



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

MONDAY, APRIL 27, 2020

2:30 P.M.

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Ben Bartlett

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council Agenda & Rules Committee will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://zoom.us/j/94066072320>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128** and Enter Meeting ID: **940 660 723 20**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Agenda & Rules Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

AGENDA

Roll Call

Public Comment

Review of Agendas

- 1. Approval of Minutes: April 13, 2020**
- 2. Review and Approve Draft Agendas:**
 - a. 5/12/20 – 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. 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.

9. Referral: Compulsory Composting and Edible Food Recovery

From: Councilmembers Robinson and Hahn

Referred: November 25, 2019

Due: June 7, 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

10. 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: July 7, 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

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment – Next Meeting Monday, May 11, 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.*

*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.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. 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:**

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.

\* \* \*

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 April 23, 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.*

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

**MONDAY, APRIL 13, 2020**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Ben Bartlett

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

**Public Comment:** 1 speaker

## **Review of Agendas**

**1. Approval of Minutes: April 6, 2020**

**Action:** M/S/C (Wengraf/Hahn) to approve the Minutes of 4/6/2020.

**Vote:** All Ayes.

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

a. 4/28/20 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Wengraf/Hahn) to approve the Agenda of April 28, 2020 revised as noted below.

- *Ceremonial Item: Adjourned in memory of all victims of COVID-19*
- *Item Added: Discussion Regarding Ballot Measures (City Manager)*
- *Item 12 Redistricting Ordinance (City Manager) – Moved to Consent Calendar*
- *Item 14 Term Limits Ballot Measure (Davila) – Scheduled for 4/28 Action Calendar*

**Vote:** All Ayes.

Order of Items on Action Calendar

Item 10 Public Hearing

Time Critical Item (Ballot Measures)

Item 11 Council Salaries Ballot Measure

Item 13 Climate Action Fund

Item 14 Term Limits Ballot Measure

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

- None selected

**4. Adjournments In Memory**

- All Victims of COVID-19

## **Scheduling**

**5. Council Worksessions Schedule** – received and filed

**6. Council Referrals to Agenda Committee for Scheduling** – received and filed

**7. Land Use Calendar** – received and filed

## Committee Action Items

### 8. Discussion and Direction Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies

**Action:** Discussion held. 2 speakers. M/S/C (Arreguin/Wengraf) to support the continuation of the policy issued by the Director of Emergency Services (DES) regarding meetings of legislative bodies and recommend that the policy remain in effect until it is determined by the DES and the Health Officer that conditions are appropriate to resume meetings while maintaining the health and safety of the community.

**Vote:** All Ayes.

## Referred Items for Review

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

**Action:** No action taken.

## Unscheduled Items

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**10. Referral: Compulsory Composting and Edible Food Recovery**

**From: Councilmembers Robinson and Hahn**

**Referred: November 25, 2019**

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

**Financial Implications:** See report

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

**11. 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: July 7, 2020**

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**Financial Implications:** None

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

## Items for Future Agendas

- None



## **Adjournment**

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

**Vote:** All Ayes.

Adjourned at 3:32 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda and Rules Committee meeting held on April 13, 2020.

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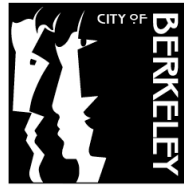
Mark Numainville  
City Clerk

## **Communications**

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## DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, May 12, 2020

6:00 PM

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

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*Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <<Insert URL>>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 and enter Meeting ID: <<Insert Meeting ID>>. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*To submit an e-mail comment during the meeting to be read aloud during public comment, email [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.*

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*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. 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 to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, 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. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

## 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. **Amendment: FY 2020 Annual Appropriations Ordinance**

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance amending the FY 2020 Annual Appropriations Ordinance No. 7,694–N.S. for fiscal year 2020 based upon recommended re-appropriation of committed FY 2019 funding and other adjustments in the amount of \$47,602,843 (gross) and \$42,647,016 (net).

**Financial Implications:** See report

Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

### 2. **Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on May 12, 2020**

**From: City Manager**

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

**Financial Implications:** Various Funds - \$729,806

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

### 3. **Revenue Grant Agreements: Funding Support from the State of California to Conduct Public Health Services**

**From: City Manager**

**Recommendation:** Adopt seven Resolutions authorizing the City Manager or her designee to submit grant agreements to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the following seven revenue agreements:

1. Child Health and Disability Prevention (CHDP) Program, which includes Early Periodic Screening, Diagnosis and Treatment (EPSDT) and Health Care Program for Children in Foster Care (HCPCFC), in the projected amount of \$352,000 for FY 2021.

2. Maternal, Child, and Adolescent Health (MCAH) Program, in the projected amount of \$336,000 for FY 2021.

3. Tobacco Trust Fund: There is no match required and this contract is expected to be for \$300,000 in FY 2021.

4. Immunization Program: In the projected amount of \$42,204 for FY 2021.

5. Public Health Emergency Preparedness/Pandemic Flu/Cities Readiness Initiative (CRI) Program in the projected allocation of \$260,000 for FY 2021.

6. Public Health Emergency Preparedness Program COVID-19 Crisis Response in the projected allocation of \$401,462 for the period of March 5, 2020 through March 15, 2021.

7. Infectious Disease Prevention and Control, Grant Agreement 19-10870, funding allocation of \$210,468 for the period of February 1, 2020 through June 30, 2023.

**Financial Implications:** See report

Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

## Consent Calendar

**4. Revenue Grant Agreements: Funding Support from Essential Access Health to Conduct Public Health Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to submit a grant application to Essential Access Health, to accept the grant, execute any resultant revenue agreement and amendment, and implement the projects and appropriation of funding for related expenses to conduct public health promotion, protection, and prevention services for the Essential Access Health revenue agreement in the projected amount of \$265,000 for April 1, 2020 to March 30, 2021.

**Financial Implications:** See report

Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

**5. Dorothy Day House License Agreements: Veterans Memorial Building and Old City Hall**

**From: City Manager**

**Recommendation:** Adopt two ordinances authorizing the City Manager or her designee to execute license agreements and any amendments thereto with Dorothy Day House to provide services at the Veterans' Memorial Building at 1931 Center Street and the Old City Hall at 2134 Martin Luther King Jr. Way.

**Financial Implications:** See report

Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

**6. Contract: CycloMedia Technology, Inc. for Geographic Information System Infrastructure Asset Data Acquisition**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with CycloMedia Technology Incorporated for Geographic Information System infrastructure asset data acquisition, for an amount not to exceed \$187,401 for the period commencing on May 15, 2020 to June 30, 2022.

**Financial Implications:** Various Funds - \$187,401

Contact: Savita Chaudhary, Information Technology, (510) 981-6500

**7. Contract: Integration Partners for Avaya Upgrade, Support, and Maintenance**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager execute a contract with Integration Partners, for Avaya support and maintenance, for a total not to exceed amount of \$727,821, from July 1, 2020 to June 30, 2024.

**Financial Implications:** Various Funds - \$727,821

Contact: Savita Chaudhary, Information Technology, (510) 981-6500

## Consent Calendar

- 8. Contract No. 10551C Amendment: Santalynda Marrero DBA SMconsulting for Professional Consulting Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10551C with Santalynda Marrero DBA SMconsulting to provide additional professional coaching services to the Department of Information Technology for an amount not to exceed \$30,000, and a total contract value not to exceed \$117,175.  
**Financial Implications:** IT Cost Allocation - \$30,000  
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 9. Contract No. 9237A Amendment: 3T Equipment Company, Inc. for Maintenance of the Pipeline Observation System Management (POSM) Software**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9237A with 3T Equipment Company, Inc. to provide additional maintenance services and support for the Pipeline Observation System Management (POSM) software in an amount not to exceed \$31,500 for a total contract amount not to exceed \$81,167, extending the term from February 1, 2013 to June 30, 2023.  
**Financial Implications:** Sanitary Sewer Fund - \$81,167  
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 10. Contract: ERA Construction, Inc. for Strawberry Creek Park Play Area and Restroom Renovation Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1. Approving the plans and specifications for the Strawberry Creek Park Play Area and Restroom Renovation Project, Specification No. 20-11382-C; and 2. Accepting the correction of the sum of bid items for ERA Construction, Inc.'s bid; and 3. Accepting the bid of the lowest responsive and responsible bidder, ERA Construction, Inc.; and 4. 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 ERA Construction, Inc., for the Strawberry Creek Park Play Area and Restroom Renovation Project at 1260 West Street, Berkeley, CA 94702, in an amount not to exceed \$900,122, which includes a contract amount of \$782,715 and a 15% contingency in the amount of \$117,407.  
**Financial Implications:** Various Funds - \$900,122  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

- 11. Contract: Suarez and Munoz Construction, Inc. for San Pablo Park Playground and Tennis Court Renovation Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1. Approving the plans and specifications for the San Pablo Park Playground and Tennis Court Renovation Project, Specification No. 20-11381-C; and 2. Accepting the bid of the lowest responsive and responsible bidder, Suarez and Munoz Construction, Inc.; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with Suarez and Munoz Construction, Inc., for the San Pablo Park Playground and Tennis Court Renovation Project at 2800 Park Street, Berkeley, CA 94702, in an amount not to exceed \$1,969,056, which includes a contract amount of \$1,790,051 and a 10% contingency in the amount of \$179,005.  
**Financial Implications:** Various Funds - \$1,969,056  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 12. Contract: BMI Imaging Systems, Incorporated for Data Conversion Services for the Berkeley Police Department**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with BMI Imaging Systems, Incorporated to provide data conversion services and necessary hosting services for the Berkeley Police Department (BPD) for a term of five years, for a total contract not to exceed \$200,000.  
**Financial Implications:** State Proposition 172 Special Fund - \$200,000  
Contact: Andrew Greenwood, Police, (510) 981-5900
- 13. Contract: Bay Cities Paving & Grading Inc. for Measure T1 Street Improvements & Green Infrastructure Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Measure T1 Street Improvements, Ward Street, Monterey Avenue and Green Infrastructure project, Specification No. 20-11394-C & 20-11387-C; accepting the bid of Bay Cities Paving & Grading Inc. as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$4,598,942 which includes a 15% contingency for unforeseen circumstances.  
**Financial Implications:** Various Funds - \$4,598,942  
Contact: Phillip Harrington, Public Works, (510) 981-6300



## Consent Calendar

**14. Contract No. 9677 Amendment: On-Call Traffic Engineering Services Contract with AECOM USA, Inc. for Design and Construction Support Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 9677 with AECOM USA, Inc. (“AECOM”) for work on the Ashby-San Pablo Intersection Improvements Project (“Project”), Specification No. 18-11182-C, to: (a) Finalize the design documents plans, specifications, and estimate (PS&E) and perform as-needed technical construction support services, increasing the contract for On-Call Traffic Engineering Services by up to \$200,000, for a total amount not to exceed \$1,200,000, and (b) Extend the ending date of the contract from June 30, 2020 to December 31, 2022.

**Financial Implications:** Measure BB - Local Streets and Roads Fund - \$200,000  
Contact: Phillip Harrington, Public Works, (510) 981-6300

**15. Contract No. 10706 Amendment: SCS Engineers and SCS Field Services for Cesar Chavez Landfill Post-Closure Maintenance and Monitoring**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10706 with SCS Engineers and SCS Field Services for engineering services for landfill post-closure engineering, maintenance, and monitoring services at Cesar Chavez Park, increasing the amount by \$338,000 for a total not to exceed \$862,900, and extending the expiration date to June 30, 2022.

**Financial Implications:** Various Funds - \$338,000  
Contact: Phillip Harrington, Public Works, (510) 981-6300

**16. Navigating the Impact of the COVID-19 Pandemic on Berkeley’s Finances**

**From: Auditor**

**Recommendation:** Consider this framework when making budget decisions about managing revenues and expenditures impacted by the COVID-19 pandemic, as well as using reserve funds. This high level report includes three sections: impact on economy, revenues, and expenditures. Government finance experts offer key considerations for managing expenditures including: reducing expenditures; focusing on essential activities that prioritize public health and community value; and long-term planning when spending reserves to make sure that enough funds are available to pull the City through a potentially long economic downturn. See full report for more information.

**Financial Implications:** See report  
Contact: Jenny Wong, Auditor, (510) 981-6750

## Council Consent Items

17. **Repeal SB 872 – Prohibition on Sugar Sweetened Beverages Tax**  
**From: Mayor Arreguin (Author), Councilmember Kesarwani (Author)**  
**Recommendation:** Adopt a Resolution calling on the Governor and State Legislature to overturn SB 872, a 2018 law prohibiting new sugar sweetened beverage taxes until 2030. Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymember Buffy Wicks.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
18. **Support California Farmworker COVID-19 Relief Legislation**  
**From: Councilmember Davila (Author), Councilmember Bartlett (Co-Sponsor), Mayor Arreguin (Co-Sponsor)**  
**Recommendation:**  
1. Adopt a resolution supporting the California Farmworker COVID-19 Relief Legislation advocated by State Assemblymember Robert Rivas (Author)  
2. Send copies of this resolution to State Assemblymember Robert Rivas, as well as State Assemblymember Buffy Wicks, and State Senator Nancy Skinner.  
**Financial Implications:** None  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
19. **Berkeley Juneteenth Association: Relinquishment of Council Office Budget Fund to General Fund and Grant of Such Funds**  
**From: Councilmember Bartlett (Author), Councilmember Davila (Author)**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 from both Councilmember Ben Bartlett & Cheryl Davila, for pre-planning the Berkeley Juneteenth Festival (organized by Berkeley Juneteenth Association, Inc. 501(c)3). The funds will be relinquished to the City’s General Fund for this purpose from the discretionary council office budget of Councilmember Bartlett and any other councilmembers who would like to contribute.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
20. **Board of Library Trustees Reappointment: John Selawsky**  
**From: Councilmember Hahn (Author)**  
**Recommendation:** Adopt a Resolution approving the reappointment of John Selawsky to the Board of Library Trustees (“BOLT”) for a term of four years commencing May 16, 2020 and ending May 16, 2024.  
**Financial Implications:** None  
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

## Council Consent Items

- 21. Budget Referral: Telegraph Shared Streets**  
**From: Councilmember Robinson (Author)**  
**Recommendation:** Refer \$500,000 to the FY2021-FY2022 Budget Process and subsequent budget processes for 30% designs of the Telegraph Shared Streets Project.  
**Financial Implications:** See report  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

## 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 use the “raise hand” function 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, use the “raise hand” function 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.*

- 22. Fiscal Year 2021 Proposed Budget Update Public Hearing #1**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing regarding the FY 2021 Proposed Budget Update.  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

## Action Calendar – Public Hearings

23. **Published Charges: Mental Health Clinical Services**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution establishing Published Charges for Mental Health Clinical Services for FY 2020. Published Charges are effective July 1, 2019.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

## Action Calendar – Old Business

24. **Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers** *(Continued from February 25, 2020. Item contains revised and supplemental materials)*  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.  
**Financial Implications:** None  
Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000

## Information Reports

25. **LPC NOD: 2043 Lincoln Street/#LMIN2019-0004**  
**From: City Manager**  
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400
26. **LPC NOD: 2133 University Avenue/#LMSA2019-0001**  
**From: City Manager**  
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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

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

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be posted on the City's website at <http://www.cityofberkeley.info>.

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

**COMMUNICATION ACCESS INFORMATION:**

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.



Captioning services are provided at the meeting, on B-TV, and on the Internet.

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CONSENT CALENDAR

May 12, 2020

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *zw*

Subject: Navigating the Impact of the COVID-19 Pandemic on Berkeley's Finances

RECOMMENDATION

Consider this framework when making budget decisions about managing revenues and expenditures impacted by the COVID-19 pandemic, as well as using reserve funds. This high level report includes three sections: impact on economy, revenues, and expenditures. Government finance experts offer key considerations for managing expenditures including: reducing expenditures; focusing on essential activities that prioritize public health and community value; and long-term planning when spending reserves to make sure that enough funds are available to pull the City through a potentially long economic downturn. See full report for more information.

FISCAL IMPACTS OF RECOMMENDATION

The COVID-19 pandemic is causing a severe economic downturn that may last for years. The decisions the City makes in this time of declining revenues and rising expenditures can have a lasting effect on its ability to provide essential services to meet community needs, especially for our most vulnerable residents. Considering this framework when making those decisions may help the City mitigate the economic impacts of COVID-19.

CURRENT SITUATION AND ITS EFFECTS

This report provides high level information about how the COVID-19 pandemic may impact Berkeley's economy as well as city revenues and expenditures.

Impact on Economy: With residents sheltering in place except for essential activities, Berkeley's businesses, arts organizations, and community service agencies are under tremendous financial pressure. Based on research data, shelter-in-place orders may impact at least 30,000 Berkeley jobs, and about 27 percent of workers who live in Berkeley are at high risk of unemployment or are already unemployed. This pandemic-induced economic shock is unprecedented because the public health risk will determine its severity and duration. The City is in a relatively strong fiscal position, but will face difficult decisions about tradeoffs in order to weather the economic downturn.

Impact on Revenues: The City relies on tax revenue from sales and use, business licenses, property, real estate transfers, and hotel occupancy to fund many of its services. With many local businesses closed and a 12-month sales tax deferral for small businesses statewide, the City's sales and hotel tax revenues are plummeting. The City will feel these decreased revenues almost immediately. Due to the timing of when some taxes are assessed and collected,

Berkeley will first feel the impact on revenue property taxes, transfer taxes, and business licenses in about a year or more. Federal and state financial assistance may help cover some of the costs of the City's COVID-19 response, but will not make up for all of the lost revenues.

Impact on Expenditures: Meanwhile, the increased need for city services is causing some expenditures to rise. Necessary measures to protect public health and support social distancing—especially among unhoused residents—will increase city expenditures. Federal and state aid may mitigate some of the financial impacts for Berkeley residents and small businesses. But for those who are not eligible for federal or state aid, Berkeley may see increased demand for services and support. Additionally, the impact of COVID-19 on insurance markets and retirement funds are likely to result in increased expenditures for employee health insurance and retirement contributions.

Government finance experts we interviewed recommended that Berkeley consider long-term strategies as revenues decline and expenditures increase. We suggest that this work be conducted quickly but thoroughly to yield maximum savings:

- Reduce expenditures to focus on essential activities that prioritize public health and safety, as well as community value.
- Leverage current and potential federal and state assistance in a comprehensive approach to addressing community needs.
- Coordinate use of Berkeley's resources to provide support in areas that are not supported by federal and state funding.
- Ensure social equity by evaluating the need to support Berkeley's residents, businesses, and community agencies comprehensively, rather than on a one-at-a-time basis, so that city resources are distributed fairly and in proportion to the level of need.
- Formulate a plan that takes a long-term view to spending reserves to make sure that enough funds are available to pull the city through a potentially long economic downturn.

The City is promptly taking steps to ensure it can continue meeting the community's needs by reducing or delaying non-essential and non-urgent expenditures. Additionally, federal and state funding may cover some of the COVID-19 response costs or provide reimbursement. However, the duration of the downturn is unknown and financial impact for the City and its residents is likely to outstrip available relief funding.

BACKGROUND

The COVID-19 pandemic is a public health crisis that has altered Berkeley's community life and economy. The Berkeley Health Officer has been at the forefront of protecting our residents by issuing the nation's first shelter-in-place order. With residents staying home except for essential

activities, Berkeley's restaurants, hotels, local retailers, arts and sports venues, and other small businesses that make up the City's unique cultural and economic fabric have had to scale back or close.

While the public health crisis has demanded the immediate attention of city staff, our office initiated this special report, consulting with the City's Budget Division and Finance Department, to review how the crisis will impact the City's budget and ability to provide essential city services for months and years to come. City officials also expressed interest in learning about best practices that could be adapted to Berkeley. In addition, we developed considerations on how to use the \$36 million in reserves the City has built over the years to weather financial instability.¹ To develop a comprehensive framework, we reached out to officials at leading finance and government organizations, as well as professional associations and other local governments.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

COVID-19 pandemic is a public health crisis with social and economic impacts that may last for years. This framework can assist city leaders in balancing the need for short-term action with long-term financial planning as revenues decline and expenditures increase.

CONTACT PERSON

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

Attachments:

- 1: Report: Navigating the Impact of the COVID-19 Pandemic on Berkeley's Finances.

¹ The City Council established a stronger reserve policy at the recommendation of the City Auditor in 2016.

