



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

**MONDAY, JUNE 15, 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://us02web.zoom.us/j/87314106547>. 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: **873 1410 6547**. 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: June 1, 2020**
- 2. Review and Approve Draft Agendas:**
 - a. 6/30/20 – 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 Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**

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. 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, June 29, 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 June 11, 2020.

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

Mark Numainville, City Clerk

**Communications**

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

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

**MONDAY, JUNE 1, 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**

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To join by phone: Dial **1-669-900-9128** and Enter Meeting ID: **875 8744 1743**. 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.

**Roll Call:** 2:32 p.m. All present.

**Public Comment** – 2 speakers.

## **Review of Agendas**

**1. Approval of Minutes: May 19, 2020**

**Action:** M/S/C (Arreguin/Wengraf) to approve the Minutes of 5/19/20.

**Vote:** All Ayes.

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

a. 6/16/20 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Arreguin/Hahn) to add to the agenda an item for the appointment of the Director of Public Works.

**Vote:** All Ayes.

**Action:** M/S/C (Wengraf/Hahn) to approve the agenda of 6/16/20 with the revisions noted below.

- *Item Added – Director of Public Works Appointment (City Manager)*
- *Item Added – Amendments to the Rules of Procedure (City Manager)*
- *Item 26 Shattuck Avenue East (City Manager) – scheduled for 7/14/20*
- *Item 27 Housing Retention Programs (Arreguin) – Councilmembers Harrison, Wengraf, and Hahn added as co-sponsors; scheduled for 6/16/20 Consent Calendar*
- *Item 28 Lessons Learned (Arreguin) – Councilmember Harrison added as a co-sponsor; scheduled for 6/16/20 Consent Calendar*
- *Item 29 Cuba Collaboration (Davila) – Councilmember Harrison added as a co-sponsor; scheduled for 6/16/20 Consent Calendar*

**Vote:** All Ayes.

Order of Items on the Action Calendar

Item 20 North Shattuck BID

Item 22 Street Lighting

Item 23 Residential Preferential Parking

Item 21 ZAB Appeal

Item 25 Charter Amendment

Item 24 CycloMedia Technology

**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

## Referred Items for Review

8. **Discussion and Recommendation on Proposed Revisions to the City Council Rules of Procedure and Order for Conduct of Business During a Declared Emergency**

**Action:** 1 speaker. M/S/C (Hahn/Arreguin) to approve the amendments to the rules of procedure with the amendments provided at the meeting by Vice-Mayor Hahn.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Wengraf) to add the amendments to the Rules of Procedure to the June 16, 2020 agenda for adoption on the Consent Calendar.

**Vote:** All Ayes.

9. **Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**

**Action:** 1 speaker. The City Manager provided a brief update on the status of commission meetings. The Committee agreed to keep the item on the agenda in order for the City Manger to provide updates at future meetings.

## Unscheduled Items

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

**10. 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

**Action:** No action taken.

## Items for Future Agendas

- None

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 3:44 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on June 1, 2020.

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Mark Numainville  
City Clerk

## Communications

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



## DRAFT AGENDA



### BERKELEY CITY COUNCIL MEETING

**Tuesday, June 30, 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

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

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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 <https://us02web.zoom.us/j/XXXXXXXXXX>. 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: **XXXXXXXXXX**. 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. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

## Preliminary Matters

### Roll Call:

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

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

**Public Comment on Non-Agenda Matters:** *Persons will be selected 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. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the council meetings of May 5, 2020 (closed), May 12, 2020 (closed and regular), May 19, 2020 (special), May 21, 2020 (closed) and May 26, 2020 (closed and regular).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 2. Animal Services Contract with the City of Piedmont**  
**From: City Manager**  
**Recommendation:** Adopt a resolution authorizing the City Manager to execute a contract, with any amendments, with the City of Piedmont for animal care services for FY2021-FY2025, which increases the existing contract by up to \$180,134, with a total contract amount not to exceed \$441,984.  
**Financial Implications:** See report  
Contact: Erin Steffen, City Manager's Office, (510) 981-7000
- 3. Amendment to Contract No. 10854 (ERMA Contract No. 118939-1): Townsend Public Affairs, Inc. for Legislative and Funding Advocacy Strategy**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with Townsend Public Affairs, Inc., contract No. 10854 (ERMA Contract No. 118939-1), for an ongoing tailored legislative and funding advocacy strategy, increasing the contract amount by \$30,000, for an amount not-to-exceed \$120,000, and extending the contract from June 30, 2020 to June 30, 2021. **Financial Implications:** See report  
Contact: Dave White, City Manager's Office, (510) 981-7000
- 4. Contract: Downtown Berkeley YMCA for Fitness Center Memberships for City Employees Pursuant to Negotiated Employee Memoranda of Understanding**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the Downtown Berkeley YMCA in the amount of \$214,848 for fitness center memberships for City employees pursuant to negotiated employee memoranda of understanding from the period July 1, 2020 to June 30, 2021.  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

