, Secretary, Children, Youth, and Recreation Commission, 981-5146
Elizabeth Echols, Chairperson

Attachment: 1: Children, Youth, and Recreation Commission FY20 Work Plan

CHILDREN, YOUTH, AND RECREATION COMMISSION ANNUAL WORK PLAN FY20 (Approved on November 18, 2019)

MISSION STATEMENT

The Children, Youth, and Recreation Commission shall be an advisory board and shall seek to achieve equity in policies, programs, planning efforts, activities, and funding associated with youth, families, early childhood education, recreation, and other related City-sponsored activities. The Commission shall advise the City Council on these matters.

1. **Make recommendations to City Council to further the goals of the 2020 Vision for Berkeley's Children and Youth to close the opportunity gap and ensure that all young people in Berkeley grow up with equitable opportunities to achieve high outcomes and realize their full potential.**

2. **Identify needs/gaps in City's community and recreation services for Berkeley's youth.**

    a. Invitations for public input at regular Commission Meetings and report to Council on findings.

    b. Review program data including, but not limited to, demand, utilization, demographics, and funding for existing programs.

    c. Make recommendations to Council.

3. **Examine out-of-school time/afterschool resources throughout community for Berkeley youth.**

    a. Engage with 2020 Vision staff to document current successes and potential gaps in educational offerings in out-of-school time programs, including afterschool and summer programs.

    b. Provide recommendations to Council regarding academics in afterschool programs.

4. **Provide support to Recreation Division staff and make Council recommendations regarding the outreach and marketing of programs to the Berkeley community.**

    a. Make recommendations to Council regarding approaching outreach through equity lens (entire community), particularly access to scholarships, free programs, and youth employment opportunities.

    b. Make recommendations to Council regarding city-wide communication (which can include City of Berkeley, Community Agency contractors, and BUSD).

    c. Review data on outcomes of outreach strategies.

5. **Coordinate with Parks & Waterfront Commission regarding alignment of future T1 facility improvement and program provision.**

    a. Develop a tool/rubric to recommend to Council for staff to use when determining alignment for:

Attachment 1

CHILDREN, YOUTH, AND RECREATION COMMISSION ANNUAL WORK PLAN FY20 (Approved on November 18, 2019)

i. Equity/Access

ii. Adaptability for program shifts in the future

b. Identify opportunities for synergy with other projects.

6. Review and recommend revisions to Community Agency Grant application and review process.

a. Document current successes and potential gaps/inconsistencies in scoring and report to Council.

b. Develop a process to work closely with 2020 Vision staff to evaluate the progress of grantees.

c. Receive quarterly updates on grantees from 2020 Vision staff.

d. Make recommendations to City Council regarding RFP outreach to new organizations.

Civic Arts Commission

INFORMATION CALENDAR
March 24, 2020

To: Honorable Mayor and Members of the City Council

From: Civic Arts Commission

Submitted by: Lisa Bullwinkel, Chair, Civic Arts Commission

Subject: Civic Arts Grants Program

INTRODUCTION

In the recently updated Arts & Culture Plan, 5 primary goals were identified:

- ☐ Goal 1: Increase Access to Affordable Housing and Affordable Spaces for Artists and Arts Organizations
- ☐ Goal 2: Increase Investment in a Vibrant Arts Community
- ☐ Goal 3: Expand High Quality and Equitable Arts Education
- ☐ Goal 4: Produce More Public Art Throughout Berkeley
- ☐ Goal 5: Expand the City of Berkeley's Organizational Capacity to Better Serve the Arts Community

The Civic Arts Grants Program is a tool to meet the Arts & Cultural Plan goals. Several additional grant categories have been or are being created to further this process. Funding is still needed to support the newer grants and the additional number of new applicants.

The Cultural Planning process also foregrounded a commitment to Cultural Equity and the Civic Arts Commission is promoting this in its grant-making process by including cultural equity as a scoring criteria in the guidelines for all grant categories and in the evaluation of potential grants panelists.

CURRENT SITUATION AND ITS EFFECTS

• The Civic Arts Grants Program, under the auspices of the Civic Arts Commission is working to achieve all of the Goals listed above.

• The program has successfully allotted funding to **Arts Organizations** since 1991 and to **Individual Artists** since 2016, achieving Goal 2 which is to *Increase Investment in a Vibrant Arts Community*. The current allotment from the General Fund for these combined grants currently has a funding baseline of $500,000. In 1999 Grants were awarded to 54 organizations and 12 individuals as follows:

17 Large Art Organizations	$171,687
20 Mid-Size Art Organizations	$171,747

17 Small Art Organizations	$105,488
12 Individual Artists	$44,411

• In 2018, a **Festival Grant** program was created, specifically allocating prior General Funds budgeted for 17 festivals at $158,315. In 2019 grants were awarded to 24 festivals as follows:

2 Large Festivals	$15,062
21 Mid-Size Festivals	$139,985
1 Small Festival	$1,189

• At the Council's request, the Commission is creating a fourth category, a **Creative Spaces Capital Improvement Grant.** Funding will need to be appropriated from the General Fund, as these substantial grants will be in the $50,000–$100,000 range for three to five applicants annually.

• The Commission is also working on an **Arts in Education Grant** that is currently unfunded. However, this program initially will only require approximately $50,000 to make a large impact quickly.

• In 2019, for the first time, the grant application review panel was comprised entirely of outside Arts professional who were compensated using a portion of the grants budget. Prior to this, members of the Civic Arts Commission Grant Committee, along with professional grant readers, were scoring the grants. This new method is more equitable and transparent and is in line with best practices as noted in other grant programs.

BACKGROUND

These grant programs have been established to provide equity, transparency, and accountability throughout the art community.

Before the Festival Grant category existed, event producers lobbied individual Council members for funding for their events. This resulted in General Funds in the amount of $158,315 being distributed annually to only 17 festivals. The process was opaque and inequitable. Furthermore, there was little oversight of the funding. The new Civic Arts Festival Grant category resolved these issues. However, more festivals than before are now applying for the same funding. The need for a larger budget in this category is apparent.

The Creative Spaces Capital Improvement Grant will work to solve Goal 1 above: *Increase Access to Affordable Housing and Affordable Spaces for Artists and Arts Organizations*. In the past, when an organization suddenly discovered a leak in the roof or needed to be brought into ADA compliance, or was given the opportunity to purchase its building, it came directly to Council to ask for a large sum of money. The Council has been quite generous and has helped many organizations with these problems.

However, that funding was usually unbudgeted and resulted in unanticipated expenditures from the existing General Fund. In addition, many arts organizations did not realize they could ask the Council for this type of funding. Establishing an equitable, transparent, and accountable program will resolve this. The Civic Arts Commission is hoping to fund it with a base amount from the General Fund of $250,000 annually plus the staff resources to manage the additional category.