Special Report
April 21, 2020

Navigating the Impact of the COVID-19 Pandemic on Berkeley's Finances



BERKELEY CITY AUDITOR

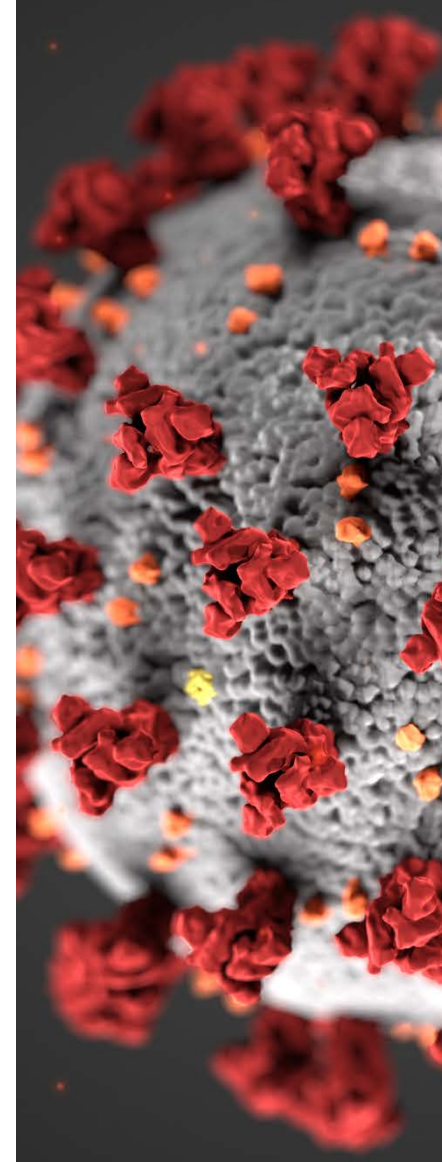


Image: Center for Disease Control

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Report Highlights



BERKELEY CITY AUDITOR

The COVID-19 pandemic is a public health crisis with social and economic impacts that may last for years.

Impact on Berkeley's Economy

- With residents sheltering in place except for essential activities, Berkeley's businesses, arts organizations, and community service agencies are under tremendous financial pressure.
- Shelter-in-place orders will impact at least Berkeley 30,000 jobs, possibly more.
- About 27 percent of workers who live in Berkeley are at high risk of unemployment or are already unemployed.
- This pandemic-induced economic shock is unprecedented because the public health risk is driving its severity and duration.
- The City is in a relatively strong fiscal position, but will face difficult decisions about tradeoffs in order to weather the economic downturn.

Impact on Berkeley's Revenues

- Berkeley's revenues from sales and use tax and hotel occupancy tax will decline in the short term.
- Berkeley will see moderate impact on property tax, property transfer tax, and business license tax revenue over the next one to two fiscal years.
- Federal and state financial assistance may help cover some costs of the COVID-19 response, but will not make up for all lost revenues.

Impact on Berkeley's Expenditures

- Costs to respond to the COVID-19 pandemic are rising as revenues are decreasing.
- Costs to provide employee health insurance and retirement contributions are expected to increase due to the pandemic.

The City will need to balance its pandemic response with long-term financial planning as revenues decline and some expenditures increase.

Experts recommend the City:

Ensure social equity by evaluating the need to support Berkeley's residents, businesses, and community agencies together, rather than on a one-at-a-time basis, so that city resources are distributed fairly and in proportion to the level of need.

Reduce expenditures to focus on essential activities that prioritize public health and safety, as well as community value.

Leverage current and potential federal and state assistance in a comprehensive approach to addressing community needs.

Coordinate use of Berkeley's resources to provide support in areas that are not supported by federal and state funding.

Take a long-term view to spending reserves to make sure that enough funds are available to pull the City through a potentially long economic downturn.

Navigating the Impact of the COVID-19 Pandemic on Berkeley's Finances

Background and Purpose

The COVID-19 pandemic is a public health crisis with devastating social and economic impacts. Unemployment is skyrocketing as consumer confidence and retail sales are plummeting. With residents sheltering in place and the closure of UC Berkeley and non-essential activities, Berkeley's community service agencies, restaurants, hotels, retail businesses, arts organizations, and other small businesses are under tremendous financial pressure. The economic shock is hitting our most vulnerable residents the hardest and demand for city services may increase at a time when city revenues are certain to shrink.¹

The City Manager and department heads are working diligently to address a myriad of issues that stem from the COVID-19 pandemic. The Mayor and City Council acted quickly to set up a relief fund for small businesses, arts and cultural organizations, and renters. The Berkeley Health Officer has been at the forefront of protecting our residents by issuing the nation's first shelter-in-place order. Staff throughout the City are working in the Emergency Operations Center to address this pandemic that local, state, and federal officials declared as an emergency.

While the public health crisis has demanded the immediate attention of city staff, our office consulted with the City's Budget Division and Finance Department, to review how the crisis will impact the City's budget and ability to provide essential city services.

This economic downturn is severe and may last for years. It is critical that decision makers and the public understand the various financial impacts so that the City can continue to meet the needs of city residents, small businesses, and arts organizations in a time of declining revenue.

Berkeley is fortunate to have a reserve fund. The City Council established a stronger reserve policy at the recommendation of the City Auditor in 2016. The fund, currently at \$36 million or 17 percent of the City's General Fund, gives city decision makers more flexibility to respond to the crisis. For the reserve fund and other city funds to best meet the needs of city residents, they need to be managed with a long-term view of a potentially prolonged economic crisis.

Response to this economic downturn will require a marathon approach rather than a sprint.

¹ The City of Berkeley's adopted budget projections of \$489.4 million in revenues in fiscal year 2020 and \$495.9 million in fiscal year 2021 will need to be adjusted.

This special report provides information to assist Berkeley's leaders in navigating the financial challenges ahead. We conducted interviews and reviewed data from government finance and budget officials to compile the following information:

- Estimates of how the COVID-19 pandemic will affect the local economy and Berkeley's revenues and expenditures; and
- Considerations from government finance and budget officials for the City Manager and Council to inform decisions about how to manage resources as revenues decline and expenditures increase.

Scope and Methodology

The COVID-19 pandemic continues to affect many important aspects of community life in Berkeley. To provide information that is timely and complementary to the work of other city departments, we focused this report on the pandemic's impact on the local economy and city revenues and expenditures through fiscal year 2021. We present a high-level overview of a range of considerations for mitigating the impact of COVID-19 in Berkeley, but do not provide detailed analysis or audit recommendations.

To develop a comprehensive set of best practices for Berkeley leaders to consider in navigating this economic downturn, we interviewed and gathered information from officials at the following organizations, professional associations, and local governments:

Brookings Institution	San Francisco, CA
California Budget and Policy Center	Oakland, CA
California Legislative Analyst's Office	San Jose, CA
California State Assembly	Hayward, CA
California Public Employees Retirement System	Seattle, WA
Center on Policy and Budget Priorities	Kansas City, MO
Downtown Berkeley Association	Johnson County, KS
U.S. Government Accountability Office	Colorado Springs, CO
League of California Cities	
Moody's Analytics	
Pew Charitable Trust	
Public Policy Institute	
University of California, Berkeley	
Urban Institute	

Information Subject to Change

The COVID-19 pandemic is unprecedented, and information about health outcomes and economic impacts is rapidly changing. All figures in this report reflect estimates based on the information available as of April 21, 2020 and are subject to change.

Impact on Berkeley's Economy

As Berkeley's economy faces sudden business closures, low income residents, small businesses, hotels, and community organizations are most impacted.

More than 30,000 jobs in Berkeley might be impacted and 27 percent² of workers who live in Berkeley are at high risk of losing their jobs. The California Budget and Policy Center suggests that this pandemic may impact nearly 1.2 million non-farm jobs in the Oakland-Hayward-Berkeley Metro Division. The jobs hardest hit by social distancing measures are in the tourism, hospitality, and retail industries, which make up an estimated 23 percent of the region's private sector jobs. Based on this data, we estimate that Berkeley's share of jobs impacted relative to its population is roughly 31,000 jobs out of Berkeley's total 70,000 jobs. However, that number could be higher due to the relatively high concentration of jobs in Berkeley, including more than 23,000 jobs at the University of California, Berkeley (UC Berkeley).

The closure of UC Berkeley will significantly impact the local economy. UC Berkeley employs over 23,000 people and brings about 43,000 students to Berkeley during the academic year. University staff and students contribute significantly to the local economy. UC Berkeley has cancelled in-person classes starting March 10 and extending through the summer. As of April 10, about 6,000 or 86 percent of students in residence halls have moved out, and more students in non-university housing have also left Berkeley. If the pandemic requires closures to continue into the next academic year, businesses that count on income from university students and staff could suffer and sales and use tax revenue will decrease. As of April 21, 2020, enrollment numbers for the 2020-2021 academic year are still uncertain.

The pandemic is disproportionately impacting low income workers and vulnerable populations. The California Budget and Policy Center estimates that lower paid

KEY TAKEAWAYS

Shelter-in-place orders will have most impact on low income residents, small businesses, hotels, and community organizations.

- In Berkeley, business closures may affect roughly 30,000 jobs and unemployment may reach 27 percent or more.
- The pandemic is disproportionately impacting low income workers and vulnerable populations.
- Berkeley's cultural identity is at risk as businesses and arts organizations struggle financially.

This unprecedented downturn is different from the Great Recession.

- This economic downturn is more volatile because it is tied to the COVID-19 public health risk.

Impact to federal and state economies may reduce funding to Berkeley.

- Without federal aid, state and local governments will be stretched to address unmet needs.
- Many California workers most impacted are in lower paid occupations.

² Based on an analysis in a April 2020 report by Economic Roundtable: <https://economicrt.org/wp-content/uploads/2020/04/In-Harms-Way.pdf?referringSource=articleShare>

occupations are hit hardest, having a greater financial impact on low income Californians with little to no savings. Others estimate that the negative financial and health effects will hit hardest for people of color, undocumented workers, seniors, unhoused residents, people in abusive households, and frontline workers in healthcare, transit, delivery, and grocery services.

The pandemic puts Berkeley's cultural identity at risk as businesses and arts organizations struggle financially. The small businesses, restaurants, arts and culture organizations, and nonprofits that make up Berkeley's cultural identity may lack the financial resources to continue to employ staff or operate during and after the shelter-in-place order. About one in five small businesses and nonprofits in Berkeley applied for aid from the Berkeley Relief Fund, illustrating the intense level of need. The Berkeley Downtown Association predicts that ongoing need for social distancing even after the shelter-in-place order is lifted will greatly impact arts and other community organizations whose work includes bringing people together.

The City of Berkeley is in a better fiscal condition to weather a recession than it was during the Great Recession. The City created a reserve, which currently has a balance of about \$36 million. The City is also sufficiently liquid in terms of its investments. According to the Finance Director, if the City manages its revenues and expenditures prudently, which will require making some difficult decisions about tradeoffs, it should be able to weather the impacts of the economic downturn.

Despite impact to many local businesses, Berkeley's diverse economic base is an advantage. Employers in Berkeley represent a diverse range of industries, including manufacturing, healthcare, higher education, research, and retail. Not all will experience the same consequences or severity of setbacks. This will aid Berkeley's local economy in weathering and recovering from the pandemic.

This unprecedented economic downturn is different from the Great Recession.

This situation is more volatile because the public health risk is driving when and how the economy will reopen. The severity of economic impact from the COVID-19 pandemic is still unknown, but unlike the Great Recession, virus transmission risk will determine when and how long businesses need to stay closed to promote social distancing, ensure adequate healthcare system capacity, and save lives. Public health experts say this pandemic may have multiple waves and require ongoing shelter-in-place orders and social distancing until an effective vaccine is developed. Governor Gavin Newsom has stated that the decision to lift the shelter-in-place order will be determined by California's ability to prevent additional outbreaks and mitigate the impact on vulnerable populations, among other public health measures.

California may face revenue reductions 1.5 times greater than during the Great Recession. Moody's Analytics estimates that state revenue losses could exceed losses during

the Great Recession, and in a shorter timeframe.

The combination of economic impact and public health risk increases overall risk for vulnerable populations. Past policy decisions at the state level resulted in greater reserves and stronger public programs to help residents. However, many residents are still vulnerable to health and economic impacts, particularly those who are uninsured or will not receive economic benefits from the federal relief bills.

There is no unified federal leadership on the nation's healthcare response. Public health responses vary by state and city. To the extent that other regions become hotspots of infection and travel remains unrestricted, regional efforts to contain the virus may be hampered. Governor Newsom is coordinating with other western states to mitigate this risk.

This economic shock is expected to hit the service, retail, and hospitality industries harder than it did in the Great Recession. These sectors are seeing immediate impacts as businesses in the service, retail, and hospitality industries close to comply with the shelter-in-place orders.

The spike in unemployment is more abrupt and spread across different employment sectors. As of April 21, 3.1 million California residents have filed new claims for unemployment insurance since the Governor issued a shelter-in-place order on March 19. This far exceeds the totals during the Great Recession, when most retail and restaurants were not affected as quickly or severely. To put these numbers in perspective, more people have filed for unemployment claims in the last four weeks nationwide than the total number of jobs created since the Great Recession, and these numbers will most surely continue to increase.

Impact to federal and state economies may reduce funding to Berkeley.

The U.S. economy is headed toward a recession or even a depression, which will affect state and local revenues. While much is still uncertain, economists agree that the U.S. will experience a recession, or even a depression.³ As of April 20, nearly all Americans are ordered to stay at home except to address essential needs. Business closures are expected to continue in many parts of the country through much of May, possibly longer. March 2020 saw the worst stock market performance since the Great Recession. Unemployment has increased rapidly with a record-breaking 20 million people filing for unemployment insurance in four weeks. The week ending in April 4 saw the highest unemployment rate on record.

Federal lawmakers passed a COVID-19 response bill that appropriated significant

³ A *recession* is a downtrend in the economy that can affect production and employment, and produce lower household income and spending. The effects of a *depression* are much more severe, characterized by widespread unemployment and major pauses in economic activity. Recessions can also be more localized while depressions can have global reach. Source: Merriam-Webster

funding for individuals and small businesses. However, many workers are not eligible for these benefits, including recent college graduates with no earnings history, newly self-employed workers who have not filed their taxes, and undocumented workers. Similarly, some small businesses have reported barriers in applying for the special relief loans included in the bill, and the New York Times reported that businesses owned by people of color may face disproportionate barriers in securing loans due to systemic disparities in banking relationships. Further complicating things, as of April 16, the small business loan fund is now exhausted and no more loans will be forthcoming without additional congressional authorization. Sufficient funds for small businesses could be a continual problem over time, depending on the direction of future federal action.

California is in a relatively strong position to face a recession, but the cost of protecting public health will put significant pressure on the state's budget. The California Legislative Analyst stated that California's recession has begun and that demand for government services is increasing as revenues are falling. State legislators authorized the use of \$1.1 billion from the general fund to pay for public health expenses and to assist homeless residents and other vulnerable populations in preventing illness. The state's Department of Finance has forecasted that COVID-19 will require California to spend an additional \$7 billion, and that the fiscal effects of the pandemic will be immediate and last into fiscal year 2021. Moody's Analytics conducted a stress test on state budgets to determine states' capacity to absorb the economic shock resulting from the pandemic. The stress test found that California may face revenue reductions of about 19 to 23 percent depending on the duration of the state's shelter-in-place order.⁴ California is listed among 12 states that have most, but not all, of the reserves they need to handle a recession. California has \$21 billion in reserves and rainy day funds, but the state's budget shortfall will likely exceed reserves. State law requires California to pass a budget with no deficit, so budget cuts will be necessary to pass the budget in June 2020. These cuts will likely result in cuts to funding for local governments to provide services unless additional federal aid becomes available.

Unless future federal relief includes individuals excluded from previous aid bills, it may fall to state and local governments to address their unmet needs. To address this issue, the U.S. House of Representatives introduced a new federal relief bill with provisions to allocate \$250 billion in direct federal aid to local governments with a population of less than 500,000 as they face the mounting challenges related to the pandemic. Whether the bill will pass and whether the funds will be allocated to state and local governments remains to be seen. As of April 20, that bill is still pending, and city staff will monitor its status.

Many California workers most impacted are in lower paid occupations. As of April 15, California saw an unprecedented 2.7 million new unemployment insurance claims in the previous four weeks. The Legislative Analyst's Office stated that unemployment statewide has

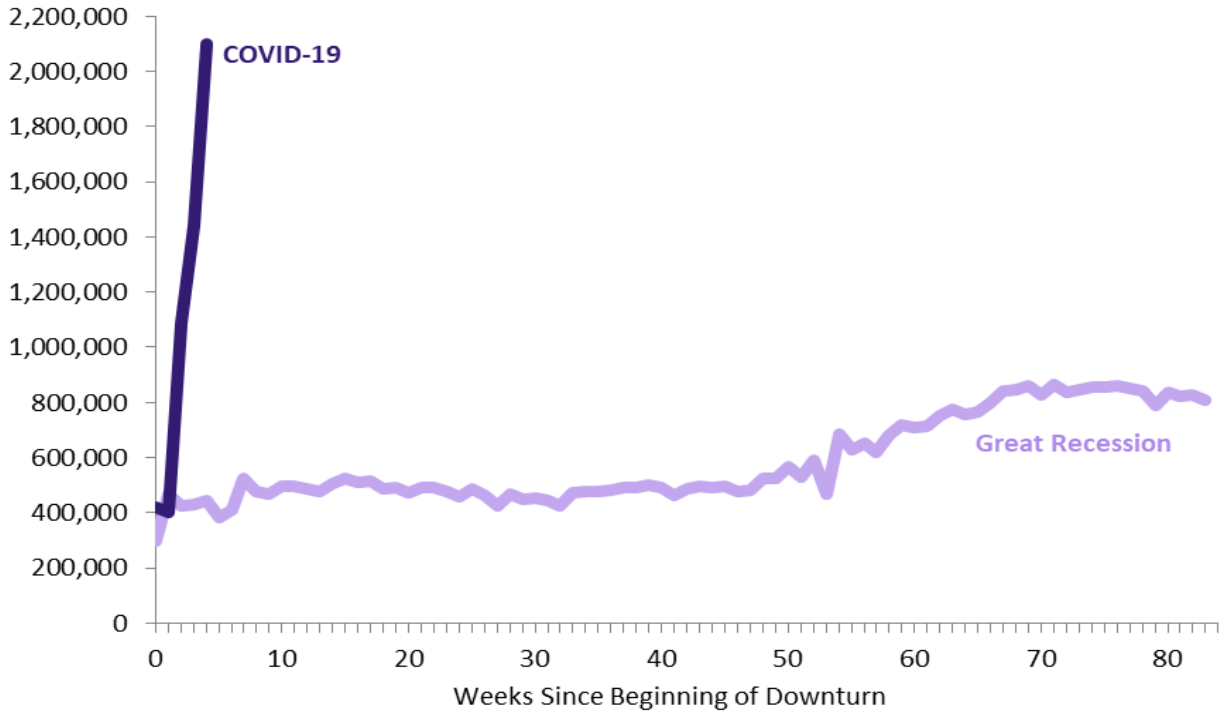
⁴ The estimated revenue reductions assume that the state will experience moderate stress in the form of a deep recession in the first half of 2020 followed by modest rebound and a peak jobless rate of 13 percent in the second quarter of 2020. There is a possibility of a more severe economic stress scenario if travel and business restrictions last into the third quarter of 2020 and the jobless rate reaches 17 percent.

already far exceeded peak unemployment during the Great Recession (see Figure 1). Many of these job losses will be in sectors hardest hit by the closures to comply with shelter-in-place orders, including restaurants, hotels, transportation, retail, and hospitality.

Figure 1. California's Unemployment caseload indicates unprecedented unemployment statewide.

Unemployment Caseload Now More than Double the Worst of the Great Recession

Total number of workers with active claims for unemployment benefits



Source: Legislative Analyst's Office report: <https://lao.ca.gov/LAOEconTax/Article/Detail/452>

Impact on Berkeley's Revenues

The economic shock will affect many of Berkeley's revenue streams, but the total impact is uncertain.

The City's main sources of revenue are expected to decrease, including sales and use tax, revenue from business licenses, transient occupancy tax, parking fines, and property transfer tax. Berkeley budgeted for revenues of \$489.4 million in fiscal year 2020 and \$495.9 million in fiscal year 2021. In the short-term, sales and use tax is likely to decline significantly due to the sudden and extended closure or limited operation of restaurants and retail businesses (see Table 1). Many businesses, especially restaurants, are at risk of closing permanently, which would affect sales and use tax revenue over time. Berkeley may feel this impact more deeply than other California cities because restaurants make up 25 percent of the sales and use tax base compared to 16 percent statewide. However, Berkeley's diverse sales and use tax base may buffer the City from more severe impact as not all businesses are experiencing the same decline in sales.

Any impact the pandemic may have on real estate values will affect property taxes and property transfer taxes. Some analysts estimate that impacts on property values may mirror the Great Recession to some extent. Due to local real estate value assessment practices, property taxes reflect values from one or more years before the taxes are collected. Consequently, Berkeley will experience any impacts to property and property transfer taxes in future years depending on the severity of the downturn. The table below highlights a selection of revenue sources likely to be most affected by the economic downturn. These revenue sources account for more than two thirds of Berkeley's budgeted general fund revenues.

Some funding to support unhoused residents may decrease, but not right away. Berkeley voters passed measures P, O, and U1 to fund affordable housing, provide services to homeless adults and youth, and assist in housing retention and rapid rehousing for unhoused residents, respectively. Measure U1 is tied to property taxes, and Measure P is tied to property transfer taxes. Initiatives funded by these measures will likely see less funding to the extent that the

KEY TAKEAWAYS

The economic shock will affect many of Berkeley's revenue streams, but the total impact is uncertain.