## Consent Calendar

- 5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on June 30, 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:** \$195,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 6. FY 2021 Reaffirming the Investment Policies and Designation of Investment Authority**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution affirming the Statement of Investment Policies (no changes from the current policy) and to confirm the delegation of investment authority to the Director of Finance to make investments for FY 2021.  
**Financial Implications:** None  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 7. Appropriations Limit for FY 2021**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution establishing the appropriations limit at \$284,280,447 for FY 2021 pursuant to Article XIIIB of the Constitution of the State of California based on the calculations for the appropriations limit.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 8. Grant Agreement Amendment: Alameda County Coordinated Entry System (CES) Grant**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to: 1. Receive \$878,449 in additional funding and execute any agreements and amendments resulting from an augmentation and extension of a three-year grant from Alameda County Health Care Services Agency (HCSA) to fund a North County Housing Resource Center and Coordinated Entry System to Prevent and End Homelessness through December 31, 2020, increasing the contract amount to \$5,309,786, and extending the end date of the contract to December 31, 2020; 2. Execute resulting contracts for services with Bay Area Community Services (BACS) and the Cities of Albany and Oakland to fulfill the purpose of the grant; and 3. Retain \$90,000 in funding for staff in the Health, Housing & Community Services Department (HHCS) for program delivery.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

## Consent Calendar

- 9. Mental Health Services Act Contract Amendment: Covenant House**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions authorizing the City Manager or her designee to execute amendments for the following contracts with Covenant House that are funded through Mental Health Services Act (MHSA) Community Services and Supports (CSS) and Prevention and Early Intervention (PEI), and increasing the contract amounts as outlined below, and extending the contracts through March 31, 2021:
1. Increasing PEI ERMA Contract No. 122380-1 (8606J) with Covenant House California-YEAH! Program, in the amount of \$24,035 for a total contract amount not to exceed \$307,139 for support groups for Transition Age Youth (TAY);
  2. Increasing CSS ERMA Contract No. 120650-1 (9553F) with Covenant House California-YEAH! Program by \$92,142 for a total contract amount not to exceed \$847,428 for services for transition age youth.
- Financial Implications:** See report  
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400
- 10. Contract Amendments: Mental Health Services Act, Prevention and Early Intervention**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions authorizing the City Manager or her designee to execute amendments for the following contracts that are funded through Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI), and extending the contracts through March 31, 2021:
1. Increasing PEI ERMA Contract No. 088999 -1 (8801I) with Center for Independent Living (CIL) in the amount of \$24,035 for a total contract amount not to exceed \$280,619 for supports for senior citizens;
  2. Increasing PEI ERMA Contract No. 052129-1 (8516J) with Pacific Center for Human Growth in the amount of \$24,035 for a total contract amount not to exceed \$307,139 to serve Lesbian, Gay, Bi-sexual, Transgender, Queer/Questioning, and Intersex (LGBTQI) individuals;
- Financial Implications:** See report  
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400
- 11. Contract Amendment with BOSS for Representative Payee services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract amendment with vendor Building Opportunities for Self-Sufficiency (BOSS) to provide Representative Payee services. The amendment will add \$100,000 to the current contract and extend it through June 30, 2021 for a total contract not to exceed amount of \$200,000.
- Financial Implications:** See report  
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

## Consent Calendar

- 12. Reimbursement Agreement with the City of San Jose and the City of Berkeley Police Department for Training Related to the Internet Crimes Against Children (ICAC) Task Force**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Agreement of Reimbursement between the City of San Jose and the City of Berkeley Police Department (Internet Crimes Against Children Training Costs to provide for training reimbursement of Internet Crimes Against Children federal grant-related training costs to the City of Berkeley.  
**Financial Implications:** None  
Contact: Andrew Greenwood, Police, (510) 981-5900
- 13. Grant Applications: Active Transportation Program Cycle 5**  
**From: City Manager**  
**Recommendation:** Adopt three Resolutions authorizing the City Manager to submit grant applications to the Caltrans Active Transportation Program for the following projects: 1) Washington Elementary and Berkeley High Safe Routes to School for up to \$2 million; 2) Martin Luther King Jr. Way Vision Zero Phase I Quick Build for up to \$600,000; and 3) Addison Street Bicycle Boulevard Phase II for up to \$2 million; and accept the grants awarded, and execute any resultant agreements and amendments.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300
- 14. Contract No. 31900035 Amendment: Ghilotti Construction Company for Shattuck Reconfiguration and Pedestrian Safety Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 31900035 with Ghilotti Construction Company for work on the Shattuck Reconfiguration and Pedestrian Safety Project (“Project”), Specification No.17-11090-C, increasing the contract amount by up to \$300,000 for an amended total not to exceed \$8,286,960.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300
- 15. Approval and Levy of 2018 Clean Stormwater Fee in FY 2021**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the proposed adjusted fees for the 2018 Clean Stormwater Fee and ordering the levy of the fees in Fiscal Year 2021.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300