The Civic Arts Commission is currently developing an Arts in Education Grant. Its aim is to achieve Goal 3 above: *Expand High Quality and Equitable Arts Education*. To maintain the City of Berkeley's thriving arts scene and "grow our own" art makers and art patrons, exposure and education in the arts should begin when the population is very young (0–5) and continue through adulthood. An Arts Education Grant category could pair teaching artists with teams of classroom teachers to develop integrated units incorporating visual and performing arts to deepen learning in science, math, English, and social studies.

Arts education can be a powerful equity tool to address disproportionate achievement, for example, the urgent challenge of African American student underperformance on the Vision 2020 indicators. Targeted strategies like arts integration and STEAM (science, technology, engineering, arts, and math) can increase students' academic engagement and performance, attendance, and reduce disciplinary referrals.

Furthermore, when an Arts Education grant category is created, additional funding can be tapped, as the California Arts Council requires a one-to-one local funding match.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

The Council will need to approve the new grant programs created by the Civic Art Commission.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The Council will need to designate additional funding annually:

Festival Grants	$91,685 (to bring it up to $250,000)
Creative Spaces Capital Improvement Grant	$250,000
Arts in Education Grant	$50,000
Staffing Resources to Administer	Approximately 0.5 FTE

CONTACT PERSON

Lisa Bullwinkel, Chair, Civic Arts Commission
Jennifer Lovvorn, Secretary, Civic Arts Commission, 981-7533

Parks and Waterfront Commission

INFORMATION CALENDAR
March 24, 2020

To: Honorable Mayor and Members of the City Council

From: Parks and Waterfront Commission

Submitted by: Jim McGrath, Chairperson

Subject: Council Referral – Commemorative Tree Program

INTRODUCTION
On October 17, 2017, the Council approved the following referral: Refer to the City Manager and the Parks and Waterfront Commission the creation of a policy to establish a Commemorative Tree Program, similar to the city's Park Bench Donation Policy.

CURRENT SITUATION AND ITS EFFECTS
At a regular meeting on February 12, 2020, the Parks and Waterfront Commission approved a motion stating that the commission believes the existing Expanded Parks Donation policy is currently sufficient. M/S/C (McGrath/Kamen/U). Ayes: Cox; Diehm; Kamen; Kawczynska; McGrath; Raghavan; Skjerping; Wozniak; Noes: None; Absent: None; Leave of Absence: None.

ENVIRONMENTAL SUSTAINABILITY
No environmental impacts or opportunities were identified as a result of this recommendation.

POSSIBLE FUTURE ACTION
None

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION
None

CITY MANAGER
The City Manager concurs with the content of the Parks and Waterfront Commission's report.

CONTACT PERSON
Roger Miller, Secretary, parks and Waterfront Commission, 981-6704
Jim McGrath, Chairperson, (510) 848-8071

Upcoming Worksessions – *start time is 6:00 p.m. unless otherwise noted*	
Scheduled Dates	
March 17	1. CIP Update (PRW and Public Works) 2. Measure T1 Update
May 5	1. Budget Update 2. Crime Report
June 23	1. Climate Action Plan/Resiliency Update 2.
July 21	1. 2.
Sept. 29	1. Digital Strategic Plan/FUND$ Replacement/Website Update 2.
Oct. 20	1. Update: Berkeley's 2020 Vision 2. BMASP/Berkeley Pier-WETA Ferry

Unscheduled Workshops
1. Cannabis Health Considerations 2. Vision 2050 3. Ohlone History and Culture (special meeting)

Unscheduled Presentations (City Manager)
1. Systems Realignment

	City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling
1.	**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** *(Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.)* ***March 18, 2019 Action:*** *Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.* **From: Councilmember Worthington** **Recommendation:** Refer the City Manager to look into adopting revisions to Ordinance No. 7,521--N.S by modeling after the Home-Sharing Ordinance of the City of Santa Monica and the Residential Unit Conversion Ordinance of the City of San Francisco in order to increase compliance with city regulations on short-term rentals of unlicensed properties. **Financial Implications:** Minimal Contact: Kriss Worthington, Councilmember, District 7, 981-7170
2.	**36. Referral Response: Issue a Request for Information to Explore Grant Writing Services from Specialized Municipal Grant-Writing Firms, and Report Back to Council** *(Referred from the October 15, 2019 agenda)* **From: City Manager** Contact: Henry Oyekanmi, Finance, 981-7300 *Note: Will be considered in FY 2021 Budget Process*
3.	**47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow** *(Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee) (Referred from the January 21, 2020 agenda)* **From: Councilmember Harrison** **Recommendation:** 1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow. 2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods. **Financial Implications:** See report Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140 *Note: Referred to Agenda & Rules for future scheduling.*

CITY CLERK DEPARTMENT
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL

Address	Board/ Commission	Appeal Period Ends	Determination on Appeal Submitted	Public Hearing
NOD – Notices of Decision				
2565 Buena Vista Wy (single-family dwelling)	ZAB	3/11/2020		
1533 Beverly Pl (single-family dwelling)	ZAB	3/12/2020		
1919 Oregon St (modifications to residential parcel)	ZAB	3/16/2020		
Public Hearings Scheduled				
0 Euclid Ave - Berryman Reservoir (denial of 4G telecom facility)	ZAB			TBD
Remanded to ZAB or LPC				
1155-73 Hearst Ave (develop two parcels)	ZAB			
90-Day Deadline: May 19, 2019				
Notes				

3/3/2020

[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.[1] 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.[2] 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

[1] http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf
[2] 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."[3] Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.[4] 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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[3] http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html

[4] 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.[5] 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*

[5] Councilmembers receive annual compensation of approximately $36,000, while the Mayor receives annual compensation of approximately $55,000.[5]

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.[6]

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

[6] 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
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.[1] For similar reasons, the BERA does not

[1] 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.

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E-mail: attorney@ci.berkeley.ca.us • TDD: 510 644-6915

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 aide 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.[2] 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 aide 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: II.E.1. and III.G.

CC:bl

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[2] 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.[1/] (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

[1/] 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[1]. 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*.[2] The per diem rate covers the meal, tax,

[1] Administrative Regulation 3.4: http://icobweb/AR/PDF/AR3-4.pdf
[2] Administrative Regulation 3.9: http://icobweb/AR/PDF/2016/Administrative Regulation 3.9.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.[3] 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.

[3] 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[4], on the City's intranet[5], 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**

[4] A.R. 3.14: http://icobweb/AR/PDF/AR3-14.pdf
[5] 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.

* * * * * *

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

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 FUND$ 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.

RESPONSIBLE DEPARTMENT: **Finance Department** **TO BE REVIEWED/REVISED:** Every year	Approved by: Finance Director City Manager

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.

Tom Bates, Mayor

ATTEST: _____
Deanna Despain, Deputy City Clerk

Date signed: 9 May 08

CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

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

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

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.

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 10th 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.