- The City's main sources of revenue are expected to decrease, including sales and use tax, revenue from business licenses, transient occupancy tax, parking fines, and property transfer tax.
- Impact on property tax and property transfer tax revenue will be more gradual and depend on how the pandemic affects property values.

Federal and state funding will cover some COVID-19 response but will likely not completely make up for lost revenue.

- This situation is more volatile because economic activity is tied to the COVID-19 transmission rate.

Financial experts suggest that cities use multiple scenarios to forecast revenue losses.

- Without additional federal aid, state and local governments will be stretched to address residents' unmet needs.

pandemic affects property values and sales. Measure O is funded through municipal bonds and the City's Finance Director does not foresee an impact to those funds at this time.

Table 1. Selected Revenues Most Impacted by COVID-19, Fiscal Year 2020

Revenue Source	% of General Fund	Potential Impact ⁵	Estimated First Impact ⁶
Property Tax (Real and Unsecured)	34%	This revenue was relatively stable during the Great Recession, and is likely to change to the extent that COVID-19 affects the housing market and property values. This impact will likely be moderate rather than severe.	12+ months
Sales and Use Tax	10%	Berkeley's sales and use tax will decline significantly with restaurants and many other businesses closed or scaled back. This impact will be multiplied if COVID-19 forces UC Berkeley to extend online classes into the fall and staff, faculty, and students are not spending money at Berkeley businesses. However, sales tax revenue is able to recover more quickly than other taxes.	Immediately
Business License Tax	10%	Business licenses are taxed based on a percentage of the previous year's gross receipts. Businesses that close permanently or take in less money this year due to closure required by public health officials will likely pay less taxes in the following fiscal year. This revenue will likely decrease by about 10-15 percent over the next 2 fiscal years.	12+ months
Property Transfer Tax ⁷	6%	During the Great Recession, property transfer taxes declined by 51% between 2007 and 2009, and did not return to pre-recession totals until 2016. This revenue will likely not be lost, but deferred until real estate sales resume after the shelter-in-place order is lifted.	12+ months
Transient Occupancy Tax	4%	Hotel Tax revenue remained relatively flat during the Great Recession. However, tax revenue will decline now as the shelter-in-place order affects occupancy.	Immediately
Parking and Moving Violations	4%	Berkeley has relaxed parking enforcement to promote social distancing. Revenue is likely to decline as a result.	Immediately

Sources: The City of Berkeley's Adopted Budget Book for Fiscal Years 2020 and 2021, auditor analysis, and estimates by the League of California Cities

Projected revenue from taxes that increase based on growth in the consumer price index (CPI)⁸ may now be overestimated. Berkeley's budget for fiscal years 2020 and 2021 assumes that revenues for the following taxes will reflect an increase in CPI: Emergency Services for the Disabled Tax, Library Tax, Parks Tax, and the Measure GG Fire Services and Disaster Preparedness Tax. The City budgeted for a CPI increase of 3.32 percent annually over the next

⁵ Auditor analysis based on estimates by the League of California Cities.

⁶ "Immediately" refers to the April-

⁷ Tax on the sale of real estate property.

⁸ The U.S. Bureau of Labor Statistics defines CPI as "a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services."

five years, but that may now change. CPI decreased to about 0.8 percent in 2009 during the Great Recession. Depending on the length and severity of this economic downturn, CPI could hold steady or decline in 2021 resulting in less revenue from these tax funds than previously estimated.

Federal and state funding will not completely cover the anticipated revenue shortfall. Berkeley receives about \$34 million in grant funding, and about half of Berkeley's public health funding in fiscal year 2019 came from government grants. Researchers at Moody's Analytics estimate that California may face revenue reductions of approximately 19 to 23 percent compared to 10 percent during the Great Recession. Such severe budget shortfalls may affect availability of funding to Berkeley to provide services unless additional federal aid becomes available.

Some actions the City has taken to assist small businesses and residents will also affect revenue. The City has allowed customers of commercial refuse services to reduce or temporarily stop service and allowed businesses that have loans with the City to defer loan payments. Additionally, revenue from parking fees and enforcement will decrease as the City has stopped charging fees at parking meters and has stopped parking enforcement except for violations with safety risks.

Revenue reductions could put more pressure on the ongoing Marina Fund deficit. Prior to COVID-19, the costs to operate the Berkeley Marina exceeded berth rentals and lease revenue by about \$1 million. The City's most recent budget noted that without revenue and expenditure balancing measures, the Marina Fund would exhaust its reserves by 2021. Any increases to personnel costs and decreases in revenue due to COVID-19 will further deplete reserves and increase the deficit.

Federal and state funding will cover some COVID-19 response costs but will likely not completely make up for lost revenue.

Some funding from the \$2 trillion COVID-19 relief bill is allocated to assist states in responding to the crisis, but it will be up to states whether to disburse any of those funds to local governments. The bill will allocate about \$10 billion in block grants to California, and Governor Newsom stated that \$4.5 billion would go directly to local governments. There are no details yet about when that will happen or how much Berkeley will receive. The bill allows jurisdictions with populations over 500,000 people to receive aid, but Berkeley's population falls short. Federal legislators are currently considering an additional relief bill that would include provisions to dedicate aid specifically for local governments. It is unclear if cities will be allowed to use those funds to make up for lost revenue. Government finance experts we interviewed stated that the total aid Berkeley receives is unlikely to completely cover the cost of responding to COVID-19 and other lost revenue.

The City of Berkeley is eligible for reimbursement for some COVID-19 response activities. Reimbursable activities include increased disinfecting of public spaces, responding to medical calls, providing overflow capacity to overwhelmed hospitals, and communicating health guidance to residents. Funding may also reimburse some staff costs associated with the response to the COVID-19 pandemic, distribution of personal protective equipment and supplies, and increased security and law enforcement. The largest amount of funding is likely to come from the Federal Emergency Management Agency's Public Assistance program. At this time, there is no funding dedicated to reimburse cities for reduced revenues due to shelter-in-place orders.

California has granted \$100 million to help protect the health and safety of people experiencing homelessness during the COVID-19 pandemic.⁹ Berkeley is likely to receive some portion of this funding as reimbursement for costs to provide COVID-19-related services to unhoused people. Other funding from state agencies directed to Berkeley's costs to respond to COVID-19 have not been released.

Financial experts suggest that cities use multiple scenarios to forecast revenue losses.

This pandemic-induced economic downturn is unprecedented, and its duration and severity are uncertain. Finance and government experts we interviewed stated that, at this early point in time, the closest cities can come to forecasting how the COVID-19 pandemic may impact local revenues is to plan for moderate and severe revenue shortfalls and moderate or long economic recoveries. Those models can be updated as more information about public health risk becomes available and federal and state policies respond to the pandemic. Some examples of scenarios that may be useful for Berkeley to consider include the following types of economic impact:

- “V-shaped” deep decline and relatively faster recovery--prior epidemics have caused “V-shaped” impact, but COVID-19 is a larger global pandemic and has affected more of the global economy
- “U-shaped” deep decline and relatively longer recovery
- “L-shaped” deep decline and longer recovery
- “W-shaped” decline and recovery followed by second decline if there is a second wave of COVID-19

City staff are working to develop revenue loss projections, but those numbers are not yet available. It is especially challenging to project revenue shortfalls because many factors, such as the duration of the shelter-in-place order and the availability of federal and state funding, are subject to change depending on the severity of the COVID-19 outbreak. Providing updates regularly with revised projections can help with planning and adjustments to the plan.

⁹ Alameda County has been allocated \$1.4 million. These funds will be available to the county once it depletes its current emergency budget.

Impact on Berkeley's Expenditures

The COVID-19 outbreak may increase demand for city services in the short- or long-term, leading some expenditures to increase even as the overall budget decreases.

Some expenditures will increase depending on the severity of the COVID-19 outbreak. The costs of running emergency operations and protecting public health will continue to increase in proportion to the rate of transmission in Berkeley and the Bay Area. In addition to safeguarding the community, the City can take comprehensive action now to contain the virus and reduce transmission, and maintain those measures until the virus is contained.

Berkeley is facing some immediate increases in costs to protect public health and welfare. These costs include city actions to communicate safety guidelines to the public, distribute supplies, assist unhoused residents, and increase sanitation measures. The total cost of these interventions will be directly related to the duration and severity of public health risk. Other immediate expenditures include relief to small businesses, community organizations, and renters. City Council established the Berkeley Relief Fund and allocated \$3 million for emergency relief grants to small businesses, nonprofit arts organizations, and residential tenants that are hardest hit by the COVID-19 pandemic. This fund provides grants to small businesses up to \$10,000, which will provide some relief. However, if COVID-19

Berkeley has taken immediate action to protect the community from COVID-19 including, but not limited to:

- Setting up a COVID-19 testing site for vulnerable community members, including those without access to health care as well as firefighters, nurses, police officers, and other essential City employees
- Convening a task force of staff from Berkeley Fire and Public Health to help skilled nursing and long term care facilities to limit the spread of COVID-19 and prepare for an outbreak
- Placing unhoused residents living in shelters into hotel rooms
- Increasing sanitation capacity at homeless encampments

KEY TAKEAWAYS

The COVID-19 outbreak may increase demand for city services in the short- or long-term, leading some expenditures to increase even as the overall budget decreases.

- Some expenditures will increase depending on the severity of the COVID-19 outbreak.
- COVID-19 will likely increase the cost to provide health insurance and retirement contributions for city employees.

Finance and budget experts we consulted recommend best practices for making decisions about reducing expenditures.

- Prioritize public health and safety, as well as community value in making decisions about cuts.

Proper planning is crucial in using reserves to make up for lost revenue.

- Berkeley is fortunate to have a reserve fund, giving the City more flexibility during economic downturns.

risks persist for many months, a year, or more, the needs of these businesses and organizations will outstrip the fund's resources.

COVID-19 will likely increase the cost to insure city employees. Covered California estimates that healthcare costs directly related to COVID-19 may cause 2021 health insurance premiums to increase by up to 40 percent nationwide. To recoup those costs, insurers will likely pass on this increase to employers, who may pass those costs to employees. Before COVID-19, Berkeley budgeted for a projected rate increase of only 12 percent in fiscal year 2021.

Potential longer term expenditure increases include contributions to employee retirement benefits. The City of Berkeley and its employees pay into the California Pension Employees Retirement System (CalPERS), which lost \$69 billion of its \$404 billion fund balance due to the economic downturn in March. City and employee contributions may increase in the future to make up for the lost value, as they did following the Great Recession. This increase is in addition to an existing \$665 million in unfunded liabilities related to employee retirement benefits.¹⁰ CalPERS may recover some of this value as stock market values rebound. Moody's Investors Service estimates that the U.S. pension systems are on track to see investment losses of about 21 percent for fiscal year 2020. However, this is only one estimate and the impact could vary depending on the severity and duration of the economic downturn.

Berkeley is taking steps to reduce expenditures and prioritize essential services. The City Manager asked department directors to look at budgets to identify non-essential and non-urgent expenditures that can be reduced or deferred. As of writing, city management is developing a balanced budget which incorporates the impacts of the COVID-19 pandemic to ensure the City can meet essential community needs and mitigate the effect of reduced revenue.

Finance and budget experts we consulted recommend considering the following in making decisions about reducing expenditures.

The considerations below summarize considerations we gathered from finance experts and government officials. We offer these practices and concepts that may be useful for Berkeley to consider in navigating the financial challenges of COVID-19. We suggest that this work be done quickly but thoroughly to yield maximum savings. Other cities in the Bay Area and across the state are already experiencing severe economic consequences and are considering or taking some of the steps listed below. Please note that these considerations do not constitute specific audit recommendations.

¹⁰ *Unfunded liabilities* are financial obligations for which an organization does not have sufficient resources to cover if all obligations were immediately due. According to a March 2019 Council report, Berkeley also has about \$786 million in unfunded liabilities related to infrastructure.

General

- Prioritize public health and safety, as well as community value, in making decisions about cuts rather than applying cuts across the board.
- Ensure social equity in decisions about using city resources to support the community by considering the full range of needs, from small businesses, to residential renters, to community service agencies that provide critical services to the City's most vulnerable residents. Evaluate the need to address community needs comprehensively, rather than on a one-at-a-time basis, so that city resources are distributed fairly and in proportion to the level of need.
- Federal and state funding will help Berkeley pay for activities to protect public health and respond to the COVID-19 pandemic. It will be important to monitor emerging funding opportunities and leverage government membership associations to collectively advocate for increased federal and state aid.
- It is also important to plan for total federal and state aid to fall short of Berkeley's overall need. It will be necessary to coordinate use of Berkeley's resources to provide support in areas that are not supported by federal and state funding. The City will need to consider supporting not only small businesses, but also Berkeley's community agencies. These organizations serve as safety nets for our most vulnerable residents by connecting them to food, healthcare, housing, and other essential resources critical to staying safe during a pandemic.
- It is important to consider both short-term expenditures to protect public health and provide essential services, and longer-term expenditures that may be needed to prepare Berkeley for swift economic recovery.
- Managing the influx of reimbursement programs and other possible future funding opportunities from the federal and state government can be challenging and resource-intensive. Much of this will require Berkeley to recover these costs from the federal and state sources. Investing in adequate staffing to manage the processes and maintain fiscal accountability requirements is a key consideration for reducing Berkeley's personnel expenditures.
- Conduct an assessment of all expenditures to determine whether they can continue, including an assessment of whether deferment is possible for new and ongoing projects that are not essential at this time.

Personnel

- Make every effort to avoid layoffs to prevent further unemployment.
- Implement a hiring freeze with a process for exceptions and flexibility for essential service roles.
- Consider approaches that would allow flexibility to defer wage increases if revenues fall short of a certain threshold.
- Consider the need for administrative support for the City's disaster cost recovery efforts when making any changes to staffing.

- Consider increased technology and operational costs for remote work if the shelter-in-place order continues into the future.
- Estimate the increase of healthcare costs associated with the continued response to the COVID-19 pandemic.
- In the event that the budgetary impact is so severe that furloughs and layoffs are considered necessary, prioritize community needs in deciding which positions to cut rather than across-the-board staff reductions. This could include a community needs assessment that evaluates the community value of positions at all levels. It could also include implementing voluntary separations for non-essential staff based on the outcomes of the community needs assessment.
- Consider maintaining the administrative support needed to monitor and manage services provided to the community, including support to community agencies.

Capital development and outlay

- For new capital projects, assess which ones may be deferred with minimal impact on community wellbeing. Remember that for affordable housing development and other projects funded by property taxes, these funding streams may not be affected in the next one to two fiscal years.
- Assess which large purchases can be deferred and which equipment and vehicles may be replaced when funding is more stable.

Proper planning is crucial in using reserves to make up for lost revenue.

Berkeley is fortunate to have a reserve fund, giving the City more flexibility during economic downturns. Experts we spoke with advised taking a long-term, multi-year view to spending reserves so that funds are available for the duration of the economic downturn. Berkeley's General Fund Reserve Policy provides some guidance but is limited on specific details on how to use the reserves. The reserves are made up of the Stability Reserves and the Catastrophic Reserves and cannot be used for new programs or projects. Stability Reserves are to be used to maintain fiscal stability to address unexpected shortfalls, while Catastrophic Reserves are for maintaining operations in the case of a public emergency.

Experts we spoke with advised taking a long-term view in spending reserves so that funds will be available for the duration of the downturn. The following points reflect other best practices for considering when and how to use reserves in an economic downturn.

- **It is most beneficial to use reserves as part of a plan with defined end dates and a specific goal.** The COVID-19 pandemic may come in multiple waves and require repeated shelter-in-place orders to control transmission and protect public health. Without a reliable estimate of when or how the economy will begin to recover, Berkeley

should be cautious about how much to spend to make sure there are enough reserves to pull the City through a protracted economic downturn.

- **Do not rely solely on reserves, but use them in combination with other measures to reduce expenditures and mitigate revenue loss.** As part of having a reserves plan, diversifying the response to revenue shortfalls rather than depleting reserves may put Berkeley in a better financial position to weather a protracted downturn and recover after the pandemic. A first step is to assess the funding needed for essential services. A second step is to make critical decisions about what needs to be reduced that is not critical. Reserves can then be used to offset the funding gap to maintain core responsibilities of preserving life safety and health of Berkeley residents, protecting our most vulnerable residents, and maintaining the character of our community.
- **It can be helpful to develop multiple scenarios with specific criteria for when and how much of the reserves can be used.** For example, if revenues fall below a certain threshold for a certain amount of time, and other identified revenue sources are exhausted, the City will use a specified amount of general funds and the reserves to cover essential costs. In addition, the City has not set a limit for using its reserves unlike the state's policy of only being able to use 50 percent of the reserves during the first year of a declared budget emergency. The City can consider a similar approach if it estimates the economic impacts to be lengthy and will need the reserves to last over a longer period of time.

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Mission Statement

Promoting transparency and accountability in Berkeley government.

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BERKELEY CITY AUDITOR

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Office of the Mayor

CONSENT CALENDAR
May 12, 2020

To: Members of the City Council
 From: Mayor Jesse Arreguín and Councilmember Rashi Kesarwani
 Subject: Repeal SB 872 – Prohibition on Sugar Sweetened Beverages Tax

RECOMMENDATION

Adopt a Resolution calling on the Governor and State Legislature to overturn SB 872, a 2018 law prohibiting new sugar sweetened beverage taxes until 2030. Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymember Buffy Wicks.

BACKGROUND

On November 3, 2014, the City of Berkeley became the first city in the country to pass a tax on sugar sweetened beverages, with Measure D receiving over 76% of the vote. As a result of Berkeley's leadership, other California cities, including San Francisco, Oakland, and Albany, have passed similar measures. In response to the growing list of cities passing such voter-approved taxes, the American Beverage Association successfully lobbied the State Legislature to pass SB 872 in 2018. This law prohibits new taxes on any "groceries", broadly defined to mean any food or beverage intended for human consumption, except for alcohol, cannabis, and tobacco products. This definition included "carbonated and noncarbonated nonalcoholic beverages".

Arguments against the bill included concerns that cities, still recovering from the 2008 recession, would lose their ability to create new sources of revenue to balance their budgets. In 2020, cities and governments across the world are grappling with the economic uncertainty caused by COVID-19, with many cities scrambling to address plummeting sales tax revenues while millions file for unemployment. Additionally, protecting public health is paramount in the face of the ongoing COVID-19 crisis. According to the American Diabetes Association, people with diabetes are more likely to face serious symptoms and complications from the virus. Multiple studies have conclusively drawn links between the consumption of sugary beverages with an increased risk for diabetes.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of SB 872

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

CALLING UPON THE CALIFORNIA GOVERNOR AND STATE LEGISLATURE TO
OVERTURN SB 872

WHEREAS, Governor Jerry Brown and the State Legislature were essentially forced to enact a law, SB 872, temporarily prohibiting and preempting the ability of California cities of their right to enact popular sugary drink taxes, despite the fact they are proven tools for cities to improve public health and raise revenue. This was in exchange for preventing a more extreme attack by big business on governmental taxing authority; and

WHEREAS, the City of Seattle enacted a soda tax in 2018 and has been able to use that revenue this year to give Seattle families \$800 each to specifically fight COVID-19; and

WHEREAS, California voters who passed soda taxes in their cities before SB 872, including the City of Berkeley in 2014, have improved the health of their residents and given their cities millions of dollars in revenue available to stave off budget cuts due to the COVID-19 induced economic downturn; and

WHEREAS, a majority vote of the California Legislature and a signature by the Governor now would give California Cities one more tool to fight COVID-19 and;

WHEREAS, California cities need every single tool available in the war against COVID-19 and to give their residents the possibility of a healthier future; and

WHEREAS, the world has changed since COVID-19 and California can no longer afford to handcuff cities and prevent voters from using proven tools to improve health equity and public health and provide for safe, accessible and affordable drinking water.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby urges the California State Legislature and the Governor of California to overturn SB 872 and allow residents to choose whether they want a sugary drink tax in their city.

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

Senate Bill No. 872

CHAPTER 88

An act to add Section 7284.10 to Chapter 1.8 (commencing with Section 7284.8) of Part 1.7 of Division 2 of the Revenue and Taxation Code, as proposed by Assembly Bill 1838 of the 2017–18 Regular Session, relating to taxation, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor July 9, 2018. Filed with Secretary of State July 9, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 872, Committee on Budget and Fiscal Review. Local government: taxation: prohibition: groceries.

Existing law authorizes counties, cities, and other local agencies to impose various taxes and fees in connection with activity or property within those jurisdictions. The California Constitution also authorizes a charter city to levy local taxes to raise revenues for local purposes, subject to restrictions imposed by that city's charter or preemption in matters of statewide concern.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose a local sales and use tax in accordance with that law for tangible personal property sold at retail in the county or city, or purchased for storage, use, or other consumption in the county or city. That law requires the county or city to contract with the California Department of Tax and Fee Administration for the administration of the taxes and requires the department to transmit those taxes to the city or county.