## Council Consent items

- 16. Support United States Congresswoman Barbara Lee’s legislation to establish a United States Commission on Truth, Racial Healing, and Transformation.**  
**From: Councilmember Davila (Author), Councilmember Bartlett (Co-Sponsor)**  
**Recommendation:** 1. Adopt a resolution supporting United States Congresswoman Barbara Lee’s legislation to establish a United States Commission on Truth, Racial Healing, and Transformation.  
2. Send copies of this resolution to United States Congresswoman Barbara Lee.  
**Financial Implications:** None  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 17. Support for AB-3256: Economic Recovery and Climate Resiliency Bond**  
**From: Councilmember Wengraf (Author)**  
**Recommendation:** Adopt a Resolution in support of AB-3256: Economic Recovery, Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Bond Act of 2020 (E. Garcia, Bloom, Bonta, Friedman, C. Garcia, Mullin, Reyes and Wood).  
**Financial Implications:** None  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 18. Support for AB-2501 COVID-19: Homeowner, Tenant, and Consumer relief**  
**From: Councilmember Wengraf (Author)**  
**Recommendation:** Adopt a Resolution in support of AB-2501: Homeowner, Tenant and Consumer Relief (Limón). Send a copy of the Resolution to Assemblymembers Limón, Skinner and Wicks and Governor Newsom.  
**Financial Implications:** None  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 19. Support for ACA 5: California Act for Economic Prosperity**  
**From: Councilmember Robinson (Author)**  
**Recommendation:** Adopt a resolution in support of ACA 5, which would place a measure on the statewide ballot to repeal Proposition 209 (1996) and allow the State of California to pursue minority equal opportunity and access initiatives in public employment, education, and contracting. Send copies of the resolution to Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, Lorena Gonzalez, and Buffy Wicks, and State Senator Nancy Skinner.  
**Financial Implications:** None  
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 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*

## Action Calendar

*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.*

*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. 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.*

### 20. Amend One-Way Car Share Program: Electric Mopeds, Fees, Deposits

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion, 1) adopt a Resolution to amend the One-Way Car Share Program to rename it as the One-Way Vehicle Share Program, add parking permit and administration fees for electric mopeds, and adjust the administration fee and free-floating parking permit deposits for cars, and 2) adopt the first reading of an Ordinance pursuant to Berkeley Municipal Code Chapter 14.62, renaming the One-Way Car Share Program as the One-Way Vehicle Share Program and removing obsolete references to parking permit stickers affixed to vehicles.

**Financial Implications:** See report

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

### 21. Amendments to the Berkeley Election Reform Act; Amending Berkeley Municipal Code Chapter 2.12

**From: Fair Campaign Practices Commission**

**Recommendation:** Conduct a public hearing and upon conclusion, adopt an ordinance amending the Berkeley Election Reform Act, BMC Chapter 2.12, regarding the public financing program.

**Financial Implications:** None

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



## Action Calendar

- 22. FY 2021 Mid-Biennial Budget Update Adoption**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: a) Adopting the FY 2021 Budget as contained in the City Manager's FY 2021 Proposed Budget Update presented to Council on May 12, 2020, and as amended by subsequent Council action.  
b) Authorize the City Manager to provide applicable advances to selected community agencies receiving City funds in FY 2021, as reflected in Attachment 2, and as amended by subsequent Council action  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000
- 23. FY 2021 Annual Appropriations Ordinance**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance adopting the FY 2021 Annual Appropriations Ordinance (AAO) in the amount of \$521,674,251 (gross appropriations) and \$452,409,230 (net appropriations).  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000
- 24. Borrowing of Funds and the Sale and Issuance of FY 2020-21 Tax and Revenue Anticipation Notes**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the borrowing of \$43,000,000 and the sale and issuance of Fiscal Year 2020-21 Tax and Revenue Anticipation Notes.  
**Financial Implications:**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Action Calendar – Policy Committee Track Items

- 25. Resolution to Incorporate the Practice of 1 Minute and 46 seconds of Mindfulness into City Council Meetings**  
**From: Councilmember Davila (Author)**  
**Recommendation:** Adopt a resolution to amend the City Council Meeting Agendas and Council Rules of Procedures to include one minute and forty-six seconds of silence to adopt mindfulness into Council meetings to remember the loss of lives due to police violence.  
**Financial Implications:** None  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

## Action Calendar – Policy Committee Track Items

### 26. **Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley**

**From: Councilmember Davila (Author), Councilmember Bartlett (Co-Sponsor)**

**Recommendation:** Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley, and commit to eliminate all socioeconomic barriers to health equity. In addition: 1) Declare the resolution an emergency measure for the immediate preservation of public peace, property, health, or safety, especially during the COVID-19 pandemic and it shall take effect and be in force immediately upon its adoption; 2) Budget Referral to convene a series of town hall sessions for all community members, City workers, and small business owners to discuss the concerns of people of color and marginalized community members, and develop strategies and programs (especially Mental Health Programs for the unhoused stay housed) for greater inclusivity, understanding, empathy, compassion, and unity. The purpose of these meetings should be to strengthen anti-racist capacity building and commitments within the city. This can be done by discussing the current quantitative and qualitative reality of racial justice and injustice, racism and non-racism in all areas of city life toward developing measures to ensure the achievement racial equity in Berkeley. These town halls, strategies and programs could include: the definition and lived experience of racism in systemic and institutional forms the effects and trauma caused by them, and provide resources to combat implicit bias on all levels. Community partners to consider to facilitate such workshops include Beyond Diversity: Courageous Conversations About Race and Showing Up for Racial Justice (SURJ). 3) City Council will establish a working group to promote racial equity as well as the development of programs to address racial equity in this City. 4) Direct the City Manager or his/her designee to record COVID-19 data by race/ethnicity and to explore greater health disparities that have emerged as a result of this crisis. 5) Direct the City Manager or his/her designee to hold several fundraisers at town hall sessions for black-owned small businesses, research of state and federal RFPs for the purpose of grants acquisitions for program development in the City of Berkeley that have been affected by Covid-19 and/or recent protests. 6) Direct the City Manager or his/her designee to prepare a Health in All Policies Ordinance (see attached City of Richmond Ordinance) for Council review and adoption, critically evaluating the public health impact of all legislative and budgetary proposals, especially upon people of color and marginalized community members. 7) Direct the City Manager or his/her designee to adopt a mandatory requirement of 16 hours of ongoing annual online and in-person training on implicit bias, cultural sensitivity, and cultural humility for City Employees, commissioners, and community members; and 8) Direct the City Manager or his/her designee in partnership with the Berkeley Public Health Division and the Mental Health Division to develop a Strategic Plan for Health Equity, with the inclusion of a diverse group of staff with expertise in this subject matter and begin immediate implementation of recommendations. 9) Submit copies of this resolution to State Assemblymember Buffy Wicks, State Senator Nancy Skinner, Congresswoman Barbara Lee, Alameda County Supervisor Keith Carson, as well as various organizations