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

RESPONSIBLE DEPARTMENT: **Finance Department** **TO BE REVIEWED/REVISED:** Every year	Approved by: Finance Director D. Williams-Ridley City Manager

Attachment A

JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE
1350	M	Accounting Manager
1317	M	Animal Services Manager
1213	Z1	Assistant City Attorney
1118	Z1	Assistant City Manager
8174	Z1	Assistant Fire Chief
1801	Z1	Assistant to the City Manager
1301	Z1	Audit Manager
1323	Z1	Budget Manager
1306	M	Building and Safety Manager
1320	Z1	Capital Improvement Programs Manager
1107	Z1	City Attorney
1102	Z1	City Auditor
1120	Z1	City Clerk
1101	Z1	City Manager
1315	M	Customer Services Manager
2303	Z2	Deputy City Attorney II
2311	Z2	Deputy City Attorney III
1366	Z1	Deputy City Auditor for Payroll Mgmt.
1219	Z1	Deputy City Clerk
1103	Z1	Deputy City Manager
1227	Z1	Deputy Director of Finance
1229	Z1	Deputy Director of Health & Human Services
1211	Z1	Deputy Director of Library Services
1228	Z1	Deputy Director of Parks, Recreation & Waterfront
1230	Z1	Deputy Director of Planning
1205	Z1	Deputy Director of Public Works
1209	Z1	Deputy Director of Public Works (Reg)
1204	Z1	Deputy Fire Chief
8182	B	Deputy Fire Marshal EMT
1203	Z1	Deputy Police Chief
1123	Z1	Director of Community Development
1104	Z1	Director of Finance
1125	Z1	Director of Health and Human Services
1126	Z1	Director of Housing
1108	Z1	Director of Human Resources
1127	Z1	Director of Information Technology
1115	Z1	Director of Library Services
1112	Z1	Director of Parks, Recreation & Waterfront
1124	Z1	Director of Planning
1111	Z1	Director of Public Works
1374	Z1	Economic Development Manager
2923	M	Economic Development Project Mgr.
1417	Z1	Emergency Services Manager
1402	Z1	Employee Relations Officer
1426	M	Energy Officer
1348	M	Equipment Superintendent
1121	Z5	Executive Director of Rent Board
1344	M	Facilities Maintenance Superintendent
8155	B	Fire Apparatus Operator EMT
8167	B	Fire Captain EMT
1105	Z1	Fire Chief
8158	B	Fire Lieutenant EMT
8164	B	Fire Lieutenant Training EMT
8160	B	Fire Prevention Inspector I EMT
8161	B	Fire Prevention Inspector II EMT
1418	Z1	Fire Prevention Manager
1321	M	General Services Manager
1377	M	Hazardous Materials Manager
1223	Z1	Health Officer
1224	Z1	Health Officer (Cert)
1363	M	Housing Authority Manager
1352	M	Housing Services Manager
1380	Z1	Human Resources Manager
1221	Z1	Information Systems Manager
1354	M	Land Use Planning Manager
1803	Z5	Library Building Project Manager
1466	Z2	Library Financial Manager
1465	Z5	Library Network Administrator
1373	M	Manager of Economic Development
1310	M	Manager of Engineering
1368	M	Manager of Environmental Health
1360	M	Manager of Health Promotion
1339	M	Manager of Mental Health Services
1362	M	Manager of Program Planning and Administration
8186	Z1	Paramedic Program Supervisor
8111	B	Paramedic Supervisor I
8113	B	Paramedic Supervisor II
1327	M	Parking Services Manager
1332	M	Parks Superintendent
1326	M	Planning Manager

JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE
1307	M	Disability Programs Manager
8148	E	Police Captain
1110	Z1	Police Chief
8145	F	Police Inspector
8147	F	Police Lieutenant
1473	Z1	Police Review Commission Officer
8142	F	Police Sergeant
2458	Z1	Psychiatrist Supervisor
1322	M	Public Safety Business Manager
1312	M	Public Works Maintenance Superintendent
1475	M	Real Property Administrator
2890	M	Recycling Program Manager

JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE
1353	M	Revenue Collection Manager
2716	Z2	Senior Human Resources Analyst
1325	M	Seniors Program Administrator
1314	M	Solid Waste and Recycling Manager
2316	Z2	Staff Attorney II
2317	Z2	Staff Attorney III
1404	M	Supervising Civil Engineer
1476	M	Supervising Systems Analyst
1340	M	Supervising Traffic Engineer
2712	Z2	Training Officer
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.catravelsmart.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** or **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.

Tom Bates, Mayor

Attest: Sherry M. Kelly, City Clerk

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

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[1], 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[2] (see Resolution 63,412-NS)
   4. Commissioner and Library Trustee[3] payments Note (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)*

[1] "Commissioner" includes Rent Stabilization Board Commissioners for reimbursements or other approved payments.

[2] Requires review by the City Auditor; SIB reimbursement payment also requires approval by City Auditor.

[3] 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.

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 FUND$ GMBA Master Inquiry [FUND$ > 7 > 1 > 2] to confirm all vendor information, including the designated Name on Checks field displayed at the bottom of the FUND$ 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 FUND$ 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[4] 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 (FUND$ 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. (FUND$ 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 (FUND$ limits this to approximately 25 characters per description field)
   1. DESCRIPTION 1: enter nature of purchase or service.

[4] 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. (FUND$ 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 1st 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 FUND$ GMBA Master Inquiry.
2. VENDOR NO.: enter the vendor # as it appears in FUND$ GMBA Master Inquiry.
3. ADDRESS: when correct information is confirmed or corrected in GMBA, this can be blank.

B. Description & Purpose (FUND$ 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 (FUND$ 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.

EXCEPTIONS

Any exceptions to this AR must be approved in writing by the Director of Finance.

RESPONSIBLE DEPARTMENT: **Finance Department** **TO BE REVIEWED/REVISED:** Every year	Approved by: Finance Director City Manager

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.[1] 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.

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

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

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

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

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

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

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

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

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

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

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
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.[1] For similar reasons, the BERA does not

[1] 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.

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E-mail: attorney@ci.berkeley.ca.us • TDD: 510 644-6915

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 aide 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.[2] 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 aide 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: II.E.1. and III.G.

CC:bl

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[2] 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 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 for further information.

Published: January 24, 2020 – The Berkeley Voice
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 30, 2020.

_____
Mark Numainville, City Clerk
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The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. 69,283–N.S. and
amended by Resolution No. 69,295–N.S.

Effective February 11, 2020

Table of Contents

I. DUTIES

A. Duties of Mayor

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

B. Duties of Councilmembers

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

C. Motions to be Stated by Chair

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

D. Decorum by Councilmembers

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

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set a limit on the speaking time allotted to Councilmembers during Council discussion.

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

E. Voting Disqualification

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

decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

F. Requests for Technical Assistance and/or Reports

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

II. MEETINGS

A. Call to Order - Presiding Officer

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

B. Roll Call

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

C. Quorum Call

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

D. Council Meeting Conduct of Business

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

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

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

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

E. Adjournment

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.