AB 1838 of the 2017–18 Regular Session, if enacted, on and after the effective date of that measure and until January 1, 2031, would prohibit the imposition, increase, levy and collection, or enforcement by a local agency of any tax, fee, or other assessment on groceries, except as provided. That bill would allow a local agency to continue to levy and collect, enforce, or reauthorize any tax, fee, or other assessment on groceries imposed, extended, or increased on or before January 1, 2018. That bill would make inoperative on the effective date of that measure any tax, fee, or other assessment on groceries imposed by a local agency after January 1, 2018.

This bill would exclude cannabis from the definition of groceries, as defined for purposes of AB 1838 of the 2017–18 Regular Session, if that bill is enacted and becomes effective.

This bill would appropriate from the General Fund \$12,000 to the California Department of Tax and Fee Administration to notify affected governmental entities of the requirements of AB 1838 of the 2017–18 Regular Session on its Internet Web site.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

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

SECTION 1. Section 7284.10 is added to Chapter 1.8 (commencing with Section 7284.8) of Part 1.7 of Division 2 of the Revenue and Taxation Code, as proposed by Assembly Bill 1838 of the 2017–18 Regular Session, to read:

7284.10. For the purposes of this chapter, all of the following definitions shall apply:

(a) “Alcoholic beverages” has the same meaning as that term is defined in Section 23004 of the Business and Professions Code.

(b) “Cannabis” has the same meaning as that term is defined in Section 26001 of the Business and Professions Code.

(c) “Cannabis products” has the same meaning as that term is defined in Section 26001 of the Business and Professions Code.

(d) “Cigarettes” has the same meaning as that term is defined in Section 30121.

(e) “Electronic cigarettes” has the same meaning as that term is defined in Section 30121.

(f) (1) “Groceries” means any raw or processed food or beverage including its packaging, wrapper, or container, or any ingredient thereof, intended for human consumption, including, but is not limited to, meat, poultry, fish, fruits, vegetables, grains, bread, milk, cheese and other dairy products, carbonated and noncarbonated nonalcoholic beverages, kombucha with less than 0.5 percent alcohol by volume, condiments, spices, cereals, seasonings, leavening agents, eggs, cocoa, teas, and coffees whether raw or processed, including its packaging, wrapper, or container.

(2) “Groceries” does not include alcoholic beverages, cannabis, cannabis products, cigarettes, tobacco products, and electronic cigarettes.

(g) “Local agency” has the same meaning as provided in Section 6252 of the Government Code, and includes the electorate of a local agency in exercising the initiative power.

(h) “Tax, fee, or other assessment on groceries” includes, but is not limited to, sales and use taxes, a gross receipts tax, business and occupation tax, business license tax, excise tax, privilege tax, surcharge, or any other similar levy, charge, or exaction of any kind on groceries or the manufacture, supply, distribution, sale, acquisition, possession, ownership, transfer, transportation, delivery, use, or consumption thereof.

(i) “Tobacco products” has the same meaning as that term is defined in Section 30121.

SEC. 2. The sum of twelve thousand dollars (\$12,000) is hereby appropriated from the General Fund to the California Department of Tax and Fee Administration to notify affected governmental entities of the

requirements of Chapter 1.8 (commencing with Section 7284.8) of Part 1.7 of Division 2 of the Revenue and Taxation Code, as added by Assembly Bill 1838 of the 2017–18 Regular Session, on its Internet Web site.

SEC. 3. This act shall become operative only if Assembly Bill 1838 of the 2017–18 Regular Session is enacted and becomes effective.

SEC. 4. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

O



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
May 12, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila (Author), Ben Bartlett (Co-Sponsor)
and Mayor Jesse Arreguin (Co-Sponsor)

Subject: Support California Farmworker COVID-19 Relief Legislation

RECOMMENDATION

1. Adopt a resolution supporting the California Farmworker COVID-19 Relief Legislation advocated by State Assemblymember Robert Rivas (Author)
2. Send copies of this resolution to State Assemblymember Robert Rivas, as well as State Assemblymember Buffy Wicks, and State Senator Nancy Skinner.

BACKGROUND

The Berkeley City Council has a record of adopting legislative measures to support and protect farm workers. Beyond this, the State of California has been instrumental as the site of farmworker resistance and activism, particularly for civil rights organizing led by Cesar Chavez and the United Farm Workers' Grape Strike of 1965. California is also the country's largest producer of leafy greens and edible produce. Our state is deemed America's "salad bowl". We must do everything possible to keep our farms productive in order to feed the country healthy nutritious fruits and vegetables. This includes supporting farmworkers in the midst of the COVID-19 pandemic.

"California's farm workers play a critical role in our state's \$50 billion agriculture industry, and in our nation's food supply," said State Assemblymember Robert Rivas, who grew up in farmworker housing. "Governor Newsom has rightly designated agricultural workers as an essential infrastructure workforce. But as we ask our farmworkers to continue working through the COVID-19 pandemic, we must take action to protect their health, safety, and economic security. Protecting farm workers is not just our moral duty, it is also critical for preventing disruptions to our food supply."¹

Agriculture and farm workers currently face unprecedented demand for food products as residents of California and elsewhere stock their pantries to ensure they can "shelter in place." Yet even as they work to meet this demand, farmworkers often lack access to adequate healthcare, and they live and work in crowded conditions that can leave them vulnerable to contracting COVID-19.

¹ <https://a30.asmdc.org/press-releases/20200409-assemblymember-rivas-introduces-california-farmworker-covid-19-relief>

State Assemblymember Rivas recently introduced a bill package with a number of legislative initiatives to sustain our State's food-growing operations and protect the health of agricultural workers. The California Farmworker COVID-19 Relief Package is posed to assist California farms, which are facing labor shortages, as well as grocers enduring empty shelves due to logistical bottlenecks. Many of the state's one million farmworkers also lack access to health care. To address this, Assemblymember Robert Rivas (D-Hollister) crafted legislation to protect the health, safety, and economic security of agricultural workers, and further prevent disruptions to the nation's food supply.

The California Farmworker COVID-19 Relief Legislation proposes to expand paid sick leave for farmworkers, provide supplemental hazard pay, extend a tax credit to farmers who offer overtime to their workers, fund an outreach campaign to educate workers on personal protection practices, and help expedite temporary housing to mitigate overcrowding and allow for social distancing. The bills were conceived following consultation with the California Department of Food and Agriculture and members of the agricultural industry and farmworker community.

The California Farmworker COVID-19 Relief Legislation consist of the following state bills:

AB 2915: Farmworker COVID-19 Health and Safety Act (to be amended)

- Expands paid sick leave for farmworkers from 3 days to 2 weeks
- Provides for supplemental hazard pay to compensate farmworkers for increased health and child care costs
- Directs subsidies to county, employer, and private child care providers who provide care to farmworker children
- Codifies comprehensive Cal/OSHA guidance on how agricultural businesses should protect and train agricultural workers vis-a-vis COVID-19, including by providing them face masks and personal protective equipment (PPE)
- Funds an outreach campaign of public service announcements and workplace signs, in both English and Spanish, to educate farmworkers on the Cal/OSHA guidance
- Provides temporary housing for agricultural workers to mitigate overcrowding and allow for appropriate social distancing
- Authorizes a comprehensive survey of farmworker housing conditions, including labor camps and H-2A housing, resulting in statewide recommendations to ensure the health and safety of farmworkers

AB 2956: Agriculture Labor Shortage and Overtime Act

- Provides an agricultural overtime tax credit to mitigate the industry labor shortage by subsidizing the cost of businesses paying overtime to existing workers

AB 2164: Telehealth and E-Consult Services Act

- Deploys telehealth and e-consult services for rural and community hospitals

AB 3155: Moderate Income Housing Act

- Streamlines the approval process for smaller unit housing developments to benefit farm workers as well as other lower income residents

AB 2165: Access to Justice and Electronic Court Filings Act

- Expands the availability of electronic filing to all state trial courts, given that access to courthouses is a serious problem in many farmworker communities

It is our duty as residents and legislators in the City of Berkeley to promote public health by ensuring the continued productivity of our food supply and safeguarding the health of vulnerable essential agricultural service workers in the face of the Coronavirus (COVID 19) pandemic.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Protecting our communities during this climate and health crisis is an act of environmental sustainability.

CONTACT PERSON

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cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution

LINKS TO LEGISLATION

1. AB 2915

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2915

2. AB 2956

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2956

3. AB 2164

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2164

4. AB 3155

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB3155

5. AB 2165

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2165

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY IN SUPPORT OF THE CALIFORNIA FARMWORKER COVID-19 RELIEF LEGISLATION

WHEREAS, The Berkeley City Council has a record of adopting legislative measures to support and protect farm workers. Beyond this, the State of California has been instrumental as the site of farmworker resistance and activism, particularly civil rights organizing led by Cesar Chavez and the United Farm Workers' Grape Strike of 1965; and

WHEREAS, California is the country's largest producer of leafy greens and edible produce. Our state fills "America's salad Bowls"; and

WHEREAS, We must do everything possible to keep our farms productive to feed the country healthy nutritious fruits and vegetables, including support of farmworkers in the midst of the COVID-19 pandemic; and

WHEREAS, California's farm workers play a critical role in our state's \$50 billion agriculture industry, and Governor Newsom has designated agricultural workers as an essential infrastructure workforce; and

WHEREAS, California farms are currently facing labor shortages due to COVID-19, grocers are experiencing empty shelves because of logistical bottlenecks, and many of the state's up to one million farmworkers are lacking access to healthcare; and

WHEREAS, State Assemblymember Robert Rivas (D-Hollister) recently introduced "California Farmworker COVID-19 Relief Package" to protect the health, safety, and economic security of agricultural workers and prevent disruptions to the nation's food supply; and

WHEREAS, The five-bill "California Farmworker COVID-19 Relief Package" proposes to expand paid sick leave for farmworkers, provide supplemental hazard pay, extend a tax credit to farmers who offer overtime work to their workers, fund an outreach campaign to educate workers on personal protection practices, and will help to expedite temporary housing, mitigating overcrowding and allowing for social distancing; and

WHEREAS, The California Farmworker COVID-19 Relief Package contains the following legislations:

AB 2915: Farmworker COVID-19 Health and Safety Act Expands paid sick leave for farmworkers from 3 days to 2 weeks; Provides for supplemental hazard pay, to compensate farmworkers for increased health and child care costs; Directs subsidies to county, employer, and private child care providers, who provide care to farmworker children; Codifies comprehensive Cal/OSHA guidance on how agricultural businesses should protect and train agricultural workers vis-a-vis COVID-19, including by providing them face masks and personal protective equipment (PPE); Funds an outreach campaign of public service announcements and workplace signs, in both English and Spanish, to educate farmworkers on the Cal/OSHA guidance; Provides temporary housing for agricultural workers, to mitigate overcrowding and allow for appropriate social distancing; Authorizes a comprehensive survey of farmworker housing conditions, including labor camps and H-2A housing, resulting in statewide recommendations to ensure the health and safety of farmworkers.

AB 2956: Agriculture Labor Shortage and Overtime Act Provides an agricultural overtime tax credit, to mitigate the industry labor shortage by subsidizing the cost of businesses paying overtime to existing workers

AB 2164: Telehealth and e-Consult Services Act Deploys telehealth and e-consult services for rural and community hospitals

AB 3155: Moderate Income Housing Act Streamlines the approval process for smaller unit housing developments, to benefit farm workers as well as other lower income residents

AB 2165: Access to Justice and Electronic Court Filings Act Expands the availability of electronic filing to all state trial courts, given that access to courthouses is a serious problem in many farmworker communities

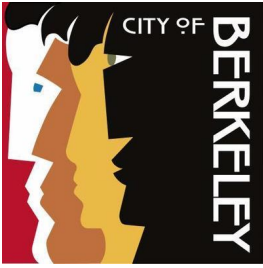
WHEREAS, Agriculture and farm workers currently face unprecedented demand for food products as people stock their pantries to ensure they can shelter in place; and

WHEREAS, Farmworkers often lack access to adequate healthcare and live and work in crowded conditions that can leave them vulnerable to contracting COVID-19; and

WHEREAS, Protecting farm workers is not just our moral duty, it is critical for preventing disruptions to our food supply;

NOW, THEREFORE, BE IT RESOLVED that the City Council for the City of Berkeley support the California Farmworker COVID-19 Relief Legislation advocated by State Assemblymember Robert Rivas (Author); and

BE, IT FURTHER RESOLVED, that copies of this resolution be sent to State Assemblymember Robert Rivas, as well as State Assemblymember Buffy Wicks and State Senator Nancy Skinner.



Councilmember Ben Bartlett
City of Berkeley, District 3
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
PHONE 510-981-7130
EMAIL: bbartlett@cityofberkeley.info

CONSENT CALENDAR
May 12th, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett (Author) and Cheryl Davila (Author)
Subject: Berkeley Juneteenth Association: Relinquishment of Council Office Budget Fund to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 from both Councilmember Ben Bartlett & Cheryl Davila, for pre-planning the Berkeley Juneteenth Festival (organized by Berkeley Juneteenth Association, Inc. 501(c)3). The funds will be relinquished to the City’s General Fund for this purpose from the discretionary council office budget of Councilmember Bartlett and any other councilmembers who would like to contribute.

BACKGROUND

President Lincoln issued his Emancipation Proclamation on January 1, 1863, but people in bondage in Texas remained unaware of their freedom until 1865 since their captors withheld this information from them. On June 18, 1865, Major General Gordon Granger of the Union Army along with 1,800 soldiers arrived in Galveston, Texas to force the captors to release the people in bondage, whose population had swelled to over a quarter of a million.

The next year, newly-freed people in Texas flooded the streets, celebrating June 19th as their own emancipation day. Local groups kept the Juneteenth tradition alive and, in 1979, the passage of H.B. 1016 made June 19th Black Heritage Day an official Texas holiday. In commemoration of African American culture and traditions, Juneteenth is now celebrated in communities nationwide.

The Berkeley Juneteenth Festival was founded by R.D. Bonds, Bradley Walters, and Sam Dyke, who started the festival celebration to promote community pride and bring together South Berkeley businesses and residents in the celebration of a major African American cultural event. The establishment of Berkeley Juneteenth Association, Inc. (BJAI) culminated in the first annual Festival in 1987, hosting 32 successful annual Juneteenth Festivals since. Former City Councilmembers Mary Wainwright and the late Maudell Shirek were instrumental in obtaining City sponsorship. The late Lothario Lotho and Giselle Thomas also dedicated over 25 years. The 33rd Annual Berkeley Juneteenth Festival will be tentatively held on Sunday, June 21, 2020 on Alcatraz Ave and Adeline St.

FISCAL IMPLICATIONS OF RECOMMENDATION No General Fund impact; \$500 is available from the discretionary council office budget of Councilmember Ben Bartlett.

ENVIRONMENTAL SUSTAINABILITY No impact.

CONTACT PERSON

Councilmember Ben Bartlett 510-981-7130
James Chang 510-981-7131

ATTACHMENT: 1. Resolution

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

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

WHEREAS, Councilmembers Bartlett has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax-exempt corporation – Berkeley Juneteenth Association, Inc. – will receive the funds; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose: Berkeley Juneteenth Association, Inc. (BJAI) promotes greater societal unity and well-being by educating and involving the community-at-large in historical, family, and cultural activities pertaining to people of color; and

WHEREAS, BJAJ hosts various activities including Black History Month Celebrations and the Berkeley Juneteenth Festival; and

WHEREAS, cultural celebrations are critical to the social and spiritual unity of our community, which are the embodiment of BJAJ events; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their council office budget, of an amount to be determined by each Councilmember, shall be granted to Berkeley Juneteenth Association, Inc.



Sophie Hahn
City of Berkeley Vice Mayor
District 5 Councilmember
2180 Milvia Street
Berkeley CA 94702
510-981-7150

CONSENT CALENDAR

May 12, 2020

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Sophie Hahn
Subject: Board of Library Trustees Reappointment: John Selawsky

RECOMMENDATION

Adopt a Resolution approving the reappointment of John Selawsky to the Board of Library Trustees (“BOLT”) for a term of four years commencing May 16, 2020 and ending May 16, 2024.

FISCAL IMPACTS OF RECOMMENDATION

None.

BACKGROUND

Pursuant to Section 30 of the Charter of the City of Berkeley and BMC Section 3.04.010, the Board of Library Trustees (BOLT) consists of five members appointed by a majority of the City Council, one of whom must be a member of the Council. Trustees are appointed for terms of four-years, serve without compensation, and must be Berkeley residents. Trustees are subject to removal from the Board “at the pleasure” of the City Council, prior to expiration of the term for which they are appointed. Permanent vacancies, from whatever cause, are filled by the City Council by a majority vote for the unexpired term.

Trustee Selawsky is currently serving as a result of appointment to BOLT on May 16, 2017, by City Council resolution 67,989-N.S., for a first term of office ending on May 16, 2020. Trustees are eligible to be reappointed for additional terms. Traditionally, BOLT has supported trustees expressing an interest in serving additional terms of office by providing the City Council with a recommendation for reappointment in advance of the term’s expiration, to ensure continuity and a full complement of board members to conduct business.

In light of the City of Berkeley, State of California and Federal declared COVID-19 Emergencies, BOLT has suspended its regular meetings and no meeting at which such a recommendation could be acted upon has taken place. While the practice of making recommendations for reappointment has been customary, it is not required by the Charter, Berkeley Municipal Code or any other policy of the Library or the City of Berkeley, and the City Council may act to appoint or reappoint a trustee without action by BOLT.

CURRENT SITUATION AND ITS EFFECTS

Trustee Selawsky's first term will end on May 16, 2020 and he is eligible for reappointment for a term that would end on May 16, 2024. Trustee Selawsky is currently serving as President of BOLT and is a trustee in good standing. He has confirmed his willingness to continue serving on BOLT for another term.

CONTACT PERSON

Councilmember Sophie Hahn - 510-981-7150 or 510-682-5905

Attachments:

1. Resolution

RESOLUTION NO. ##,###-N.S.
RE-APPOINTMENT OF JOHN SELAWSKY AS A MEMBER OF THE LIBRARY
BOARD OF TRUSTEES

WHEREAS, Pursuant to Section 30 of the Charter of the City of Berkeley and BMC Section 3.04.010, the Board of Library Trustees consists of five members appointed by a majority of the City Council; and

WHEREAS, on May 16, 2017, by City Council resolution 67,989-N.S., John Selawsky by was appointed to a first term as a Trustee, ending on May 16, 2020; and

WHEREAS, Trustee Selawsky currently serves as President of the Board of Library Trustees, is eligible for reappointment, and has expressed his willingness to serve as a Trustee for another term;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that John Selawsky be reappointed to the Board of Library Trustees for a term beginning May 16, 2020 and ending May 16, 2024.



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

CONSENT CALENDAR
 May 12, 2020

To: Honorable Mayor and Members of the City Council
 From: Councilmember Rigel Robinson
 Subject: Budget Referral: Telegraph Shared Streets

RECOMMENDATION

Refer \$500,000 to the FY2021-FY2022 Budget Process and subsequent budget processes for 30% designs of the Telegraph Shared Streets Project.

IMPACT OF COVID-19

Given the uncertainty of the city's financial situation due to COVID-19, this item is written with the understanding and the intent that the full allocation may need to be allocated in pieces over several budget processes, and it may not be appropriate or possible to allocate funds towards it this upcoming budget process as more immediate needs arise. Nevertheless, this item is submitted for the Council's consideration during the upcoming and future budget processes so that the necessary design work may proceed for the city's applications for regional grant funding in future application cycles. ACTC, for example, is not expected to be accepting project applications this year.

BACKGROUND

The Telegraph Public Realm Plan (TPRP), approved by the Council in 2016 after extensive input from community members including vendors, merchants, property owners, and representatives from UC Berkeley and AC Transit, establishes a vision and provides guidance for a shared street on the first four blocks of Telegraph Avenue.

On October 29th, 2019, the Council referred to staff to develop a plan to implement the shared streets proposal outlined in the Telegraph Public Realm Plan, including identification of potential regional funding sources for the project. In order to begin this process, it is critical for the Council to approve funds for the initial designs of the project. Such preliminary "30% designs" are required for applications for many state and regional grants that will ultimately be the source of much of the funding for the remaining design, planning, and construction work of the project, alongside matching City of Berkeley funding. Staff are currently integrating the Telegraph Shared Streets Project into the Berkeley Strategic Transportation (BeST) Plan, which will further enable the project to receive grant funding.

For more information about the Telegraph Shared Streets Project, please see the October 29th referral, attached, and the TPRP, linked [here](#) and below.

FINANCIAL IMPLICATIONS

Up to \$500,000 to fund designs of the Telegraph Shared Streets referral as originally presented in the Telegraph Public Realm Plan. Funds for implementation of the plan have not yet been identified; this is a preliminary process to create designs with which funding needs and resources can be determined and sought. Transit infrastructure and pedestrian accessibility improvements that may result from future implementation are intended to increase City tax revenues from Telegraph Avenue.