**Financial Implications:** \$50,000 estimated

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

## Action Calendar – Policy Committee Track Items

27. **Ordinance: Public Right to Identify Officers**  
**From: Councilmember Robinson (Author), Councilmember Bartlett (Co-Sponsor)**  
**Recommendation:** Adopt an ordinance prohibiting law enforcement from obscuring or failing to wear their identification, such as name and badge number, when it is required to be displayed, with additional penalties when done during the commission of a crime or violation of City or Department regulation or procedure, and refer to the City Manager to update City policy regarding undercover and plainclothes officers in crowd control situations to comply with the ordinance.  
**Financial Implications:** Negligible  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
28. **Resolution: No Police Revolving Door**  
**From: Councilmember Robinson (Author), Councilmember Bartlett (Co-Sponsor)**  
**Recommendation:** Adopt a resolution designating a history of serious misconduct and the act of previously resigning in the middle of a serious misconduct investigation as immediate disqualifiers in the Berkeley Police Department recruitment and selection process.  
**Financial Implications:** None  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
29. **Commission Reorganization for Post-COVID19 Budget Recovery**  
**From: Councilmember Droste (Author), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)**  
**Recommendation:** 1. Reorganize existing commissions with the goal of achieving 20 total commissions; 2. Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions; 3. Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions; 4. Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.  
**Financial Implications:** See report  
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

## Information Reports

30. **Dispatch Audit Report Wins National Recognition**  
**From: Auditor**  
Contact: Jenny Wong, Auditor, (510) 981-6750

## Information Reports

31. **City Auditor Fiscal Year 2021 Audit Plan**  
**From: Auditor**  
Contact: Jenny Wong, Auditor, (510) 981-6750

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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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> and may be read at reference desks at the following locations:

#### 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. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
June 30, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila (Author) and Ben Bartlett (Co-Sponsor)

Subject: Support United States Congresswoman Barbara Lee’s legislation to establish a United States Commission on Truth, Racial Healing, and Transformation.

RECOMMENDATION

1. Adopt a resolution supporting United States Congresswoman Barbara Lee’s legislation to establish a United States Commission on Truth, Racial Healing, and Transformation.
2. Send copies of this resolution to United States Congresswoman Barbara Lee.

BACKGROUND

In the wake of the COVID-19 public health crisis and killing of George Floyd in Minneapolis, Congresswoman Barbara Lee recently submitted legislation to establish a United States Commission on Truth, Racial Healing, and Transformation.

“The murder of George Floyd and the current COVID-19 crisis illustrates once again the painful and dangerous legacy that white supremacy has had in our country, and the desperate need to fully acknowledge and understand how our history of inequality continues today,” Congresswoman Lee said. “This inequality is at the heart of every crisis we’re dealing with right now – the crises of police brutality and mass incarceration, the COVID-19 public health crisis which is disproportionately affecting communities of color, and the crisis of poverty excluding so many minority families from the American Dream. This is a matter of survival for countless Americans. Only by understanding our past, and confronting the errors that still haunt us today, can we truly move forward as a people and a country.”<sup>1</sup>

Congresswoman Lee’s proposal to establish the Commission is to examine the effects of slavery, institutional racism, and discrimination against people of color, and how history impacts laws and policies today.

The purpose of the commission is to properly acknowledge, memorialize, and be a catalyst for progress toward jettisoning the belief in a hierarchy of human value based on race, embracing our common humanity, and permanently eliminating persistent racial inequities.

The roots of racism, bias, and centuries of socioeconomic inequality are deep and require a thoughtful, inclusive, and comprehensive effort.

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<sup>1</sup> <https://lee.house.gov/news/press-releases/in-the-wake-of-covid-19-and-murder-of-george-floyd-congresswoman-barbara-lee-calls-for-formation-of-truth-racial-healing-and-transformation-commission>

All levels of government play a critical role in establishing a model and process to explore, expose, confront, and reconcile the truths of our past to create a more just, equitable future for all, not just a select few.