2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

F. Unfinished Business

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

G. City Council Schedule and Recess Periods

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

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

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

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

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

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

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

H. Pledge of Allegiance to the Flag

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

I. Ad Hoc Subcommittees

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Councilmembers may be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from residents, related commissions, and other groups, 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:

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

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

Ad hoc subcommittees will be staffed by City Council legistive staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

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

Ad hoc subcommittees may convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.

III. AGENDA

A. Declaration of Policy

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

B. Definitions

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

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

2. Agenda items shall contain all relevant documentation, including the information listed below:

   a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;

   b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;

c) Recommendation of the report's Primary Author that describes the action to be taken on the item, if applicable;

d) Fiscal impacts of the recommendation;

e) A description of the current situation and its effects;

f) Background information as needed;

g) Rationale for recommendation;

h) Alternative actions considered;

i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items);

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

k) Additional information and analysis as required. It is recommended that reports include the points of analysis in Appendix B - Guidelines for Developing and Writing Council Agenda Items.

3. "Author" means the Mayor or other Councilmembers who actually authored an item by contributing to the ideas, research, writing or other material elements.

4. "Primary Author" means the Mayor or Councilmember listed first 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.

5. "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.

6. "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.

7. "Packet" means the agenda plus all its corresponding agenda items.

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

   a) A work stoppage or other activity which severely impairs public health, safety, or both;

   b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency

matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

9. “Continued Business” Items carried over from a prior agenda of a meeting occurring less than 11 days earlier.

10. "Old Business" Items carried over from a prior agenda of a meeting occurring more than 11 days earlier.

C. Procedure for Bringing Matters Before City Council

1. **Persons Who Can Place Matters on the Agenda.**
Matters may be placed on the agenda by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules and limitations contained herein. The Agenda & Rules Committee shall be a standing committee of the City Council.

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

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

a) **Items Authored by the Mayor, a Councilmember, or the Auditor.**

As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda & Rules Committee shall review the item and may 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.2 (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.i, ii, or 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 III.C.1.a. i, ii, or iii, or request Policy Committee assignment.

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.

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

If the City Manager determines that the matter should proceed notwithstanding the Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the recommendation of the Agenda & Rules Committee will automatically be placed on the Action Calendar.

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

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

1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.

2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.

3. Refer the item to a Policy Committee for review.

4. Allow the item to proceed as submitted.

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

d) The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E.

2. **Scheduling Public Hearings Mandated by State, Federal, or Local Statute.** The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

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

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

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

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

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

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

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

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

c) After 12:00 p.m. one calendar day prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

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

D. Packet Preparation and Posting

1. **Preparation of the Packet.**
Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4.

2. **Distribution and Posting of Agenda.**
   a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.

   b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.

c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

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

a) distribute the Agenda Packet to each member of the City Council;

b) post the Agenda Packet to the City's website;

c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and

d) make the Agenda Packet available to members of the press.

4. **Failure to Meet Deadlines.**
a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.

b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:

- A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.8.

- Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.

c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

E. Agenda Sequence and Order of Business

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

1. Preliminary Matters: (Ceremonial, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
2. Consent Calendar
3. Action Calendar
    a) Appeals
    b) Public Hearings

c) Continued Business

d) Old Business

e) New Business

4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment
7. Communications

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

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

F. Closed Session Documents

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

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.

2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.

3. Removal of confidential materials from a binder is prohibited.

4. Duplication of the contents of a binder by any means is prohibited.

5. Confidential materials shall be retained in the binders for at least two years.

6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

G. Regulations Governing City Council Policy Committees

1. Legislative Item Process

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

Full Council Track

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

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

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

Policy Committee Track

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

The Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the Agenda & Rules Committee. The Agenda & Rules Committee may only assign the item to a single Policy Committee.

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

Time Critical Track

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

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

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

2. Council Referrals to Committees

The full Council may refer any agenda item to a Policy Committee by majority vote.

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

a. The quorum of a three-member Policy Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.

b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.

c. Notwithstanding paragraph (b) above, two members of a Policy Committee may be listed as Authors or Co-Sponsors on an item provided that one of the 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 Author or Co-Sponsor.

d. All three members of a Policy Committee may not be Authors or Co-Sponsors of an item that will be heard by the committee.

e. Only one 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 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.

4. Functions of the Committees

Committees shall have the following qualities/components:

a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
b. Minutes shall be available online.
c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.
f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.
g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.
h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.
i. Reports leaving a Policy Committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.
j. Per Brown Act regulations, any 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 & Rules Committee or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, the committee must vote to either (1) accept the 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 & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

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

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

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

The 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 City Clerk by the members of the committee.

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

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.

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 & Rules Committee on the next available agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

The Primary Author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the committee approves expedited review.

5. Number and Make-up of Committees

Six committees are authorized, each comprised of three Councilmembers, with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

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

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

All standing Policy Committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

6. Role of City Staff at Committee Meetings

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

IV. CONDUCT OF MEETING

A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.

- Public comment on the Consent and Information Calendars.

- Public comment on action items, appeals and/or public hearings as they are taken up under procedures set forth in the sections governing each below.

- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

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

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

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

   The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. No additional items can be moved onto the Consent Calendar once public comment has commenced.

   At any time during, or immediately after, public comment on Information and Consent items, the Mayor or any Councilmember may move any Information or Consent item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

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

2. Public Comment on Action Items.

After the initial ten minutes of public comment on non-agenda items, public comment on consent and information items, and adoption of the Consent Calendar, 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.

3. Appeals Appearing on Action Calendar.

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

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

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

shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

4. **Public Comment on Non Agenda Matters.**
Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting.

   The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

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

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

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

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

B. Consent Calendar

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry

will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

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

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

C. Information Reports Called Up for Discussion

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

D. Written Communications

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 a Councilmember may refer a communication to the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

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

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

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

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

place, and content of the contact. Written reports shall be available for public review in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

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

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

F. Work Sessions

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

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

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

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

G. Protocol

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

V. PROCEDURAL MATTERS

A. Persons Authorized to Sit at Tables

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

B. Decorum

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

C. Enforcement of Decorum

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

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

D. Precedence of Motions

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

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

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

E. Robert's Rules of Order

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

F. Rules of Debate

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

2. **Getting the Floor - Improper References to be avoided.**
   Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themself to the question under debate.

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

4. **Privilege of Closing Debate.**
   The Mayor or Councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the Mayor or Councilmember moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

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

6. **Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**
   Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

G. Debate Limited

1. Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Information Reports; provided that either of the following two not debatable motions shall be in order:

    a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or

    b) If there are one or more motions on the floor, 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 1 hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.

3. In the interest of expediting the business of the City, failure by the Chair or any Councilmember to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any Councilmember may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in Section D hereof is made and is passed.

H. Motion to Lay on Table

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

I. Division of Question

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

J. Addressing the Council

Under the following headings of business, unless the presiding officer rules otherwise, any interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

1. **Written Communications.**
   Interested parties or their authorized representatives may address the Council in the form of written communications in regard to matters of concern to them by

submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.