ENVIRONMENTAL SUSTAINABILITY

Implementing a Shared Street on Telegraph Avenue would be with the goal of increasing the number of people walking, biking, and using public transit to access and move through the Telegraph area vis a vis cars. This is directly in line with Berkeley's environmental goals, and a main objective of this project.

CONTACT PERSON

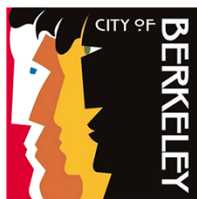
Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Telegraph Public Realm Plan:

<https://www.berkeleyside.com/wpcontent/uploads/2016/09/Telegraph-Public-Realm-Plan-Final-Low-Res.pdf>

2: Referral: Telegraph Shared Streets



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

ACTION CALENDAR

October 29, 2019

(Continued from October 15, 2019)

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson, Mayor Jesse Arreguin, and
 Councilmember Kate Harrison

Subject: Referral: Telegraph Shared Streets

RECOMMENDATION

Refer to the City Manager to develop and return to Council with a plan to implement the shared streets proposal outlined in the Telegraph Public Realm Plan, including identification of potential regional funding sources for the project.

BACKGROUND

The Telegraph Public Realm Plan (TPRP), approved by the Council in 2016 after extensive input from community members such as vendors, merchants, property owners, and representatives from UC Berkeley and AC Transit, establishes a vision and provides guidance for a shared street on the first four blocks of Telegraph Avenue.

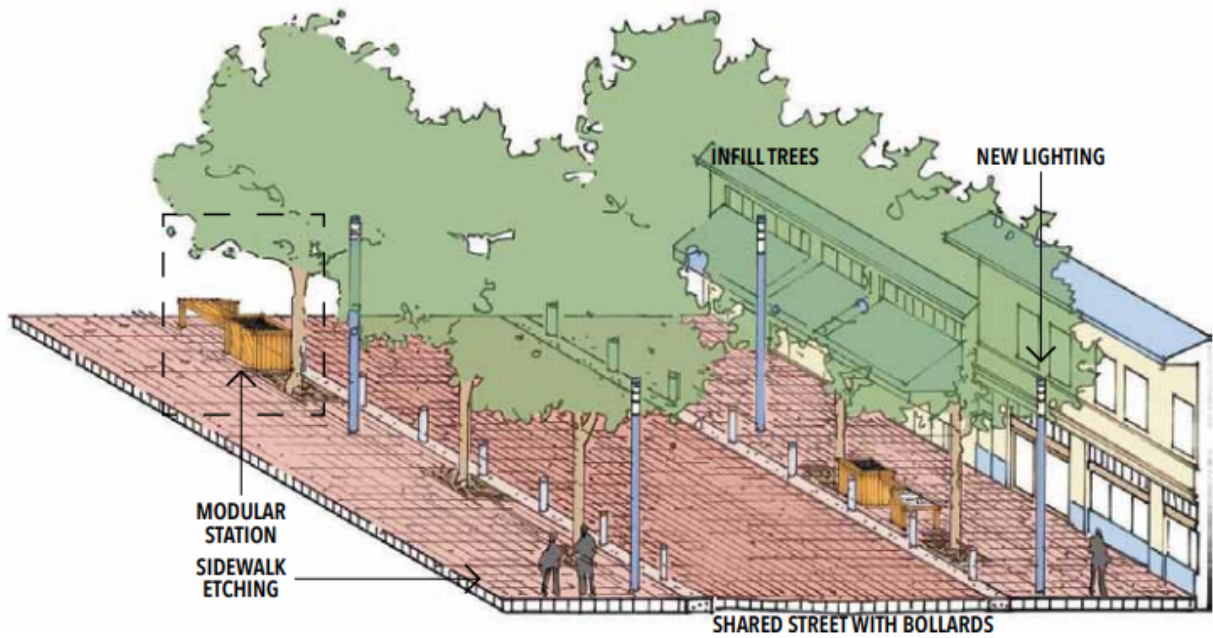
Telegraph Avenue serves as a hub for shopping, dining, music, and nightlife, attracting everyone from students to long-time residents to tourists. Yet, the poor condition of its sidewalks and other public realm elements show that infrastructure improvements have not kept pace. The streetscape has not seen a comprehensive overhaul since the 1970s, demonstrating the need for renewed investment in the area.

The concept of shared streets dates back to before the twentieth century, prior to the invention of modern cars. Most streets were shared between bicycles, carriages, and pedestrians, with minimal delineation between areas for separate transportation modes. As cars became the primary mode of transportation for the majority of Americans, street design standards shifted to prioritize drivers at the expense of bicyclists and pedestrians. Starting in the 1960s, the livable streets movement began to grow as a pushback to auto-centric design. While shared streets are more ubiquitous in European countries, similar projects are becoming more common in the United States. Perhaps most famously, New York City's Times Square was recently transitioned to a pedestrian plaza.¹

As proposed in the TPRP, the stretch of Telegraph Avenue between Dwight and Bancroft is an ideal location for a shared street because of its high foot traffic. Telegraph serves as both one of the main entrances to the UC Berkeley campus and a major

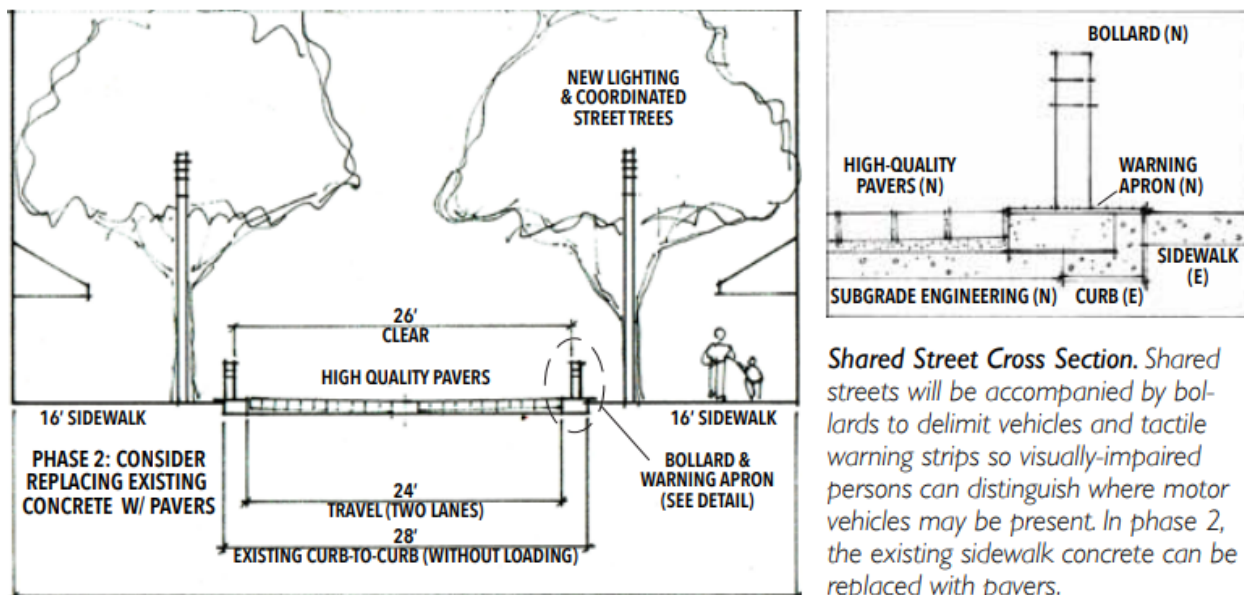
¹ <https://ny.curbed.com/2017/4/19/15358234/times-square-snohotta-before-after-photos>

commercial hub, complete with restaurants, retailers, and more. In a May 2016 study, UC Berkeley found that only 6 percent of students drive to school, while 77 percent walk and 17 percent bike or use public transit.² Merchants on Telegraph would also benefit from a shared street layout, which encourages foot traffic and emphasizes interactions with local businesses and street vendors over through traffic.



Ultimate Condition. TRPR proposes a plaza-like shared street and new lighting as a final phase. Sidewalk etching may remain or, if necessary, sidewalks can be replaced.

² https://opa.berkeley.edu/sites/default/files/where_berkeley_students_live_0.pdf



Shared Street Cross Section. Shared streets will be accompanied by bollards to delimit vehicles and tactile warning strips so visually-impaired persons can distinguish where motor vehicles may be present. In phase 2, the existing sidewalk concrete can be replaced with pavers.

This shared streets initiative is deeply similar to what the City of Seattle implemented with its Bell Street Park project in 2014. The City of Seattle’s Department of Parks and Recreation and Department of Transportation converted Bell Street, one of the busiest avenues in the city, into a shared street, with similar aesthetic and pedestrian-focused changes to those proposed in the TPRP. In order to further incentivize public transit usage, the City does not allow cars to travel more than one block on Bell Street, while buses can travel straight through unhindered.³

³ <https://nacto.org/case-study/bell-street-park-seattle/>



Bell Street, during and shortly after construction.

Additionally, the City of Los Angeles' Great Streets initiative has adopted multiple aspects of shared streets into its renovations of major thoroughfares, seeing both fiscal and popular success. One of the most prominent examples of this has been the Venice Boulevard Great Streets project. In 2016, the city refurbished a 0.8 mile stretch of Venice in Mar Vista with bollard-protected bike lanes, restored and decorated sidewalks, commissioned murals, and parklets on the sidewalks and in medians.

In the first year of the Venice Boulevard Great Street, business and popular opinion have improved, with minimal impact on traffic. Economic activity increased by \$3.3 million and transactions in which customers spent ten dollars or more jumped from 50 percent to 70 percent.⁴ A 2018 survey of the community showed an uptick in public opinion of the neighborhood after the renovation, as the following statistics--which refer to the number of respondents answering "strongly agree" to the statements given--illustrate:

- "The neighborhood is safe" increased from 10% to 46%
- "The neighborhood is active and lively" increased from 6% to 45%
- "The neighborhood is clean and well-maintained" increased from 7% to 35%.⁵

⁴https://static1.squarespace.com/static/595fd8fa5016e119d794e4b1/t/5c1c0c3fcd836656561d106f/1545342048197/VeniceBlvd_1-Year_Report_FINAL_.pdf

⁵ ibid

Additionally, the busiest intersection in the Great Streets stretch, Venice Boulevard and Centinela Avenue, saw a 75 percent reduction in collisions since the project's completion.⁶

Converting Telegraph Avenue into a shared street would make the corridor more appealing to consumers and safer for pedestrians. This vision has similarities to other successful projects, such as the Bell Street Park shared street and the Venice Boulevard Great Street. These case studies highlight additional benefits of a shared street, such as improvements in public opinion and increases in economic activity. The City of Berkeley should move forward with the recommendations made in the TPRP and begin securing the funding needed to put this plan into action by assessing potential regional grant opportunities and partnerships with relevant entities such as UC Berkeley.

FINANCIAL IMPLICATIONS

\$5,787,150 for all four blocks according to the 2016 Telegraph Public Realm Plan, with adjustments for inflation and rising construction costs. The City should explore all funding options, including and especially regional grant opportunities.

ENVIRONMENTAL SUSTAINABILITY

The Telegraph Public Realm Plan shared streets proposal aligns with the City of Berkeley Climate Action Plan to reduce emissions and make "sustainable mobility modes...the primary means of transportation for Berkeley residents and visitors."⁷ In prioritizing pedestrians, bicyclists, and public transit, this initiative directly works towards these goals.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Liam Howell, Intern

Attachments:

1: Telegraph Public Realm Plan: <https://www.berkeleyside.com/wp-content/uploads/2016/09/Telegraph-Public-Realm-Plan-Final-Low-Res.pdf>

⁶ ibid

⁷ <https://www.cityofberkeley.info/climate/>

Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
June 23	<ol style="list-style-type: none"> 1. Climate Action Plan/Resiliency Update 2.
July 21	<ol style="list-style-type: none"> 1. Crime Report 2.
Sept. 29	<ol style="list-style-type: none"> 1. Digital Strategic Plan/FUND\$ Replacement/Website Update 2. Update: Zero Waste Priorities
Oct. 20	<ol style="list-style-type: none"> 1. Update: Berkeley’s 2020 Vision 2. BMASP/Berkeley Pier-WETA Ferry

Unscheduled Workshops
<ol style="list-style-type: none"> 1. Cannabis Health Considerations 2. Vision 2050 3. Ohlone History and Culture (special meeting) 4. Presentation from StopWaste on SB 1383

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

	City Council Referrals to the Agenda Committee and Unfinished Business for Scheduling
1.	<p>68. Revisions to Ordinance No. 7,521--N.S. in the Berkeley Municipal Code to increase compliance with the city's short-term rental ordinance (<i>Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.</i>) March 18, 2019 Action: Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.</p> <p>From: Councilmember Worthington</p> <p>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.</p> <p>Financial Implications: Minimal</p> <p>Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p>
2.	<p>36. Referral Response: Issue a Request for Information to Explore Grant Writing Services from Specialized Municipal Grant-Writing Firms, and Report Back to Council (<i>Referred from the October 15, 2019 agenda</i>)</p> <p>From: City Manager</p> <p>Contact: Henry Oyekanmi, Finance, 981-7300</p> <p><i>Note: Will be considered in FY 2021 Budget Process</i></p>
3.	<p>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 (<i>Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee</i>) (<i>Referred from the January 21, 2020 agenda</i>)</p> <p>From: Councilmember Harrison</p> <p>Recommendation:</p> <ol style="list-style-type: none"> 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. <p>Financial Implications: See report</p> <p>Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140</p> <p><i>Note: Referred to Agenda & Rules for future scheduling.</i></p>
4.	<p>33. Proposed Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley (<i>Referred from the March 10, 2020 agenda</i>)</p> <p>From: Commission on Disability</p> <p>Contact: Dominika Bednarska, Commission Secretary, (510) 981-6300</p> <p><i>Note: Referred for scheduling of a presentation by the Commission</i></p>
5.	<p>44. Pathways STAIR Center: Fiscal Year 2020 – Six Month Evaluation and Results-Based Accountability Dashboard (<i>Referred from the April 14, 2020 agenda</i>)</p> <p>From: City Manager</p> <p>Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400</p> <p><i>Note: Referred to Agenda & Rules for future scheduling.</i></p>

6.	<p>7. Adopt a Resolution to Upgrade Residential and Commercial Customers to 100% Greenhouse Gas Emissions-Free Electricity Plan and Municipal Accounts to 100% Renewable Plan <i>(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee) (Referred from the April 21, 2020 agenda)</i></p> <p>From: Councilmember Harrison (Author), Mayor Arreguin (Author), Councilmember Robinson (Co-Sponsor), Councilmember Hahn (Co-Sponsor)</p> <p>Recommendation: Adopt a Resolution to: a. Opt up Berkeley’s municipal 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. b. Upgrade current and new Berkeley residential and commercial customer accounts from Bright Choice (>85% GHG-free) to Brilliant 100 (100% GHG-free), except for residential customers in low income assistance programs. The transition would be effective October 1, 2020 for residential customers and January 1, 2021 for commercial customers. c. Provide for yearly Council review of the City’s default municipal, residential, and commercial plans.</p> <p>Financial Implications: See report</p> <p>Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140</p> <p><i>Note: Referred to Agenda & Rules for future scheduling.</i></p>
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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				
1449 Grizzly Peak Blvd (single family dwelling)	ZAB	4/28/2020		
2150-2176 Kittredge St (construct new mixed-use building)	ZAB	4/28/2020		
2650 Telegraph Ave (construct new mixed-use building)	ZAB	4/28/2020		
Public Hearings Scheduled				
1533 Beverly Pl (single-family dwelling)	ZAB			TBD
0 Euclid Ave - Berryman Reservoir (denial of 4G telecom facility)	ZAB			TBD
Remanded to ZAB or LPC				
1155-73 Hearst Ave (develop two parcels) 90-Day Deadline: May 19, 2019	ZAB			
Notes				

4/22/2020

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

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I. DUTIES

A. Duties of Mayor

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

B. Duties of Councilmembers

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

C. Motions to be Stated by Chair

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

D. Decorum by Councilmembers

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

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set 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 legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

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

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

III. AGENDA

A. Declaration of Policy

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

B. Definitions

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

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if the Mayor or a Councilmember so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter. Council agenda items are limited to a maximum of 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 agendaized commission report in the following manner:
1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
 2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.
 3. 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 agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

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

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

B. Consent Calendar

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

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

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

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

C. Information Reports Called Up for Discussion

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

D. 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 themselves to the question under debate.

3. Interruptions.

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

4. Privilege of Closing Debate.

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

5. Motion to Reconsider.

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

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

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

G. Debate Limited

1. Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Information Reports; provided that either of the following two not debatable motions shall be in order:
 - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
 - b) If there are one or more motions on the floor, 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 Author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

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

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

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
 - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
 - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
 - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
 - d. Fiscal impacts of the recommendation;
 - e. A description of the current situation and its effects;
 - f. Background information as needed;
 - g. Rationale for recommendation;
 - h. Alternative actions considered;
 - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
 - j. Person or persons to contact for further information, with telephone number. If the Primary Author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

Guidelines for City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Summary Statement/Current situation and its effects
5. Background
6. Review of Existing Plans, Programs, Policies and Laws
7. Actions/Alternatives Considered
8. Consultation/Outreach Overview and Results
9. Rationale for Recommendation
10. Implementation, Administration and Enforcement
11. Environmental Sustainability
12. Fiscal Impacts
13. Outcomes and Evaluation
14. Contact Information
15. Attachments/Supporting Materials

1. **Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

2. **Consent/Action/Information Calendar**

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

3. **Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

4. Summary Statement/ “Current situation and its effects”

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):
Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.

5. Background

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

6. Review of Existing Plans, Programs, Policies and Laws

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
 - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
 - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

10. Implementation, Administration and Enforcement

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

11. Environmental Sustainability

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

12. Fiscal Impacts

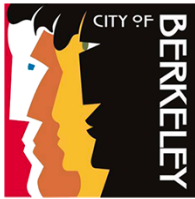
Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

13. Outcomes and Evaluation

State the specific outcomes expected, if any (i.e., "*it is expected that 100 homeless people will be referred to housing every year*") and what reporting or evaluation is recommended.

14. Contact Information

15. Attachments/Supporting Materials



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/>

SB 1383

Reducing Short-Lived Climate Pollutants in California

An Overview of SB 1383's Organic Waste Reduction Requirements



Note to presenter: This slide presentation was developed for local jurisdiction staff by CalRecycle staff to educate city council members city board members, city and county staff, decision-makers, and other impacted colleagues. The slides include suggested talking points. We have also provided a handful of slides with artwork, images, and icons that you can use to build new content if needed. Please view this presentation in slideshow mode before presenting to familiarize yourself with the animations. If you have any questions, you can contact Christina Files in the CalRecycle Office of Public Affairs: christina.files@calrecycle.ca.gov.

Presentation Introduction

- SB 1383 (Lara, Chapter 395, Statutes of 2016) is the most significant waste reduction mandate to be adopted in California in the last 30 years.
- SB 1383 requires the state to reduce organic waste [food waste, green waste, paper products, etc.] disposal by 75% by 2025. In other words, the state must reduce organic waste disposal by more than 20 million tons annually by 2025.
- The law also requires the state to increase edible food recovery by 20 percent by 2025.
- This has significant policy and legal implications for the state and local governments.
 1. SB 1383 establishes a statewide target and not a jurisdiction organic waste recycling target.
 2. Given that it is a statewide target and there are not jurisdiction targets, the regulation requires a more prescriptive approach (this is different than AB 939).
 - A. CalRecycle must adopt regulations that impose requirements necessary to achieve the statewide targets.
 - B. This makes the regulation more similar to other environmental quality regulations where regulated entities, i.e., jurisdictions, are required to implement specific actions, rather than achieve unique targets.

- a. For example AB 32 established GHG reduction targets for the state, and the implementing Cap-and-Trade regulations require businesses to take specific actions.
 - i. The individual businesses are not required to achieve a specific target.
 - ii. They are required to take actions prescribed by the date.