We must recognize that together we wield tremendous power to specifically improve black lives and the lives of other communities of color.

The City Council as its elected representatives of the people and its management have a special responsibility not to stay silent in the face of hate, discrimination, and racism against any of our community members or employees.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution
2. Congresswoman Barbara Lee's legislation

LINKS TO LEGISLATION

1. Congresswoman Barbara Lee's legislation:  
<https://lee.house.gov/imo/media/doc/TRHT%20Resolution%20Final.pdf>

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY IN SUPPORT OF UNITED STATES CONGRESSWOMAN BARBARA LEE'S LEGISLATION TO ESTABLISH A UNITED STATES COMMISSION ON TRUTH, RACIAL HEALING AND TRANSFORMATION.

WHEREAS, in the wake of the COVID-19 public health crisis and killing of George Floyd in Minneapolis, Congresswoman Barbara Lee recently submitted legislation to establish a United States Commission on Truth, Racial Healing, and Transformation; and

WHEREAS, Congresswoman Lee's proposal to establish the Commission is to examine the effects of slavery, institutional racism, and discrimination against people of color, and how history impacts laws and policies today; and

WHEREAS, The purpose of the commission is to properly acknowledge, memorialize, and be a catalyst for progress toward jettisoning the belief in a hierarchy of human value based on race, embracing our common humanity, and permanently eliminating persistent racial inequities; and

WHEREAS, The roots of racism, bias, and centuries of Socioeconomic inequality are deep and require a thoughtful, inclusive, and comprehensive effort; and

WHEREAS, All levels of government play a critical role in establishing a model and process to explore, expose, confront, and reconcile the truths of our past to create a more just, equitable future for all, not just a select few; and

WHEREAS, We must recognize that together we wield tremendous power to specifically improve black lives and the lives of other communities of color; and

WHEREAS, The City Council as its elected representatives of the people and its management have a special responsibility not to stay silent in the face of hate, discrimination, and racism against any of our community members or employees; and

NOW, THEREFORE, BE IT RESOLVED that the City Council for the City of Berkeley Support United States Congresswoman Barbara Lee's legislation to establish a United States Commission on Truth, Racial Healing, and Transformation; and

BE, IT FURTHER RESOLVED, that copies of this resolution be sent to United States Congresswoman Barbara Lee.

.....  
(Original Signature of Member)

116TH CONGRESS  
2D SESSION

**H. CON. RES.** \_\_\_\_\_

Urging the establishment of a United States Commission on Truth, Racial Healing, and Transformation.

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

Ms. LEE of California submitted the following concurrent resolution; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**CONCURRENT RESOLUTION**

Urging the establishment of a United States Commission on Truth, Racial Healing, and Transformation.

Whereas the first ship carrying enslaved Africans to what is now known as the United States of America arrived in 1619;

Whereas this event 400 years ago was significant not only because it ushered in the institution of chattel slavery of African Americans, but also because it facilitated the systematic oppression of all people of color that has been a devastating and insufficiently understood and acknowledged aspect of our history over these past 400 years, and that has left a legacy of this oppression that haunts us to this day;



Whereas the institution of American chattel slavery subjugated African Americans for nearly 250 years, fractured our Nation, and made a mockery of its founding principle that “all men are created equal”;

Whereas our Constitution failed to end slavery and oppressions against African Americans and other people of color, thus embedding in our society the belief in the myth of a hierarchy of human value based on superficial physical characteristics such as skin color and facial features, and resulting in purposeful and persistent racial and gender inequities in education, health care, employment, Social Security and veteran benefits, land ownership, financial assistance, food security, wages, voting rights, and the justice system;

Whereas these oppressions denied opportunity and mobility to African Americans and other people of color within the United States, resulting in stolen labor worth billions of dollars while ultimately forestalling landmark contributions that African Americans and other people of color would make in science, arts, commerce, and public service;

Whereas Reconstruction represented a significant but constrained moment of advances for Black rights as epitomized by the Freedman’s Bureau, which negotiated labor contracts for ex-enslaved people but failed to secure them their own land;

Whereas the brutal overthrow of Reconstruction failed all Americans by failing to ensure the safety and security of African Americans and by emboldening States and municipalities in both the North and South to enact numerous laws and policies to stymie the socioeconomic mobility

and political voice of freed Blacks, thus maintaining their subservience to Whites;

Whereas Reconstruction, the civil rights movement, and other efforts to redress the grievances of marginalized people were sabotaged, both intentionally and unintentionally, by those in power, thus rendering the accomplishments of these efforts transitory and unsustainable, and further embedding the racial hierarchy in our society;

Whereas examples of government actions directed against populations of color include—

(1) the creation of the Federal Housing Administration, which adopted specific policies designed to incentivize residential segregation;

(2) the enactment of legislation creating the Social Security program, for which most African Americans were purposely rendered ineligible during its first two decades;

(3) the GI bill, which left administration of its programs to the States, thus enabling blatant discrimination against African American GIs;

(4) the Fair Labor Standards Act of 1938, which allowed labor unions to discriminate based on race;

(5) subprime lending aimed purposefully at families of color;

(6) disenfranchisement of Native Americans, who, until 1924, were denied citizenship on land they had occupied for millennia;