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

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

K. Addressing the Council After Motion Made

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

L. Use of Cellular Phones and Electronic Devices

The use of cell phones during City Council meetings is discouraged for the Mayor and Councilmembers. While communications regarding Council items should be minimized, personal communications between family members and/or caregivers can be taken outside in the case of emergencies. In order to acknowledge differences in learning styles and our of support tactile learners, note-taking can continue to be facilitated both with a pen and paper and/or on electronic devices such as laptop computers and tablets.

The use cell phones during Closed Session Meetings is explicitly prohibited for the Mayor and Councilmembers.

VI. FACILITIES

A. Meeting Location Capacity

Attendance at council meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

B. Alternate Facilities for Council Meetings

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

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

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

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

C. Signs, Objects, and Symbolic Materials

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

D. Fire Safety

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

E. Overcrowding

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

APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

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

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

Section 1 – Lead Commission
The City Council designates the following commissions as the 'Lead Commissions' in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

Board of Library Trustees

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

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

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

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

Section 3 – Criteria for Naming of Public Facilities
When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

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

Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
B. The honoree has a record of outstanding service to their community
C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

Section 5 –Procedures for Naming or Renaming of Public Facilities

A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
    1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
    1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
    1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination

D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.

E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda & Rules Committee to request that the Primary Authorof an item provide "additional analysis" if the item as submitted evidences a "significant lack of background or supporting information" or "significant grammatical or readability issues."

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt Authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
   a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
   b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
   c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
   d. Fiscal impacts of the recommendation;
   e. A description of the current situation and its effects;
   f. Background information as needed;
   g. Rationale for recommendation;
   h. Alternative actions considered;
   i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
   j. Person or persons to contact for further information, with telephone number. If the 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

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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. <u>Actions/Alternatives Considered</u>

- 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. <u>Consultation/Outreach Overview and Results</u>

- 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. <u>Rationale for Recommendation</u>

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

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.[1]

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.[2]

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.[3] This successful policy laid the

[1] http://www.recyclingrulesac.org/ordinance-overview/
[2] http://www.recyclingrulesac.org/my-recycling-rules/
[3] 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.[4] 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.[5]

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.[6]

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.[7]

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.[8] 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.[9] 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

[4] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1383
[5] https://www.calrecycle.ca.gov/organics/slcp/education
[6] http://ncrarecycles.org/wp-content/uploads/2018/10/SB1383_Final-May-Draft-Edible-Regs-Only.pdf
[7] https://ww3.arb.ca.gov/cc/cc.htm
[8] https://www.epa.gov/ghgemissions/understanding-global-warming-potentials
[9] 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.[10]

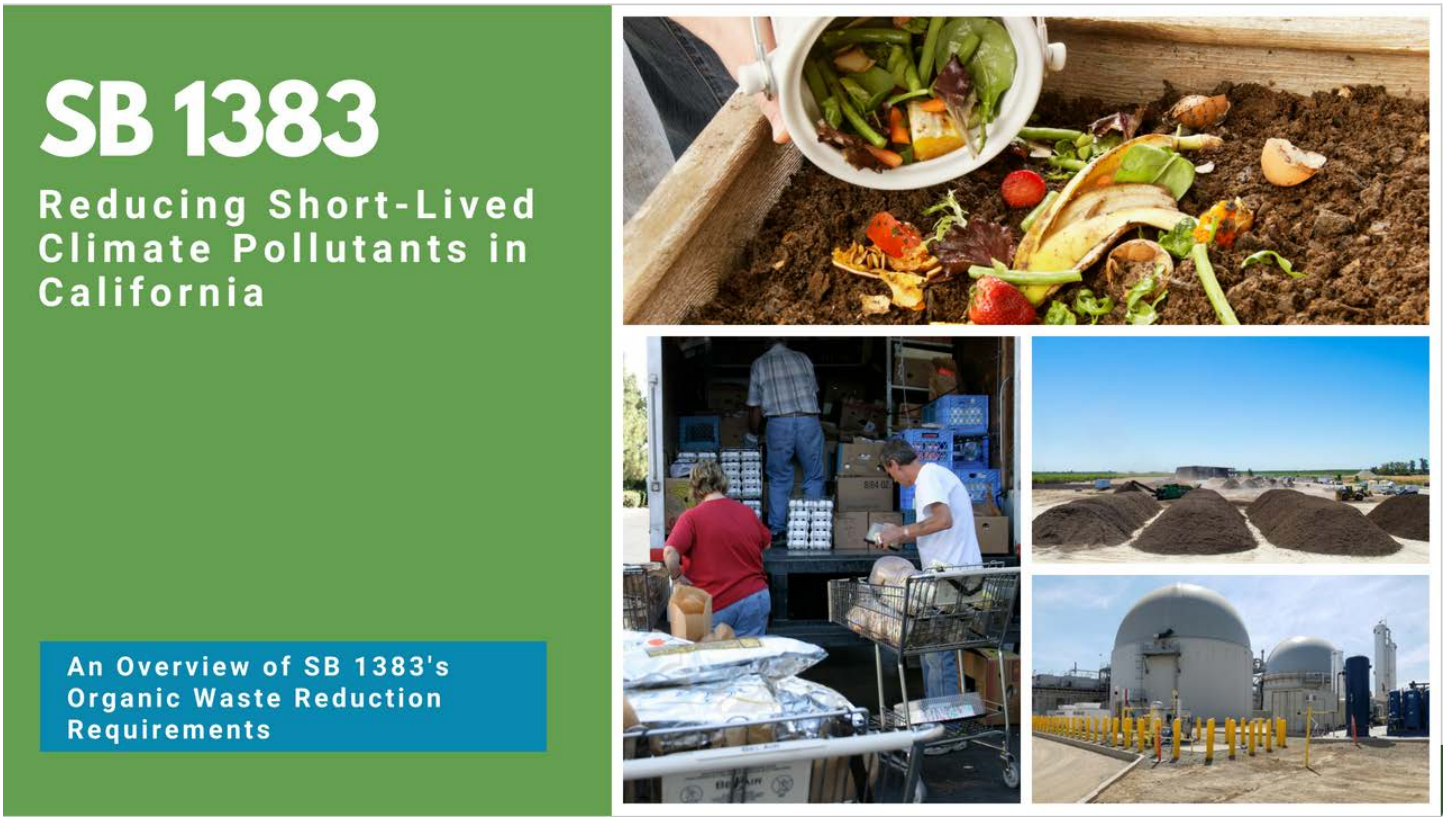
FINANCIAL IMPLICATIONS
Staff time and an undetermined amount of funding, contingent on the Commission's recommendations, to bring the City into compliance with state law.

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."[11]

CONTACT PERSON
Councilmember Rigel Robinson, (510) 981-7170

[10] https://berkeleyfoodnetwork.org/about/our-work/
[11] 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
3: Recycling Rules Alameda County
http://www.recyclingrulesac.org/enforcement-overview/



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.