Overview of Presentation

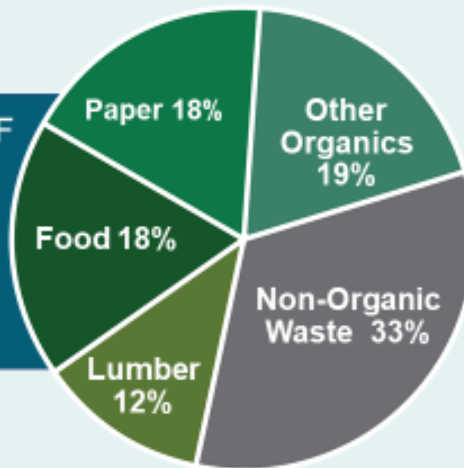
- Background and Context of SB 1383: Why California passed this law
- SB 1383 Requirements: A big picture look at the law's requirements and objectives
- Jurisdiction Responsibilities: What SB 1383 requires of local governments
 - Provide organic waste collection to all residents and businesses
 - Establish an edible food recovery program that recovers edible food from the waste stream
 - Conduct outreach and education to all affected parties, including generators, haulers, facilities, edible food recovery organizations, and city/county departments
 - Capacity Planning: Evaluating your jurisdiction's readiness to implement SB 1383
 - Procure recycled organic waste products like compost, mulch, and renewable natural gas (RNG)
 - Inspect and enforce compliance with SB 1383
 - Maintain accurate and timely records of SB 1383 compliance
- CalRecycle Oversight Responsibilities
- SB 1383 Key Implementation Dates
- SB 1383 Key Jurisdiction Dates

Additional Resources

- CalRecycle's Short-Lived Climate Pollutants (SLCP): Organic Waste Methane Emissions Reductions webpage has more information: <https://www.calrecycle.ca.gov/Climate/SLCP/>
- CalRecycle's SB 1383 Rulemaking webpage as more information about the status of 1383 regulations: <https://www.calrecycle.ca.gov/laws/rulemaking/slcp>

Organic Waste Is the Largest Waste Stream in California

CALIFORNIA DISPOSED OF APPROXIMATELY **27 MILLION TONS** OF ORGANIC WASTE IN 2017



California's Waste Stream

IN CALIFORNIA, MILLIONS ARE
FOOD INSECURE

1 IN 8 CALIFORNIANS
1 IN 5 CHILDREN



CALIFORNIA THROWS AWAY
MORE THAN 6 MILLION TONS
OF FOOD WASTE EVERY YEAR!

CalRecycle 

- When we are talking about organic waste for the purposes of SB 1383 we are talking about green waste, wood waste, food waste, but also fibers, such as paper and cardboard.
- Organic waste comprises two-thirds of our waste stream.
- Food waste alone is the largest waste stream in California.
 - According to CalRecycle's last waste characterization study in 2014, food waste comprised 18 percent of what we disposed.
- SB 1383 also requires California to recover 20 percent of currently disposed edible food.
 - We currently don't know how much of the food waste stream is edible.
 - CalRecycle is conducting a new waste characterization study in 2018/19 that is taking a closer look at our food waste stream.
 - The results of this study will help determine how much edible food waste is landfilled on average throughout the state.
- Here's what we do know:
 - 1 in 5 children go hungry every night in California – redirecting perfectly edible food that is currently being disposed to feed those in need can help alleviate this.
 - For every 2 ½ tons of food rescued, that's the equivalent of taking 1 car off the road for a year. (<https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>)

CLIMATE CHANGE NEGATIVELY IMPACTS CALIFORNIA

Landfilled Organic Waste Emits
Methane Gas—
A Super Pollutant
 More Powerful than CO₂

Methane Gas Contributes to
 Climate Change in California



CALIFORNIA
 is already experiencing
 the impacts of
CLIMATE CHANGE

IN 2015 THE DROUGHT COST THE
 AGRICULTURE INDUSTRY IN THE
 CENTRAL VALLEY AN ESTIMATED
\$2.7 BILLION & 20,000 JOBS

CalRecycle 

- Landfilling organic waste leads to the anaerobic breakdown of that material, which creates methane.
- Landfills are responsible for 21% of the state's methane emissions. **Landfills are the third largest producer of methane.**
- Methane is 72 times more potent than Carbon Dioxide (CO₂) over a 20-year horizon.
- Climate change may seem like a distant problem, but there are other more localized environmental impacts associated with landfill disposal of organic waste that **have immediate negative impacts on our community now.**
 - Landfilling organic waste is a significant source of local air quality pollutants (NOX and PM_{2.5}).
 - 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.

SB 1383 Requirements

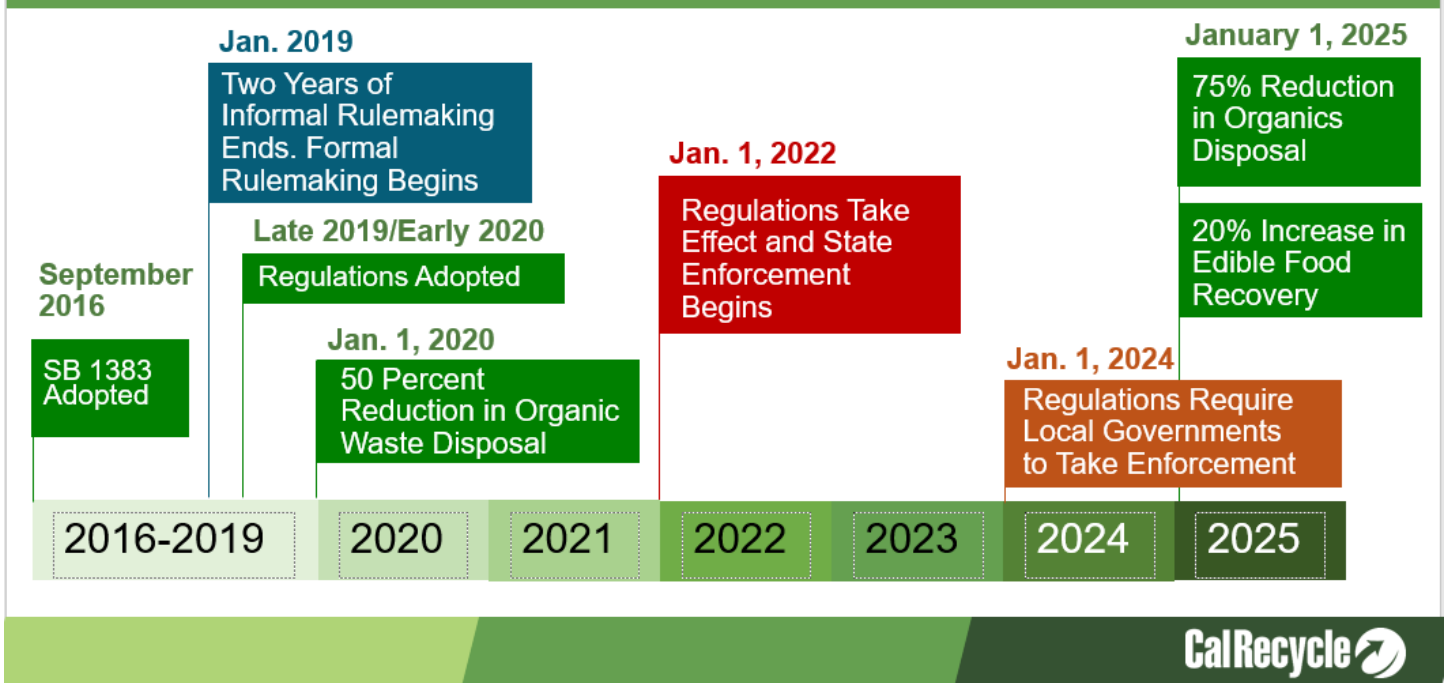
2020	50 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE (11.5 Million Tons Allowed Organic Waste Disposal)
2022	REGULATIONS TAKE EFFECT
2025	75 PERCENT REDUCTION IN LANDFILLED ORGANIC WASTE (5.7 Million Tons Allowed Organic Waste Disposal)
2025	20 PERCENT INCREASE IN RECOVERY OF CURRENTLY DISPOSED EDIBLE FOOD



Overview of SB 1383:

- SB 1383 establishes aggressive organic waste reduction targets.
- SB 1383 also builds upon Mandatory Commercial Organics Recycling law. Our jurisdiction has been implementing this law since 2016.
- SB 1383 requires Californians to reduce organic waste disposal by 50% by 2020 and 75% by 2025.
 - These targets use the 2014 Waste Characterization Study measurements when 23 million tons of organic waste were disposed.
 - These disposal reductions will reduce at least 4 million metric tons of greenhouse gas emissions annually by 2030.
- Additionally as a part of the disposal reduction targets the Legislature directed CalRecycle to increase edible food recovery by 20 percent by 2025.
 - The food recovery goal is unique.

SB 1383 Key Implementation Dates



Highlighted here on the slide are the key dates for SB 1383 implementation and milestones.

1. This law, the targets, and the requirements for CalRecycle to adopt regulations were adopted in September 2016
2. CalRecycle conducted two years of informal hearings with local governments and stakeholders to develop regulatory concepts.

Formal Rulemaking

1. CalRecycle started the formal regulation rulemaking January 18, 2019, this is expected to conclude by the end of 2019.

Regulations Take Effect

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

Jurisdictions Must Initiate Enforcement

1. **In 2024 Jurisdictions will be required to take enforcement against noncompliant entities.**
2. Finally, in 2025 the state must achieve the 75 percent reduction and 20 food recovery targets.
3. To meet the deadline of January 1, 2022, **CalRecycle expects that jurisdictions will be planning and making programmatic and budgetary decisions regarding the requirements in advance of the deadline.**
4. CalRecycle can begin enforcement actions on jurisdictions and other entities starting on Jan. 1, 2022.
5. **The enforcement process on jurisdictions is different than under AB 939:**
 - a. Like many solid waste and recycling regulations, a regulated entity (such as a city or county) can be issued a violation and be subject to enforcement for failure to comply with any individual aspect of the regulation. This is different from the unique AB 939 enforcement structure where a jurisdiction's overall efforts to achieve specific target are reviewed in arrears

- b. Like most regulatory enforcement programs, the enforcing agency (CalRecycle) will have discretion to determine the level of penalty necessary to remedy any given violation. E.g. A reporting violation may be considered less severe than a failure to provide collection services to all generators.
 - c. CalRecycle will consider certain mitigating factors which are specifically enumerated in the regulation. This is not the same as good faith effort but includes similar considerations. The specific nuances regarding requirements for state and local enforcement will be discussed in the later slides.
- **These timelines mean that we need to start planning now.**

SB 1383 Key Jurisdiction Dates

2022



Provide Organics Collection Service to All Residents and Businesses



Establish Edible Food Recovery Program



Conduct Education and Outreach



Procurement



Capacity Planning

2024



Starting January 1, 2024 Jurisdictions must take action against non-compliant entities

1. To meet the deadline of January 1, 2022, **CalRecycle expects that jurisdictions will be planning and making programmatic and budgetary decisions regarding the requirements in advance of the deadline.**
 - a. CalRecycle can begin enforcement actions on jurisdictions and other entities starting on Jan. 1, 2022.
2. This slide outlines the major programmatic activities for jurisdictions and the following slides will cover more details.
3. In 2024 Jurisdictions will be required to take enforcement against noncompliant entities.
 - a. There are additional details in the draft regulations regarding the enforcement requirements
4. CalRecycle has some funding through competitive grant programs, as well as a loan program, for establishing the infrastructure for recycling organic waste and recovering edible food. However, for the programmatic activities, such as enforcement, inspections, education, collection we will need to plan for budgetary changes to address these.

- a. In early 2020 CalRecycle will have a number of tools that we can begin utilizing, such as a model enforcement ordinance, franchise agreement models, and education materials. Using the 2018 and 2020 Statewide Waste Characterization Studies, jurisdictions will have data needed to conduct some of the capacity planning requirements.
- b. Although the regulations are not finalized the major components are not expected to change.
- c. We need to **start planning now** to have the programmatic and budgetary changes in place by January 1, 2022.

JURISDICTION RESPONSIBILITIES

**Provide Organics
Collection Services to All
Residents and Businesses**



**Conduct Education
and Outreach to
Community**



**Secure Access to
Recycling and Edible
Food Recovery Capacity**



**Establish Edible
Food Recovery
Program**



**Procure Recyclable
and Recovered
Organic Products**



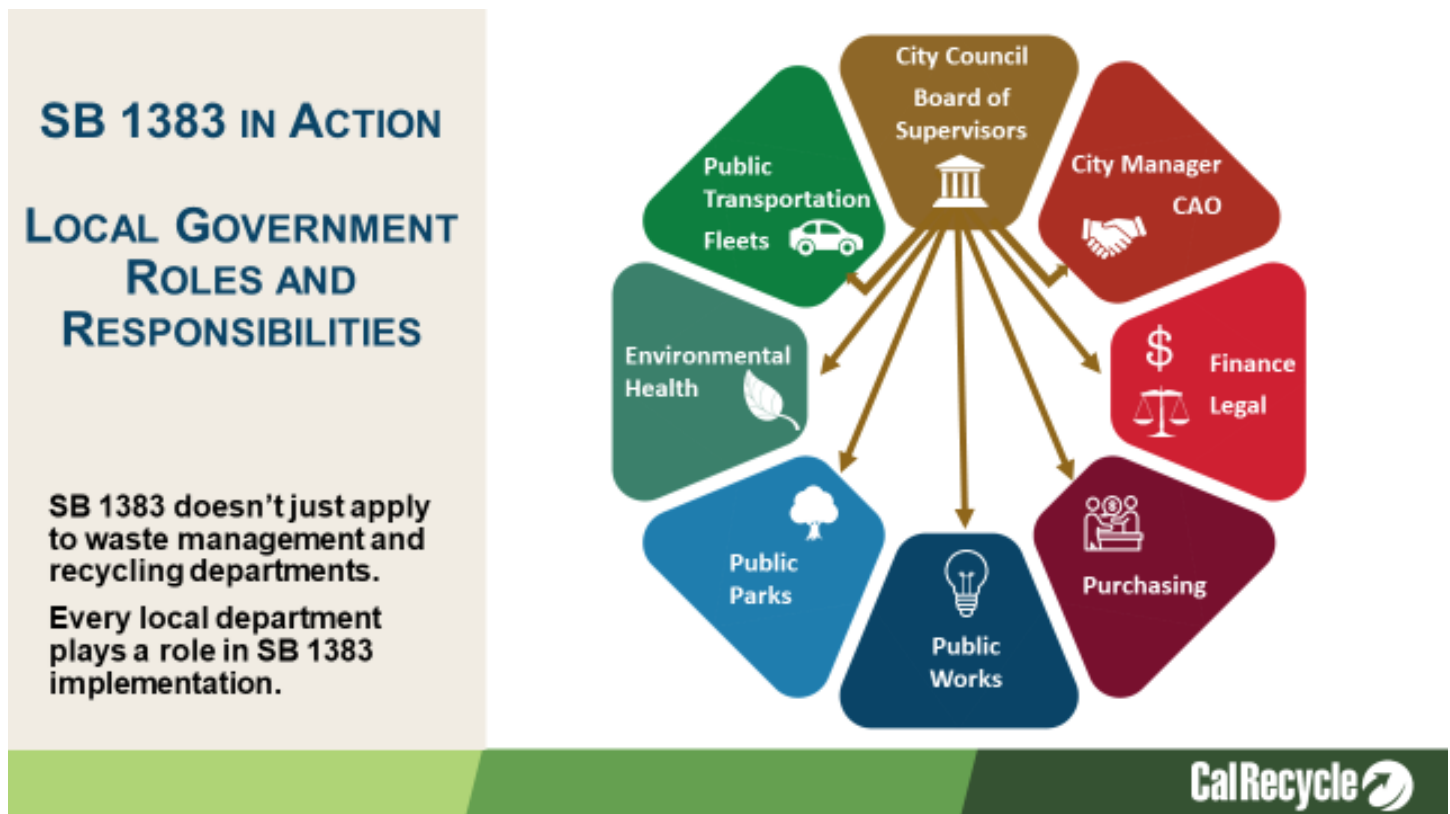
**Monitor Compliance
and Conduct
Enforcement**

CalRecycle

Jurisdictions will be required to adequately resource these programs:

1. **Provide organic waste collection services to all residents and businesses.**
 - A. This means for all organic waste, including green waste, wood waste, food waste, manure, fibers, etc.
 - B. Containers have prescribed colors (any shade of grey or black for trash, green for organic waste and blue containers for traditional recyclables)
 - C. There are container labeling and contamination monitoring requirements
 - D. We need to assess our current collection programs and determine what may need to be, expanded, or changed
2. **Establish edible food recovery program for all Tier 1 and 2 commercial edible food generators**
 - A. This means ensuring that there are edible food recovery organizations that have enough capacity
 - B. This may entail providing funding to ensure there is adequate capacity and collection services
3. **Conduct education and outreach to all generators**

- A. This will require education to be provided to all generators, and when applicable education may need to be provided in Spanish and other languages.
- 4. **Our jurisdiction will be required to procure certain levels of compost, renewable gas used for transportation fuels, electricity, heating applications, or pipeline injection, or electricity from biomass conversion produced from organic waste.**
- 5. **Plan and secure access for recycling and edible food recovery capacity.**
- 6. **We will be required to monitor compliance and conduct enforcement**
 - A. **Monitoring and education must begin in 2022**
 - B. **Enforcement actions must start Jan 1, 2024**
- 7. **We will need to adopt an ordinance, or similarly enforceable mechanism that is consistent with these regulatory requirements prior to 2022.**
- 8. **Planning in 2019 will be critical to meet the deadline.**



- 1. Jurisdictions should start planning now to get ready for SB 1383 implementation.
- 2. This **law extends beyond directing waste management and recycling operations and staff.**
 - a. **Each department will need to understand how SB 1383 impacts their work.**
 - b. **Recordkeeping and reporting requirements extend to all of these departments,** and jurisdiction leaders will play a vital role in ensuring compliance with SB 1383.
- **City Councils and Boards of Supervisors** will need to pass local enforcement ordinances to require all residents and businesses to subscribe to these services.
- **City Managers and Chief Administrative Officers** will be involved in capacity planning, directing procurement of recycled organic products like compost and renewable natural gas, and establishing edible food recovery programs.

- **Finance and Legal staff** will be involved in local enforcement ordinances, new collection fees, and ensuring programs are adequately resourced.
- **Purchasing staff** will be central to procuring recycled organic products, including paper.
 - Procure does not necessarily mean purchase, but this department is likely aware of current compost, mulch, RNG, and paper product purchases for the jurisdiction.
- **Public Works staff** are involved with hauler agreements, local waste management processing facilities, and organic waste recycling facilities (like compost and anaerobic digestion facilities). They may also be involved in civil engineering activities where compost may be utilized (as in erosion control along city streets and embankments).
- **Public Parks staff** may be involved with assessing the need for local compost application to parks and city landscaped areas.
- **Environmental Health staff** may be tasked with enforcement duties, including inspecting commercial food generators for compliance with edible food recovery requirements.
- **Public Transportation and Fleet departments** could be involved in procuring renewable natural gas for city and county owned vehicles.

SB 1383 IN ACTION

JURISDICTION REQUIREMENTS






Provide organics collection service to all residents and businesses

Organic Waste Collection Services



Three-Container “source separated” Collection Service

- Organics prohibited from black container
- All organic waste segregated for collection and recycling



Two-Container Collection Service

- One container for collection of segregated organic waste
- One container for collection of mixed waste (subject to 75% organic content recovery standard)



One-Container Collection Service

- One container for collection of mixed waste (subject to 75% organic content recovery standard)

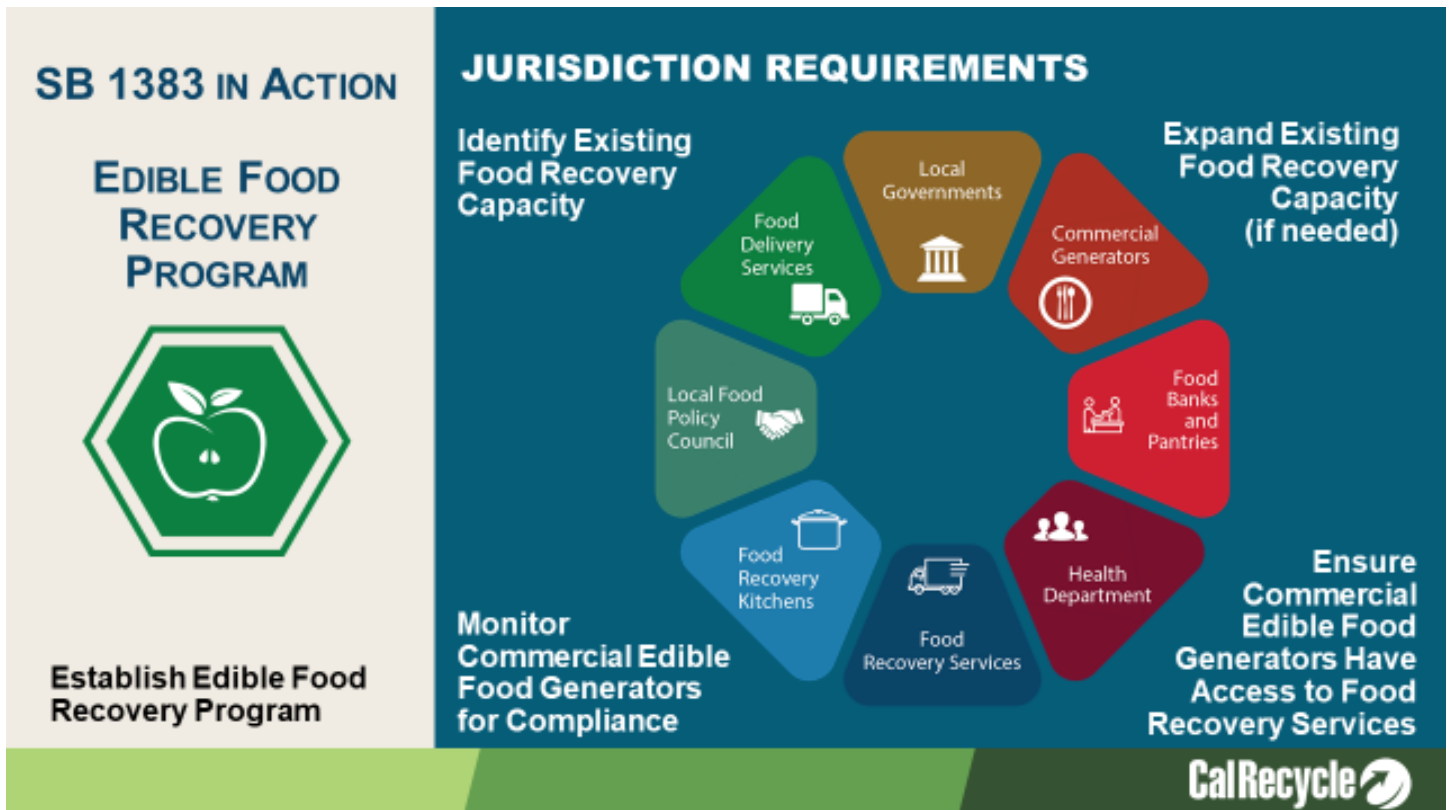
- Minimum contamination monitoring and reduction requirements
- Collection waivers authorized for certain documented circumstances



(Note to presenter: You might customize this slide to reflect the collection system for residential and commercial recycling programs. Remember this law/regulation is about all organic waste so that means the fibers, foodwaste, greenwaste, manure, etc.)