(7) Federal Indian Boarding School policy during the 19th and 20th centuries, the purpose of which was to “civilize” Native children through methods intended to eradicate Native cultures, traditions, and languages;

(8) land policies toward Indian Tribes, such as the allotment policy, which caused the loss of over 90 million acres of Tribal lands, two-thirds of which were guaranteed to Tribes by treaties and other Federal laws, and similar unjustified land grabs from Tribes that occurred regionally throughout the late 1800s and into the Termination Era in the 1950s and 1960s;

(9) the involuntary removal of Mexicans and United States citizens of Mexican descent through large-scale discriminatory deportation programs in the 1930s and 1950s;

(10) the United States annexation of Puerto Rico, which made Puerto Ricans citizens of the United States without affording them voting rights;

(11) racial discrimination against Latino Americans, which has forced them to fight continuously for equal access to employment, housing, health, financial services, and education;

(12) the Chinese Exclusion Act of 1882, which effectively halted immigration from China and barred Chinese immigrants from becoming citizens of the United States, and which was the first instance of xenophobic legislation signed into law specifically targeting a specific group of people based on ethnicity;

(13) the treatment of Japanese Americans, despite no evidence of disloyalty, as suspect and traitorous in the very country they helped to build, leading most notably to the mass internment of Japanese Americans beginning in 1942;

(14) the conspiracy to overthrow the Kingdom of Hawaii and annex the land of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii; and

(15) the United States history of colonialism in the Pacific, which has resulted in economic, health, and educational disparities among other inequities, for people in United States territories, as well as independent nations with which it has treaty obligations;

Whereas these governmental actions, among other government policies that have had racially disparate impacts, have disproportionately barred African Americans and other people of color from building wealth, thus limiting potential capital and exacerbating the racial wealth gap;

Whereas research has shown that this persistent wealth gap has had a significant negative impact on other racial disparities, such as the achievement gap, school dropout rates, income gaps, home ownership rates, health outcome disparities, and incarceration rates;

Whereas American civic leaders and foundations have spearheaded critical efforts to advance racial healing, understanding, and transformation within the United States, recognizing that it is in our collective national interest to urgently address the unhealed, entrenched divisions that will severely undermine our democracy if they are allowed to continue to exist;

Whereas many of the most far-reaching victories for racial healing in the United States have been greatly enhanced by the involvement, support, and dedication of individuals from any and all racial groups;

Whereas at the same time, much of the progress toward racial healing and racial equity in the United States has been limited or reversed by our failure to address the root cause of racism, the belief in the myth of a hierarchy

of human value based on superficial physical characteristics such as skin color and facial features;

Whereas the American institution of slavery, as well as other examples enumerated in this resolution, represents intentional and blatant violations of every American's most basic right to a free and decent life;

Whereas the consequences of these oppressions have cascaded for centuries, across generations, beyond the era of active enslavement, imperiling for descendants of slaves and other targets of oppression what should have otherwise been every American's right to life, liberty, and the pursuit of happiness;

Whereas more than 40 countries have reckoned with historical injustice and its aftermath through forming Truth and Reconciliation Commissions to move toward restorative justice and to return dignity to its citizens; and

Whereas contemporary social science, medical science, and the rapidly expanding use of artificial intelligence and social media reveal the costs and potential threats to our democracy if we continue to allow unhealed, entrenched divisions to be ignored and exploited: Now, therefore, be it

1        *Resolved by the House of Representatives (the Senate*  
2 *concurring)*, That the Congress—

3            (1) affirms on the 400th anniversary of the ar-  
4            rival of the first slave ship, the United States long-  
5            overdue debt of remembrance to not only those who  
6            lived through the egregious injustices enumerated  
7            above, but also to their descendants; and

7

1           (2) proposes a United States Commission on  
2           Truth, Racial Healing, and Transformation to prop-  
3           erly acknowledge, memorialize, and be a catalyst for  
4           progress toward jettisoning the belief in a hierarchy  
5           of human value, embracing our common humanity,  
6           and permanently eliminating persistent racial inequi-  
7           ties.



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
June 30, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf  
Subject: Support for AB-3256: Economic Recovery and Climate Resiliency Bond

RECOMMENDATION

Adopt a Resolution in support of AB-3256: Economic Recovery, Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Bond Act of 2020 (E. Garcia, Bloom, Bonta, Friedman, C. Garcia, Mullin, Reyes and Wood).

Send a copy of the Resolution to Assemblymembers Eduardo Garcia and Buffy Wicks, Senator Nancy Skinner and Governor Newsom.

FINANCIAL IMPLICATIONS

None

BACKGROUND

The global pandemic has slashed government funding along with Californians' jobs and paychecks. Funds once committed to protecting communities from climate change crises, such as increasingly severe wildfires and mega droughts, have been redirected to help with the pandemic and make up for lost revenue.

AB-3256, the State Assembly's proposed infrastructure bond supports a long-term, large-scale capital infrastructure investment plan to assist in economic recovery and protect California from near-term climate disasters.

The Bay Area Council Economic Institute notes that a resilient infrastructure bond like AB-3256 would create over 100,000 jobs statewide and generate nearly \$15 billion in total economic activity. It is critical that we pivot through this global pandemic with a bold bond to create the kind of durable employment demand we need to fully recover, while building infrastructure that protects Californians from climate change's disastrous impacts.