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.

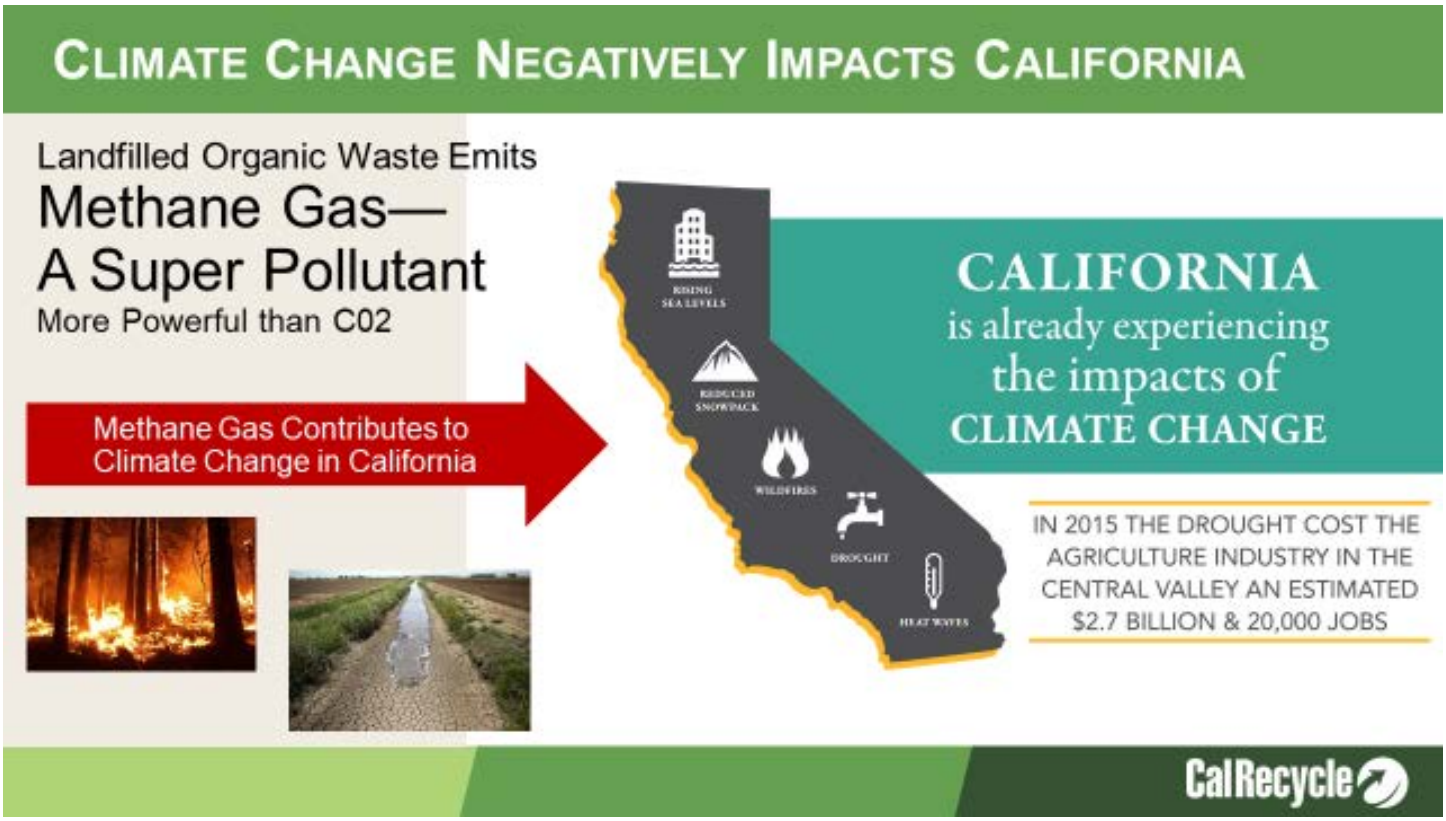
Overview of Presentation

- 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

- 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)



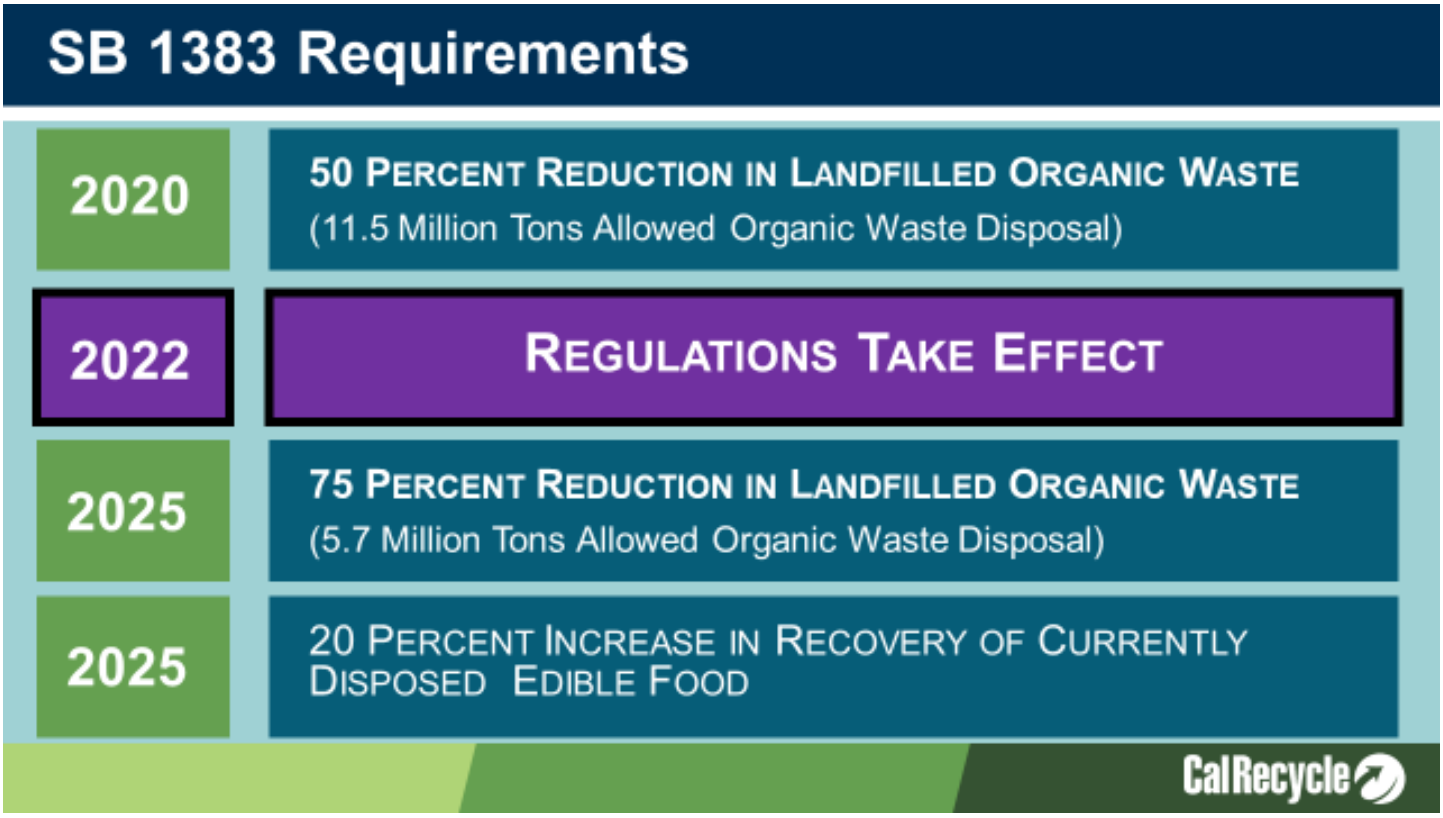
- Landfilling organic waste leads to the anaerobic breakdown of that material, which creates methane.
- Landfills are responsible for 21% of the state's methane emissions. ***Landfills are the third largest producer of methane.***
- Methane is 72 times more potent than Carbon Dioxide (C02) over a 20-year 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 PM2.5).
    - 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