- The most basic element of the regulation is that jurisdictions are **required to provide an organic waste collection service to each of their residents and businesses.**
- The regulations also **require all residents and businesses to use an organic waste recycling service that meets the regulatory requirements.**
- Jurisdictions must have enforceable requirements on its haulers that collect organic waste in the jurisdiction, and also for commercial and residential generators and self-haulers.

- There is a lot of detail regarding the types of allowable collection programs (several pages of regulatory text dedicated just to this). These are the high level requirements.
 - **Each resident and business**, must subscribe to an organic waste collection service that either “source-separates” the waste (e.g. separate bins), or transports all unsegregated waste to a facility that recovers 75 percent of the organic content collected from the system.
 - The regulations allow for a menu of collection options.
 - A one-can system – you’ll be responsible for ensuring that all contents are transported to a facility that recovers 75% of organic content
 - A two-can system – at least one of the containers (whichever includes organic waste and garbage) must be transported to a facility that recovers 75% of organic content
 - A three-can system – organic waste is required to be source separated (paper in blue, food and yard in green). No recovery rate
 - The three-can option also allows additional separation at the hauler/generators discretion... For example some jurisdictions provided separate containers for yard (green) and food (brown) waste so they can be managed separately
- The same rules will apply to entities not subject to local control, and CalRecycle will oversee State Agencies, UCs, CSUs, Community Colleges, K-12 schools and other entities not subject to local oversight.



(Note to presenter: You may want to customize the speaking points depending on how much your community is already doing to implement edible food recovery programs)

SB 1383 requires that we strengthen our existing infrastructure for edible food recovery and food distribution.

Jurisdictions – are responsible to implement Edible Food Recovery Programs in their communities. Even in communities where existing infrastructure already exists, there are new recordkeeping and inspection tasks that will need to be implemented.

- **Assess Capacity of Existing Food Recovery**
- **Establish Food Recovery Program (And Expand Existing Infrastructure if necessary)**
- **Inspect Commercial Generators for Compliance**
- **Education and Outreach**

Jurisdictions should get a **head start on 1383 implementation by assessing the infrastructure that currently exists within your community.** Jurisdictions need to assess the following:

- How many commercial generators do you have? How much edible food could they donate?
- How many food recovery organizations exist, and what is their capacity to receive this available food?
- What gaps do we have in our current infrastructure and what do we need to do to close them?
- How can we fund the expansion of edible food recovery organizations? (Grants, partnerships, sponsorships, etc.)
- What partnerships currently exist and what new partnerships need to be established?
 - CalRecycle will be developing some tools to assist jurisdictions with this assessment.

SB 1383 IN ACTION

EDUCATION REQUIREMENTS

JURISDICTION REQUIREMENTS

Annually educate all organic waste generators, commercial edible food generators, and self-haulers about relevant requirements

Jurisdictions must provide print or electronic communication.

Jurisdictions May Supplement with Direct Communication.

Appropriate educational material must be provided to linguistically isolated households

Conduct Education and Outreach to Community

CalRecycle


Jurisdictions must conduct education and outreach to:

1. **All businesses and residents** regarding collection service requirements, contamination standards, self-haul requirements, and overall compliance with 1383
2. **Commercial edible food generators** regarding edible food donation requirements, and available edible food recovery organizations

Educational material must be linguistically accessible to our non-English speaking residents.

SB 1383 IN ACTION

PROCUREMENT REQUIREMENTS



Procure Recycled and Recovered Organic Products


JURISDICTION REQUIREMENTS


COMPOST, RNG & ELECTRICITY

- Minimum Procurement

PAPER PROCUREMENT REQUIREMENTS

- Recycled Content
- Recyclability





- Each jurisdiction will have a minimum procurement target that is linked to its population. CalRecycle will notify jurisdictions of their target Prior to January 1, 2022
 - The jurisdiction can decide what mix of compost, mulch, biomass derived electricity, or renewable gas they want to use to meet their target.
 - CalRecycle will provide a calculator with the conversion factors for compost/renewable gas/electricity from biomass conversion made from organic waste for a jurisdiction to use to calculate progress towards meeting their target.
- **Procurement doesn't necessarily mean purchase.**
 - A jurisdiction that produces its own compost, mulch, renewable gas, or electricity from biomass conversion can use that toward the procurement target. Same goes for the jurisdiction's direct service providers (for example, its haulers).
 - A jurisdiction can use compost or mulch for erosion control, soil amendment, soil cover, parks/open spaces, giveaways.
 - A jurisdiction can use renewable gas to fuel their fleets, or a jurisdiction's waste hauler could use renewable gas to fuel their trucks. Renewable gas can be used for transportation fuels, electricity, or heating applications.
- SB 1383 also **requires that jurisdictions procure recycled-content paper when it is available at the same price or less than virgin material.**
- Finally procured paper products must meet FTC recyclability guidelines (essentially products we purchase must be recyclable).

Construction & Landscaping Requirements



Recycling organic waste commingled with C&D debris, to meet CalGreen 65% requirement for C&D recycling in both residential and non-residential projects

Model Water Efficient Landscape Ordinance (MWELo) requirements for compost and mulch application.



CalRecycle 

(Note to presenter: If your Jurisdiction already enforces CalGreen and MWELo, then you would address that this would not be a new requirement, or this slide could be eliminated.)

Jurisdictions will have to adopt an ordinance or other enforceable requirement that requires compliance with CalGreen and Water Efficient Landscape Ordinance requirements (California Code of Regulations Title 24, Part 11):

- Providing readily accessible areas for recycling containers in commercial and multi-family units
- Recycling organic waste commingled with C&D debris, to meet CalGreen 65% requirement for C&D recycling in both residential and non-residential projects
- Require new construction and landscaping projects to meet Water Efficient Landscape requirements for compost and mulch application.

ORGANIC WASTE RECYCLING INFRASTRUCTURE



SB 1383 Requires 50-100
New or Expanded
Organic Waste Recycling Facilities



(Note to presenter: You might customize this slide if you have already secured adequate capacity for your organic recyclables.)

In California today we have about 180 compost facilities with 34 of them accepting food waste.

- We have 14 AD facilities accepting solid waste.
- There is also a significant number of Waste Water Treatment Plants that could be leveraged to use for co-digestion of food waste.
- It will take a significant number of new facilities to recycle an additional 20-25 million tons of organic waste annually. CalRecycle estimates we will need 50-100 new or expanded facilities (depending on the size of each new facility this number could fluctuate).

SB 1383 IN ACTION

CAPACITY PLANNING



**Evaluating Current
Infrastructure and Planning
New Compost and AD Facilities
and Edible Food Recovery**

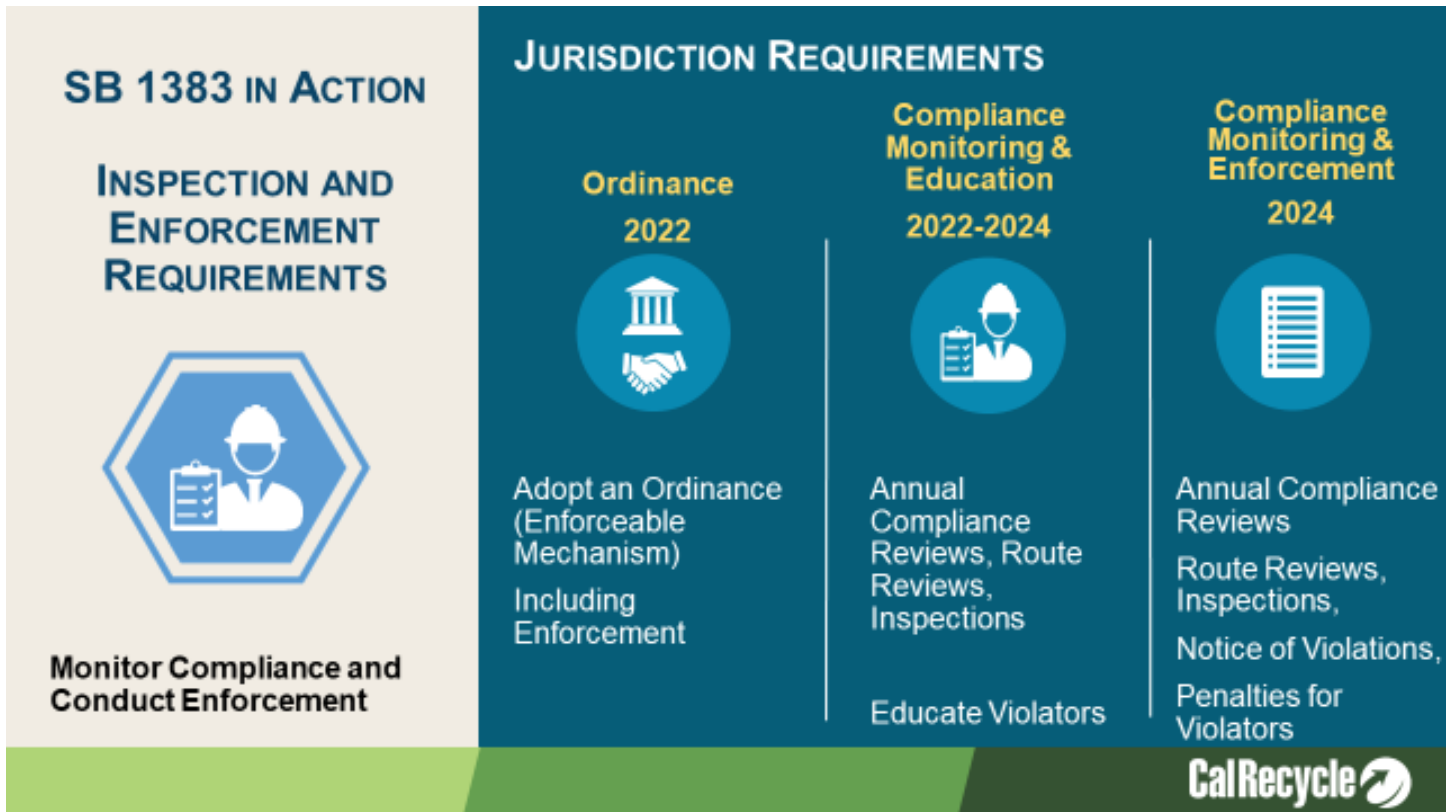


CalRecycle 

Key Points:

1. **Each jurisdiction must plan for adequate capacity for recycling organic waste and for edible food recovery**
 - A. For edible food recovery capacity each jurisdiction must plan to recover 20 percent of the edible food for human consumption, must identify Tier 1 and 2 commercial edible food generators, and funding for edible food recovery infrastructure
2. Each county will lead this effort by coordinating with the cities in the county to estimate existing, new and/or expanded capacity.
3. Counties and cities must demonstrate that they have access to recycling capacity through existing contracts, franchise agreements, or other documented arrangements.
4. There are requirements for each jurisdiction to consult with specified entities to determine organic waste recycling capacity, such as the Local Enforcement Agency, Local Task Force, owners/operators of facilities, community composting operations, and from citizens, such as disadvantaged communities, i.e., to discuss the benefits and impacts associated with expansions/new facilities.
5. For edible food recovery the county and city must contact edible food recovery organizations that serve the jurisdiction to determine how much existing, new and/or planned capacity if available.
6. If capacity cannot be guaranteed, then each jurisdiction within the county that lacks capacity must submit an implementation schedule to CalRecycle that includes specified timelines and milestones, including funding for the necessary recycling or edible food recovery facilities.
7. The County must collect data from the cities on a specified schedule and report to CalRecycle. Cities are required to provide the required data to the County within 120 days.

- A. **Start year for planning and reporting is 2022 – that report must cover 2022-2025.**
- B. Subsequent reports will be due every 5 years, and will plan for a 10-year horizon



- **By January 1, 2022**, Jurisdictions are required to have:
 - An enforcement mechanism or ordinance in place, yet they are not required to enforce until 2024.
- **Between Jan 2022 and Dec 2023**, jurisdictions need to:
 - Identify businesses in violation and provide educational material to those generators
 - **The focus during the first 2 years is on educating generators.**
 - **The goal is to make sure every generator has an opportunity to comply before mandatory jurisdiction enforcement comes into effect in 2024.**
 - **The regulations allow 2 years for education and compliance.**
- **After January 2024**, jurisdictions shall take progressive enforcement against organic waste generators that are not in compliance.
 - The progressive approach allows for notification to the generator and provides ample time for the generator to comply before penalties are required to be issued by the jurisdiction.
 - CalRecycle sets a maximum timeframe that a jurisdiction has to issue a Notice of Violation and issue penalties to a generator.
 - The jurisdiction has the flexibility to develop its own enforcement process within these parameters.
 - When a Jurisdiction determines a violation occurred the jurisdiction is required to, at a minimum:

- Issue a Notice of Violation within 60 days of determining a violation.
- If the generator still has not complied within 150 days from the issuance of the Notice of Violation, then the jurisdiction is responsible to issue penalties
 - The 150 days, between the Notice and Violation and the penalty phase, allows the jurisdiction to use other methods to achieve compliance prior to being required to issue penalties. Therefore, only the most recalcitrant violators will need to be fined.
 - The regulations allow a generator to be out of compliance for a total 210 days, before penalties must be issued.
- The regulations set a minimum penalty amount of at least \$50 for the first offense within one year and can go up to \$500 a day for multiple offenses occurring within one year.
- **An early robust education program will minimize the amount of future enforcement action needed**

JURISDICTION ENFORCEMENT REQUIREMENTS

Must Have Enforcement and Inspection Program that Includes:

- **Annual Compliance Review**
 - Commercial Businesses that Generate ≥ 2 Cubic Yards/week
 - Verify Businesses are:
 - Subscribed to Service or Self-hauling
- **2 or 3 Container Collection Service: Route Reviews of Commercial/Residential Areas to Verify Service and Inspect for Contamination**
- **Single Unsegregated Collection Service: Verify Businesses are subscribed to a service that is Transporting Contents to a High Diversion Organic Waste Processing Facility**

Requirements Harmonize with AB 1826 and Don't Establish a Minimum Quantity of Physical Inspections

CalRecycle

(Note to Presenter: If needed, customize the next couple of slides to fit the type of collection service that your City has/will have for residential and commercial. You may have residential on 3-container, multifamily on single or 2-container and businesses having all three depending on the business.)

- If a Jurisdiction is using a 3- or 2-bin organic waste collection service they are required to do:
 - **Annual compliance review of commercial businesses just as we should be doing now with AB 1826 Mandatory Commercial Recycling**
 - Commercial businesses that generate 2 CY or more per week of solid waste (trash, recycling, organics),

- Note: commercial businesses include multi-family dwellings of five units or more
- This can be a desk audit to review reports from our haulers to verify that service is provided or that they are complying through self-hauling or backhauling
- **2- or 3-Collection Service:**
 - **Route reviews:** We are supposed to conduct route reviews of commercial businesses and residential areas. The route reviews check for:
 - Verifying subscription (validating the desk review)
 - This entails seeing that the business has the appropriate external containers.
 - If a business does not use the hauler's service, then verifying the business is self-hauling would be necessary. As noted earlier this is same type of action that AB 1826 already requires
 - Note: This random inspection of routes does not require going inside a business to verify that the business has appropriate containers/labels inside of the business.
 - **Monitoring for contamination on**
 - Randomly selected containers, and ensuring all collection routes are reviewed annually and that contamination is being monitored in the collection containers and education is provided if there is an issue
 - OR
 - A jurisdiction has the option of conducting waste composition studies every six months to identify if there are prohibited container contaminants. If there is more than 25 percent prohibited container contaminants, then additional education must be provided
- The Route Reviews can be done by our hauler(s)
- **Single Unsegregated Collection Service:** Same as the 2- or 3-bin service except:
 - We will need to verify with our hauler(s) that the contents are transported to a high diversion organic waste processing facility and that the facility is meeting the requirements of the organic content recovery rate
 - Note: The department will be identifying in the future what facilities are high diversion organic waste processing facilities as the facilities will be reporting to CalRecycle.
 - There are no route reviews required

JURISDICTION ENFORCEMENT REQUIREMENTS ON COMMERCIAL FOOD GENERATORS



Must Have Enforcement and Inspection Program that Includes:

- Inspections to verify:
 - Edible food Recovery arrangements
- Tier 1 Commercial Edible Food Generators by 2022
- Tier 2 Commercial Edible Food Generators by 2024

Commercial Edible Food Generator Inspections Can Be Combined with Existing Mandatory Inspections



(Note to Presenter: If your jurisdiction is already implementing an edible food recovery program and conducting inspections, such as through the Health Department you will want to revise the talking points.)

Edible Food Recovery Program

- These types of inspections will be new for our jurisdiction.
- We will need to plan resources to conduct these inspections.
 - We might consider partnering with Health Inspectors that are already visiting food generators.
- Inspections on Tier One edible food generators in 2022 and Tier Two in 2024
 - Verify they have arrangements with a food recovery organization
 - Verify that the food generators are not intentionally spoiling food that can be recovered

SB 1383 IN ACTION
JURISDICTION REQUIREMENTS



Maintain Records and Report to CalRecycle

Recordkeeping Requirements:

				
Organic Collection Services	Hauler Program	Contamination Minimization	Waivers	Education & Outreach
				
Edible Food Recovery Program	Recycled Organic Waste Procurement	Recycled Paper Procurement	Commercial Edible Food Generators	Jurisdiction Inspection & Enforcement



- Our jurisdiction will have to maintain all information in an Implementation Record.
 - Many sections require a minimum level of recordkeeping such as “ordinances, contracts, and franchise agreements”.
 - This graphic is a snapshot of items to be kept in the Implementation Record.
 - CalRecycle staff may review the implementation record as part of an audit of our program.
- The Implementation Record needs to be stored in one central location
 - It can be kept as a physical or electronic record
 - It needs to be accessible to CalRecycle staff within ten business days
 - It needs to be retained for five years

CALRECYCLE OVERSIGHT (BEGINS IN 2022)

STATE ENFORCEMENT

CalRecycle

Authorize Waivers

- Low Population
- Rural Areas

Emergency Circumstances

Oversee and Monitor

- State Agencies and Facilities
- Local Education Agencies

Oversee and Monitor for Compliance

Jurisdiction Review

- Conduct joint inspections with jurisdictions
- Review Implementation Record

If Violations

- Issue Notices of Violation
- May Authorize Corrective Action Plan
- Allows up to 24 months to address barriers outside of a jurisdiction's control

CalRecycle

Enforcement – CalRecycle will authorize low population and rural area waivers. In the case of entities such as public universities, which may be exempt from local solid waste oversight, CalRecycle will be directly responsible for ensuring compliance. This will be monitored through CalRecycle’s existing state agency monitoring process.

CalRecycle will be evaluating a Jurisdiction’s Compliance.