ENVIRONMENTAL SUSTAINABILITY

Should the bill pass, new infrastructure will mitigate impacts of climate change.

CONTACT PERSON

Councilmember Wengraf                      Council District 6                      510-981-7160

Attachments: 1: Resolution    2: [AB-3256](#)

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

CITY OF BERKELEY SUPPORTS AB-3256

WHEREAS, The Global Pandemic has slashed government funding for climate change mitigation efforts; and

WHEREAS, Covid-19 has left over 4 million Californians unemployed seemingly overnight; and

WHEREAS, The proposed infrastructure bond of AB-3256 would put an estimated 100,000 people back to work building infrastructure to mitigate climate change disasters; and

WHEREAS, California, and the City of Berkeley, require an infrastructure plan as bold as AB-3256 to recover from this global pandemic and invest in infrastructure to lessen the blows of near-term climate disasters.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it enthusiastically supports AB-3256.



**AMENDED IN ASSEMBLY JUNE 4, 2020**  
**AMENDED IN ASSEMBLY MAY 18, 2020**  
**AMENDED IN ASSEMBLY MAY 4, 2020**

california legislature—2019–20 regular session

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February 21, 2020

An act to add Division 47 (commencing with Section 80200) to the Public Resources Code, relating to an economic recovery, wildfire prevention, safe drinking water, drought preparation, and flood protection program, by providing the funds necessary therefor through an election of the issuance and sale of bonds of the State of California and for the handling and disposition of those funds. *funds, and declaring the urgency thereof, to take effect immediately.*

legislative counsel’s digest

AB 3256, as amended, Eduardo Garcia. Economic Recovery, Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Bond Act of 2020.

The California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018, approved by the voters as Proposition 68 at the June 5, 2018, statewide direct primary election, authorizes the issuance of bonds in the amount of \$4,000,000,000 pursuant to the State General Obligation Bond Law to finance a drought, water, parks, climate, coastal protection, and outdoor access for all program.

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This bill would enact the Economic Recovery, Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Bond Act of 2020, which, if approved by the voters, would authorize the issuance of bonds in the amount of \$6,980,000,000 pursuant to the State General Obligation Bond Law to finance projects for an economic recovery, wildfire prevention, safe drinking water, drought preparation, and flood protection program.

This bill would provide for the submission of these provisions to the voters at the November 3, 2020, statewide general election.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. The people of California find and declare all of line 2 the following:

3 (a) The climate crisis presents a significant threat to the health, 4 safety, and prosperity of  
the people of California. The changing 5 climate increases the risk of extreme weather events,  
biodiversity 6 loss, catastrophic wildfire, and sea level rise, resulting in harm to 7  
California’s agricultural industry, water supply, unique ecosystems, 8 and economy.

9 (b) According to the state’s Fourth Climate Change Assessment, 10 “[e]merging findings  
for California show that costs associated with 11 direct climate impacts by 2050 are dominated  
by human mortality, 12 damages to coastal properties, and the potential for droughts and 13  
mega-floods.”

14 (c) Improving climate resiliency will require investments in 15 planning and both capital-  
and non-capital costs.

16 (d) Strategic restoration and stewardship of California’s natural 17 infrastructure will  
increase the state’s resilience to the changing 18 climate and can prevent or reduce many of the  
forecasted impacts 19 of climate change.

20 (e) State investments to improve climate resiliency must reflect 21 the varying type and  
severity of climate impacts across the state. 22 Already vulnerable communities often face  
greater risks from 23 climate change.

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1 (f) Planning, investment, and action to address current and future 2 climate change impacts must be guided by the best available 3 science, including local and traditional knowledge.

4 (g) Investment in transformative, cost-effective, and 5 evidence-based projects that increase the state’s resilience to 6 climate change will protect the lives of all Californians, conserve 7 our unique ecosystems, and save billions of dollars by preventing 8 or reducing damage that may otherwise occur.

9 (h) Climate risks and impacts vary by region and can overwhelm 10 the resources of local governments and communities that must 11 cope with changing conditions and severe climate change-related 12 events.

13 (i) An integrated statewide investment that prevents wildfires 14 and other natural disasters, reduces near-term climate change risks, 15 and increases long-term resilience to climate change will save local 16 and state agencies and California residents billions of dollars by 17 preventing or reducing the amount of damage that would otherwise 18 occur.

19 (j) The investment of public funds pursuant to Division 47 20 (commencing with Section 80200) of the Public Resources Code 21 will result in public benefits that will address the most critical 22 statewide needs and priorities for public funding while saving local 23 and state agencies billions of dollars.

24 SEC. 2. Division 47 (commencing with Section 80200) is added line 25 to the Public Resources Code, to read:

26 27 DIVISION 47. ECONOMIC RECOVERY, WILDFIRE 28 PREVENTION,  
SAFE DRINKING WATER, DROUGHT 29 PREPARATION, AND FLOOD PROTECTION  
BOND ACT OF 30 2020

31 32 Chapter 1. General Provisions

33 34 80200. This division shall be known, and may be cited, as the line 35 Economic Recovery, Wildfire Prevention, Safe Drinking Water, line 36 Drought Preparation, and Flood Protection Bond Act of 2020.