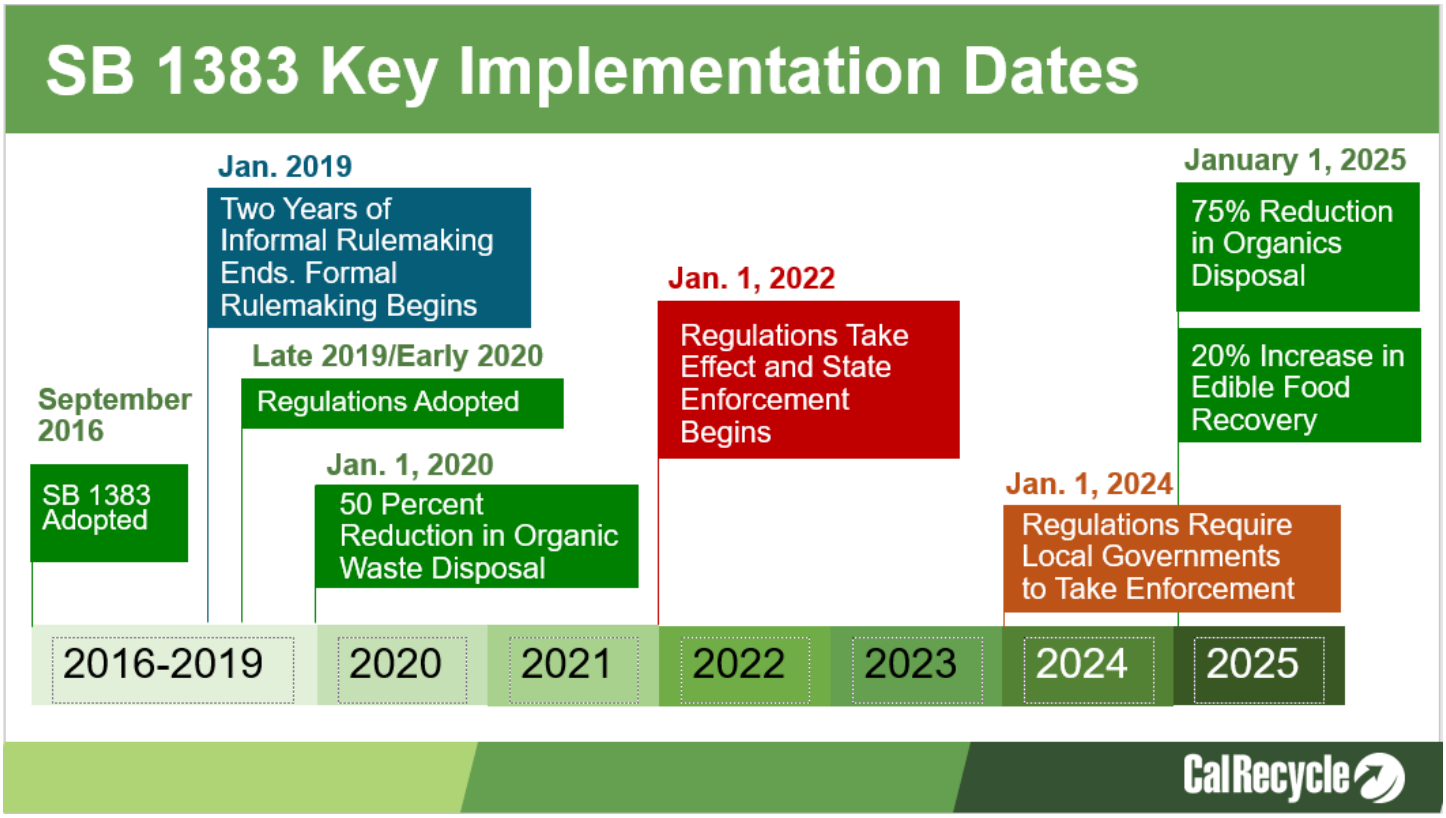
- We should not underestimate the cost of these climate change impacts.
    - The state and communities are spending billions fighting wildfires, removing debris and rebuilding homes.
    - That means we are paying for the effects of climate change today.

    - 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.



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.