For example:

- Verifying that all organic waste generators have service
- Jurisdictions are providing education
- Issuing Notices of Violation within the correct timeline

SB 1383 is a Statewide target and not a jurisdiction organic waste diversion target. Unlike with AB 939 where there was a specified target for each jurisdiction, SB 1383 prohibits a jurisdiction target. Due to this structure:

- The regulations require a more prescriptive approach, and establishes state minimum standards.
- Jurisdictions will have to demonstrate compliance with each of the prescriptive standards **rather than the determination of a Good Faith Effort**, which uses a suite of indicators to determine if a jurisdiction is actively trying to implement programs and achieve targets

Under the SB 1383 regulations if CalRecycle determines a jurisdiction is violating one or more of the requirements,

- A jurisdiction will be noticed and will have 90 days to correct.
- Most violations should be able to be corrected in this timeframe. For cases where the jurisdiction may need a little additional time, the timeframe can be expanded to 180 days

- **For violations that are due to barriers outside the jurisdictions control and which may take more time to correct, the** regulations allow for the jurisdiction to be placed on a Corrective Action Plan (CAP), allowing up to 24 months to comply. In these cases, it must be apparent that the jurisdiction has taken substantial effort to comply but cannot due to extenuating circumstances (such as a lack of capacity, disaster).
- An initial corrective action plan issued due to inadequate capacity of organic waste recovery facilities may be extended for a period of up to 12 months if the jurisdiction meets the requirements and timelines of its CAP and has demonstrated substantial effort to CalRecycle.

The Corrective Action Plan [or CAP] is modeled off of the Notice and Order Process that is used for noncompliance at solid waste facilities, where a number of steps or milestones must be taken by the solid waste facility operator prior to being able to fully comply.

Regarding eligibility for a CAP failure of a governing body to adopt an ordinance, or adequately fund/resource a program IS NOT *considered substantial effort or an Extenuating Circumstance* and will not allow a violation to be subject to a Corrective Action Plan.



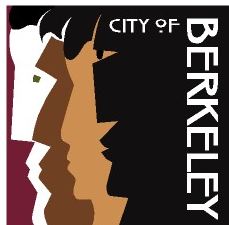
CalRecycle
STAY ENGAGED

-  <https://www2.calrecycle.ca.gov/Listservs/Subscribe/152>
-  <https://www.calrecycle.ca.gov/organics/slcp>
-  **Presenter's Contact Info**

CalRecycle 

(Note to presenter: If you have been participating in the regulatory workshops you might customize this slide. If you haven't been participating you might consider using this slide to discuss next steps with your elected officials and executive management.)

Jurisdictions are encouraged to participate in the 1383 regulatory process.



[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
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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.

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.

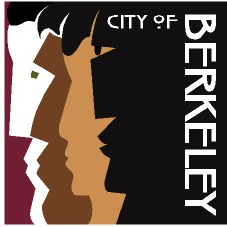
Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, 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 *MA*
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

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

CONCLUSION:

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

ANALYSIS:

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

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.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 aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

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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.)

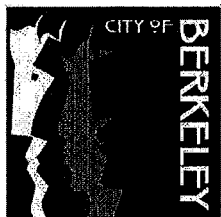
Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election 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 3.4¹. 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](http://icobweb/AR/PDF/2016/Administrative%20Regulation%203.9.pdf)

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

- Breakfast \$10
 - Lunch \$15
 - Dinner \$26
- **Airfare:** Airfare is reimbursed based on the most economical mode and class of transportation reasonably consistent with scheduling needs. We suggest that you attach a printout of available fares with your request. Please note that the current language in Resolution No. 66,295–N.S. is out of date because it references a program that is no longer available. This will be corrected in Council’s next revision of that resolution.
 - **Lodging:** Lodging for conferences will be reimbursed at the available group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or the government rates published by the U.S. General Services Administration, whichever is greater. Where no conference rate is published, the reimbursement rate will be based on the government rate or the median rate listed on discount travel websites, whichever is greater. Trivago, Priceline, Kayak, Orbitz, Travelocity, and Expedia are examples of travel sites that provide discount rates and may be used to identify a reasonable median rate. Include a printout of the published conference rate, government rate, or travel site rates with the reimbursement request as applicable. Council Members can look up rates by using the U.S. General Services Administration’s Per Diem Rates Look-Up tool.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 3.14⁴, on the City's intranet⁵, 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:

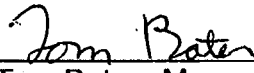
1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for 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 FUNDS system maintains lists of vendors cross-referenced to commodities and services.
3. The General Services Division is ultimately responsible for determining the means of purchase and the appropriate vendor. All purchases made will be of a quality consistent with the ultimate use intended and will be based on best value to the City of Berkeley, not necessarily on the lowest obtainable price.
4. Only the City Manager has the authority to enter into a contract/agreement, except purchase orders, with a vendor. The authority to enter into a Purchase Order has been delegated to the General Services Manager.
5. A comprehensive list of City restrictions on procurement are addressed in Section I of the manual. In addition to those restrictions prescribed by law the following are prohibitions requested by City Council.

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

PROCEDURE

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

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

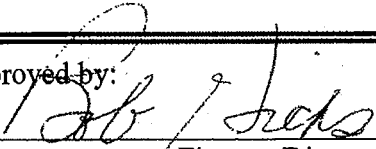
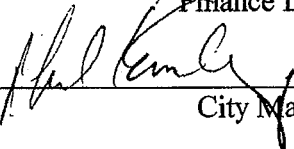
DEFINITIONS

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

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

Attachments:

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

<p>RESPONSIBLE DEPARTMENT: Finance Department</p> <p>TO BE REVIEWED/REVISED: Every year</p>	<p>Approved by:</p> <p> _____ Finance Director</p> <p> _____ City Manager</p>
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ATTACHMENT 1

ORDINANCE NO. 6,875-N.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT 2

ORDINANCE NO: 7,035-N.S.

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

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

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

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

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

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

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

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

Noes: Spring and Worthington.

Absent: None.

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

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

Noes: Spring and Worthington.

Absent: None.

ATTEST: Deanna Despain
Deanna Despain, Deputy City Clerk

Tom Bates
Tom Bates, Mayor

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.

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I. APPROVALS

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

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

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

II. EXPENDITURES BASICS

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

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

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

In addition:

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

See item V. Advance Payments and Reconciliation.

III. ALLOWABLE EXPENSES

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

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

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

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

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

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

IV. PAYMENTS BY CHECK USING A PURCHASE ORDER

Generally, General Services – Procurement will process a PO within three working days, and a check could be issued in the next AP check run. It is the department responsibility to notify Procurement staff when the requisition is approved to ensure timely processing of the PO in order to issue the check promptly. Departments may have internal procedures that require additional time, and employees are expected to familiarize themselves with these internal deadlines.

- A. Expenses for registration should be paid by check using a Purchase Order (PO). This includes online registration when "pay by check" is an option.
- B. Use of an employee's credit card or personal check for registration is only permitted and eligible for reimbursement when time does not permit issuing a City check for payment, and is approved by the Department Director.
- C. Resolution No. 66,295 or Resolution No. 63,413 governs any exceptions for Mayor and Council, or for the Rent Stabilization Board or Board of Library Trustees.
- D. Expenses for accommodations, if lodging is included in the event package, should be paid with the registration fee using a Purchase Order (PO).

V. ADVANCE PAYMENTS & RECONCILIATION

An approved A&T Request is required for any request for an advance. Advances are extended only to employees in classifications that are not included on the list of **Classifications NOT eligible for advances**. Advances are limited to approved air/train fare and lodging only.

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).

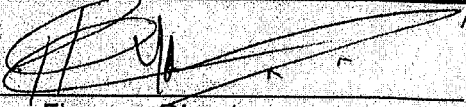
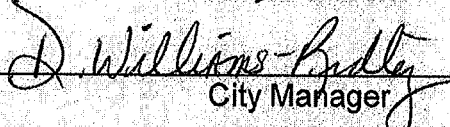
Payment Documentation: Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original receipts, 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	Approved by:  Finance Director
TO BE REVIEWED/REVISED: Every year	 City Manager

Attachment A

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

JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE	JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE
1307	M	Disability Programs Manager			
8148	E	Police Captain	1353	M	Revenue Collection Manager
1110	Z1	Police Chief	2716	Z2	Senior Human Resources Analyst
8145	F	Police Inspector	1325	M	Seniors Program Administrator
8147	F	Police Lieutenant	1314	M	Solid Waste and Recycling Manager
1473	Z1	Police Review Commission Officer	2316	Z2	Staff Attorney II
8142	F	Police Sergeant	2317	Z2	Staff Attorney III
2458	Z1	Psychiatrist Supervisor	1404	M	Supervising Civil Engineer
1322	M	Public Safety Business Manager	1476	M	Supervising Systems Analyst
1312	M	Public Works Maintenance Superintendent	1340	M	Supervising Traffic Engineer
1475	M	Real Property Administrator	2712	Z2	Training Officer
2890	M	Recycling Program Manager	1369	M	Waterfront Manager

RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

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

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

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

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

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

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

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

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

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

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

II. Reimbursement of Actual and Necessary Expense of Office

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

A. Authorized Activities.

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

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

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

B. Unauthorized Expenses

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

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

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

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

C. Particular Types of Authorized Expenditures Defined

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

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

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

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

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

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

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

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

E. Expense Report Content and Submission Deadline

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

F. Audits of Expense Reports

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

G. Reports

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

H. Compliance with Laws

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

I. Violation of This Policy

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

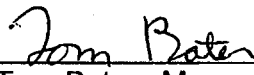
1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for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

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

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

Noes: None.

Absent: None.



Tom Bates, Mayor

Attest: 

Mark Numainville, CMC, City Clerk

Councilmember Office Budget Relinquishment and Grant Policy

Introduction – Limitations on the Expenditure of Public Funds

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

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

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

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

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

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

Criteria for Grants of City Funds from Councilmember Office Budgets

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

Table 1.

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

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

RESOLUTION NO. 63,413-N.S.

ESTABLISHING TRAVEL AND TRAINING REIMBURSEMENT POLICY FOR
BOARD AND COMMISSION MEMBERS

WHEREAS, AB 1234, a new state law, requires that all cities adopt an expense reimbursement policy before a legislative body member may receive reimbursement for necessary expenses of office; and

WHEREAS, the Rent Stabilization Board and Board of Library Trustees occasionally authorize their Board members to attend specific training seminars and meetings which are designed to facilitate the Board members' performance of their duties; and

WHEREAS, the City Manager will occasionally authorize the use of City funds for a board or commission member from other boards or commissions to attend training programs or conferences designed to improve that official's skill and information level; and

WHEREAS, the Council has adopted an Expenditure and Reimbursement Policy for the Council and Mayor that sets forth those travel and training expenses for which Council will be reimbursed.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the following policy is adopted for reimbursement of board and commission members for travel and training expenses.

TRAVEL AND TRAINING REIMBURSEMENT FOR BOARDS/COMMISSIONS

A. Authorized Activities.

Travel, meals and lodging incurred in connection with attending educational seminars designed to improve officials' skill and information levels constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled. For members of most of the City's boards and commission, other than the Board of Library Trustees and Rent Stabilization Board, such activities will occur only on rare occasions when approved by the City Manager and determined to be within the City's budget. The member of the body attending the educational event shall provide a brief report of the activity to the legislative body at a public meeting subsequent to the seminar. The Rent Stabilization Board may also receive travel meals and lodging incurred in connection with communicating with representatives of local, regional, state and national government on Board policy positions to the extent permitted by the Board.

B. Unauthorized Expenses

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

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;

3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business. Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

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

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

6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business which reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question. Travelers must request government rates, when available. In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the IRS per diem rates for a given area are presumed reasonable and hence reimbursable.
8. **Meals.** Meal expenses and associated gratuities should be moderate, taking into account community standards and the prevailing restaurant costs of the area. A helpful source of guidance is Internal Revenue Service per diem rates for meals and incidental expenses, which include adjustments for higher costs locations (*see* Publication 1542 at www.irs.gov 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.

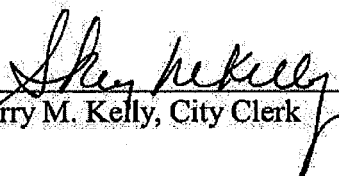
The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2006 by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

Attest:


 Sherry M. Kelly, City Clerk


 Tom Bates, Mayor

CITY OF BERKELEY
ADMINISTRATIVE REGULATIONS

A.R. NUMBER: 3.14
ORIGINAL DATE: 03/01/96
POSTING DATE: 08/30/07
PAGE 1 of 7 PAGES

SUBJECT: FN-024 Voucher Processing

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, Commissioners¹, 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 expenses² (see Resolution 63,412-NS)
 4. Commissioner and Library Trustee³ 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 FUNDS\$ GMBA Master Inquiry [FUNDS\$ > 7 > 1 > 2] to confirm all vendor information, including the designated Name on Checks field displayed at the bottom of the FUNDS\$ screen.

1. For an existing vendor/payee: if there are any differences between the data in GMBA Vendor Master file and the remittance information: please notify Finance – General Services: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and use this form to update/correct the vendor information, and submit it to General Services.
2. For any new vendor or payee: an original and signed Vendor Information Application and/or W-9 (as applicable for vendor/payment) must be on file with Finance – General Services. In the interim, fax a copy to General Services; then attach a copy of completed Vendor Application and/or W-9 to the FN-024; the signed original/s must be mailed within 3 days.
 - a. Vendor Information Application: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and have the vendor/payee complete this form.
 - b. Tax Payer ID & Certification Form W-9, or go to <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

Payments to City Employees, Elected Officials, Qualifying Commissioners, or Library Trustees

A. Vendor Information

1. VENDOR NAME: enter the name of individual, followed by "EMPLOYEE," "MAYOR," "COUNCIL," "COMMISSIONER," "RENT BOARD" or "LIBRARY TRUSTEE," as applicable, and highlight the individual's designation.

-
2. VENDOR NO.: enter the number for the individual, as found in FUNDS\$ GMBA Vendor Master Inquiry.
 3. ADDRESS: enter the department and division of payee or Commissioner's mailing address.
 4. Payments to employees, Mayor and Council must be picked up from AP: complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.
Payments to qualifying Commissioners⁴ or Library trustees will be mailed. If payment will be picked up rather than mailed out, complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.

NOTE: FN-024s for Mayor/Council official reimbursements, qualifying Commissioner stipends, and Library Trustees must be reviewed by the City Auditor prior to submitting to Accounts Payable for payment processing. SIB payments must be reviewed and approved by the City Auditor.

- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
 1. DESCRIPTION 1: enter conference name, period/s of mileage reimbursement, or Board or Commission meeting date/s.
 2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.
- C. Invoice Information
 1. INVOICE #: enter conference invoice # or date/s. (FUNDS\$ limit of approximately 15 characters)
 2. INVOICE DATE: for advances or reimbursements to an employee, Mayor, Councilmember or Commissioner*, enter the date of the conference or the last date of the reimbursement period.

Payments for Refunds

- A. Vendor Information
 1. VENDOR NAME: enter payee name followed by "MISC REFUND" and **highlight** it.
 2. VENDOR NO.: enter the assigned miscellaneous vendor number.
 3. ADDRESS: enter the payee mailing address.
 4. Requests for refunds that include deductions for fees should clearly state the original amount paid to the City, the reason for the deduction, and the balance for the refund owed to payee.
 5. Original receipts must be submitted for a refund. If an original receipt is not available, a completed and signed Customer Request for Refund Without Receipt must be attached.
- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
 1. DESCRIPTION 1: enter nature of purchase or service.

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. (FUNDS\$ limit of approximately 15 characters)
2. INVOICE Date: for refunds, enter the original payment date from the original receipt.

Other Designated Payments (see list under Policy on 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 FUNDS\$ GMBA Master Inquiry.
2. VENDOR NO.: enter the vendor # as it appears in FUNDS\$ GMBA Master Inquiry.
3. ADDRESS: when correct information is confirmed or corrected in GMBA, this can be blank.

B. Description & Purpose (FUNDS\$ limits these to approximately 25 characters per description field)

1. DESCRIPTION 1: enter nature of purchase or service.
2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.

C. Invoice Information

1. INVOICE #: enter exactly as it appears on the vendor invoice, with dashes, hyphens, etc; if there is no invoice number, use the statement date as the invoice number (FUNDS\$ has a limit of approximately 15 characters).
2. INVOICE Date: enter the invoice or statement date.

Additional Instructions for all FN-024 Payment Vouchers

A. Account Codes & Project Code

1. Prior to submitting an FN-024, departments must confirm the account codes and project code used are active, correct for the expenditure, and have sufficient, unencumbered balances.
2. If needed, departments must process any budget adjustments prior to submitting the FN-024.
3. Accounts Payable will return FN-024s to departments for inactive budget or project codes, and/or improper budget codes, or insufficient funds.

B. Authorized Signatures

Each department must complete an Authorized Signatures Card with the designated staff authorized to approve invoices and FN-024s (see AR 3.12 and the Authorized Signatures Card form on Groupware – Finance). When there are changes in personnel authorized to approve an FN-024, the Authorized Signatures Card must be updated with Accounts Payable. 1.

PREPARED BY: signature of the person responsible for completing the FN-024.



-
2. **AUTHORIZED DEPT SIGNATURE:** must be signed by authorized personnel, as reflected by the Authorized Signatures Card currently on file with Accounts Payable. FN-024s signed by unauthorized personnel will be returned.
- C. Limitations & Justification for 1-time Miscellaneous Items
1. A 1-time request for payment made on an FN-024, which would otherwise be made using a Purchase Order, means 1-time ever – not once a year or once-in-awhile. 1-time requests are only allowed for payments less than \$5,000.
 2. If a request for payment is being made on an FN-024 that would otherwise be made using a Purchase Order, there must be a justification provided on, or attached to, the FN-024. The Finance Director must approve the justification for use of an FN-024 prior to it being submitted for payment.
- D. Compiling the FN-024 Package: Form & Attachments
1. Place the FN-024 on top, with all required documentation stapled to the upper left-hand corner.
 2. If there is documentation required to be included with payment to the vendor, you must provide copies of this documentation, along with an envelope or mailing label addressed to the vendor. This is in addition to documentation required for Accounts Payable. Attach the documentation (duplicate copies and/or mailing stubs) to the upper right-hand corner.
 3. For payment of two or more items on a single FN-024, list each item separately, with its corresponding amount and account codes, on the FN-024. Attach an adding machine tape that totals the original items, and balances to the total on the FN-024.
 4. Employee reimbursements for authorized use of a private vehicle require an attached corresponding Auto Record for Mileage Reimbursement, available in Groupware. In addition, attach an adding machine tape totaling and balancing to the FN-024 for the period submitted.

Check Printing & Disbursement

1. Checks are usually printed weekly on Thursdays. FN-024s received in Accounts Payable by 5:00pm Monday will be processed for printing that week. Changes to this schedule will be emailed to departmental AP processing personnel and/or posted on the City's intranet.
2. Vendor checks will be mailed; see Compiling the FN-024 Package: Form & Attachments for specific requirements. If payment will be picked up rather than mailed, see instructions below.
3. Employee, Mayor, and Council checks will be available to pick up at Accounts Payable after 4:00pm on Thursday.
4. Pick Up Check at Accounts Payable: If it's been indicated on the FN-024 that a designated person will pick up the check, a City employee may sign for and pick up vendor checks. However, vendors may not pick up checks themselves from Finance – Accounts Payable. If payment will be picked up by an employee, rather than mailed out, complete the line in the upper right hand side of the FN-024 for Pick Up Check at AP: enter and **highlight** the name of authorized person the payment may be released to. This employee will be notified by email when the check is available to be picked up from Finance – Accounts Payable.

EXCEPTIONS

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

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

The following items are related to this AR, and can be found on Groupware – Finance:

1. FN-024 Payment Voucher – Excel file
2. FN-024 Payment Voucher – PDF file
3. AR 3.12 Authorized Signatures for Invoices and FN-024 Payment Vouchers
4. Authorized Signatures Card
5. Vendor Information Application
6. Tax Payer ID & Certification Form W-9
7. Customer Request for Refund Without Receipt
8. Attendance & Travel Expense Forms – web page with links to individual forms



Fair Campaign Practices Commission

PUBLIC HEARING

February 4, 2020

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

RECOMMENDATION

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

SUMMARY

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

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

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

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

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

BACKGROUND

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

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

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

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

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

Definition of an Officeholder Account

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

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

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

Contributions to Officeholder Accounts

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

Expenditures from Officeholder Accounts

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

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

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

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

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.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 FPCC guidelines.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

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

CITY MANAGER

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

CONTACT PERSON

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

Attachments:

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

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE
CHAPTER 2.12

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

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

BMC 2.12.157 Officeholder account

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

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

BMC 2.12.441 Officeholder account prohibited

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

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


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GOVERNMENT CODE - GOV

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

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

ARTICLE 3. Contribution Limitations [85300 - 85321]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 18531.62. Elected State Officeholder Bank Accounts.

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

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

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

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

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

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

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

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

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

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

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

(d) Prohibitions:

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

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

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

(e) Contributions to the Officeholder Account:

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

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

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

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

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

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

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

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

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

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

(f) Contributions Over the Limits:

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

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

(g) Terminating Officeholder Accounts and Committees.

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

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

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

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

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

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

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

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

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

HISTORY

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



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

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

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

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

CONCLUSION:

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

ANALYSIS:

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

Barbara Gilbert
Re: Application of Berkeley Election Reform Act To Officeholder Accounts
December 28, 1999
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apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.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 aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

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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.

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Mark Numainville, City Clerk