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

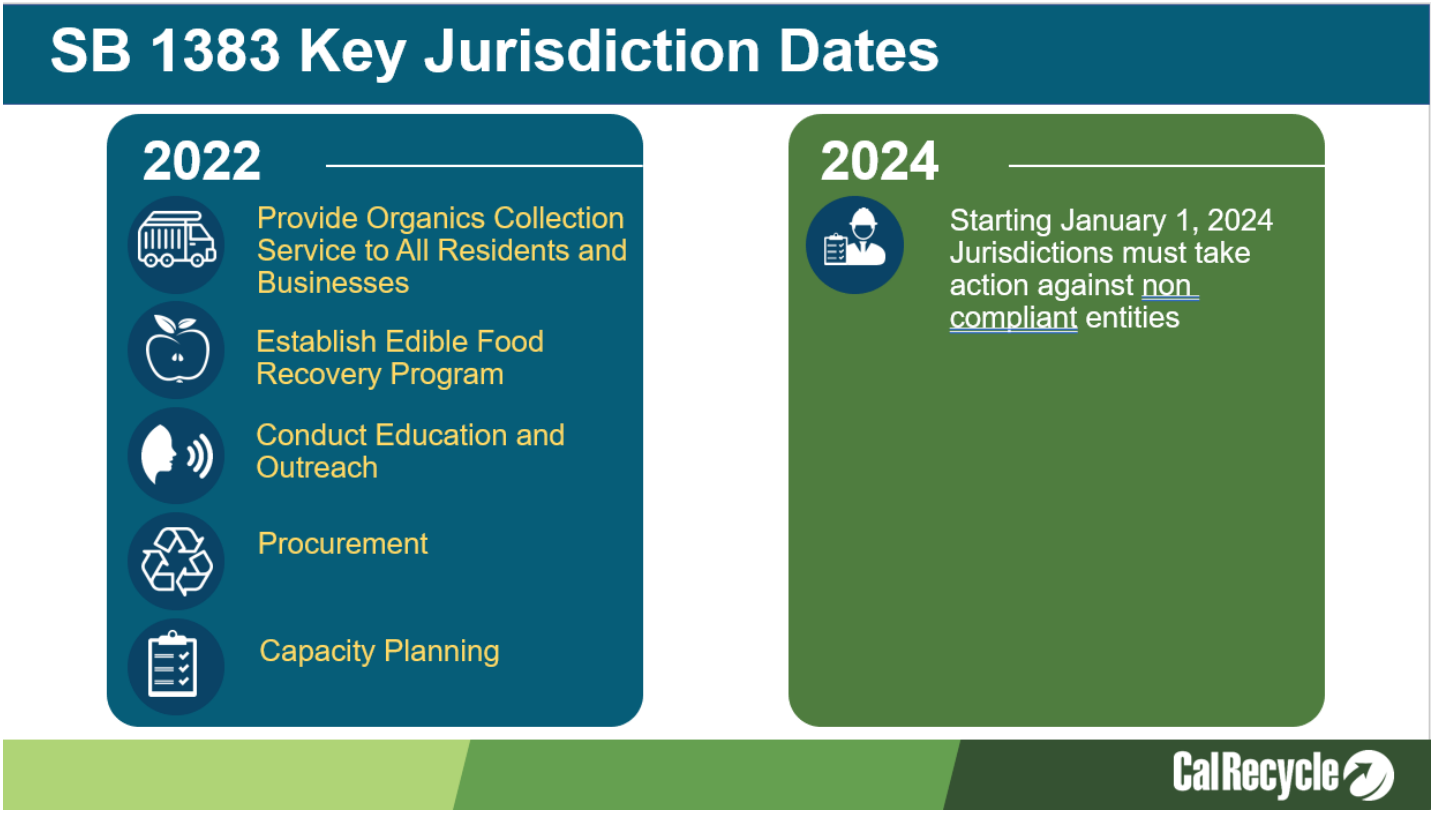
1. The regulations will become enforceable in 2022.
    a. **Jurisdictions must have their programs in place on January 1, 2022.**

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.**



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.

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.

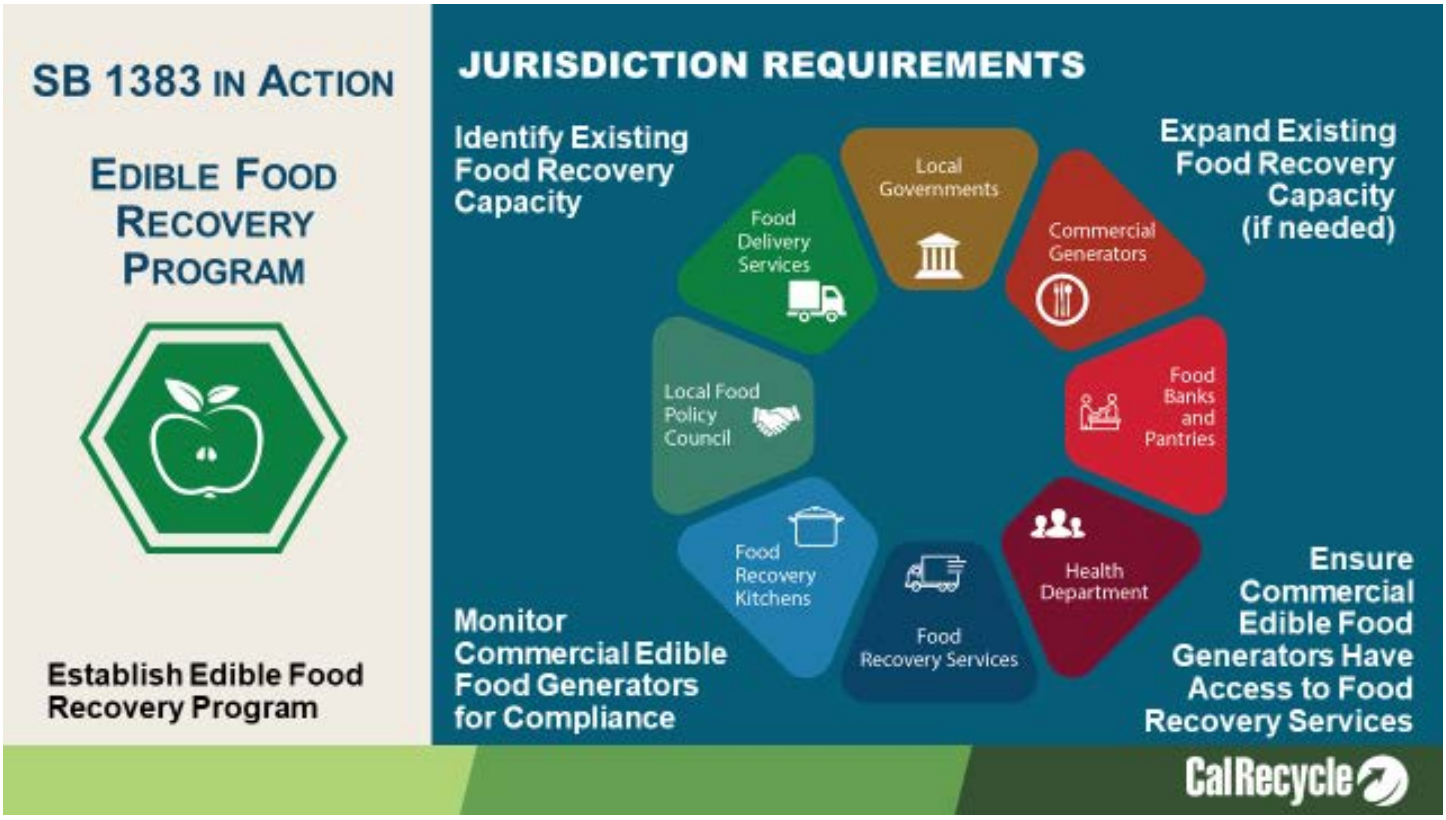
- **City Councils and Boards of Supervisors** will need to pass local enforcement ordinances to require all residents and businesses to subscribe to these services.
- **City Managers and Chief Administrative Officers** will be involved in capacity planning, directing procurement of recycled organic products 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.

(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.

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.

- 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 then virgin material.**
- Finally procured paper products must meet FTC recyclability guidelines (essentially products we purchase must be recyclable).

(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.

(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).

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**

(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

(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

•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

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 Circumstan*ce and will not allow a violation to be subject to a Corrective Action Plan.

(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.