37 80201. (a) In expending funds pursuant to this division, an line 38 administering state agency shall give priority to projects that line 39 leverage private, federal, and local funding or produce the greatest line 40 public benefit.

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1 (b) A project funded pursuant to this division shall include 2 signage informing the public  
that the project received funding from 3 the Economic Recovery, Wildfire Prevention, Safe  
Drinking Water, 4 Drought Preparation, and Flood Protection Bond Act of 2020.

5 80202. For purposes of this division, the following definitions line 6 apply:

7 (a) "Air board" means the State Air Resources Board.

8 (b) "Committee" means the Economic Recovery, Wildfire 9 Prevention, Safe Drinking  
Water, Drought Preparation, and Flood 10 Protection Bond Finance Committee created pursuant  
to Section 11 80282.

12 (c) "Fund" means the Economic Recovery, Wildfire Prevention, 13 Safe Drinking Water,  
Drought Preparation, and Flood Protection 14 Fund created pursuant to Section 80209.

15 (d) "Groundwater sustainability agency" has the same meaning 16 as defined in Section  
10721 of the Water Code.

17 (e) "Interpretation" includes, but is not limited to, a 18 visitor-serving amenity that  
enhances the ability to understand and 19 appreciate the significance and value of natural,  
historical, and 20 cultural resources and that may use educational materials in 21 multiple  
languages, digital information in multiple languages, and 22 the expertise of a naturalist or other  
skilled specialist.

23 (f) "Natural infrastructure" means natural ecological systems 24 or processes that reduce  
vulnerability to climate change-related 25 hazards, or other related climate change effects, while  
increasing 26 the long-term adaptive capacity of coastal and inland areas by 27 perpetuating  
or restoring ecosystem services. "Natural 28 infrastructure" includes, but is not limited to, the  
conservation, 29 preservation, or sustainable management of any form of aquatic 30 or  
terrestrial vegetated open space, such as beaches, dunes, tidal 31 marshes, reefs, seagrass, parks,  
rain gardens, and urban tree 32 canopies. "Natural infrastructure" also includes systems and  
33 practices that use or mimic natural processes, such as permeable 34 pavements, bioswales,  
and other engineered systems, such as levees 35 that are combined with restored natural systems,  
to provide clean 36 water, conserve ecosystem values and functions, and provide a 37 wide  
array of benefits to people and wildlife.

38 (g) "Nonprofit organization" means a nonprofit corporation 39 qualified to do business in  
California and qualified under Section 40 501(c)(3) of the Internal Revenue Code.

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1 (h) "Socially disadvantaged farmers and ranchers" has the same 2 meaning as defined in  
Section 512 of the Food and Agricultural 3 Code.

4 (i) "Tribe" means a California native American tribe that appears 5 on the California  
Tribal Consultation List maintained by the Native 6 American Heritage Commission.

7 (j) "Water board" means the State Water Resources Control 8 Board.

9 (k) "Water Resilience Portfolio" means a suite of recommended 10 actions by the Natural  
Resources Agency, the California 11 Environmental Protection Agency, and the Department of  
Food 12 and Agriculture to help the state cope with more extreme droughts 13 and floods,  
rising temperatures, declining fish populations, aging 14 infrastructure, and other challenges.

15 80203. An amount that equals not more than 5 percent of the line 16 funds allocated for a  
program funded pursuant to this division may line 17 be used to pay the administrative costs of that  
program.

18 80204. (a) The Department of Finance shall provide for an line 19 independent audit of  
expenditures pursuant to this division. The line 20 Secretary of the Natural Resources Agency shall  
publish a list of line 21 all program and project expenditures pursuant to this division not line 22 less  
than annually, in written form, and shall post an electronic line 23 form of the list on the agency's  
internet website in a downloadable line 24 spreadsheet format. The spreadsheet shall include  
information line 25 about the location and footprint of each funded project, the line 26 project's  
objectives, the status of the project, anticipated outcomes, line 27 any matching moneys provided for  
the project by the grant line 28 recipient, and the applicable chapter of this division pursuant to line  
29 which the grant recipient received moneys.

30 (b) If an audit, required by statute, of any entity that receives 31 funding authorized by  
this division is conducted pursuant to state 32 law and reveals any impropriety, the California  
State Auditor or 33 the Controller may conduct a full audit of any or all of the activities 34  
of that entity.

35 (c) The state agency issuing any grant with funding authorized 36 by this division shall  
require adequate reporting of the expenditures 37 of the funding from the grant.

38 (d) The costs associated with the publications, audits, statewide 39 bond tracking, cash  
management, and related oversight activities 40 provided for in this section shall be funded from  
this division.

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1 These costs shall be shared proportionally by each program through 2 this division. Actual costs incurred to administer nongrant programs 3 authorized by this division shall be paid from the funds authorized 4 in this division.

5 80205. If any moneys allocated pursuant to this division are line 6 not encumbered or expended by the recipient entity within the time line 7 period specified by the administering state agency, the unexpended line 8 moneys shall revert to the administering state agency for allocation line 9 consistent with the applicable chapter.

10 80206. A state agency that receives funding to administer a line 11 grant program under this division shall report to the Legislature line 12 annually in the budget on its expenditures pursuant to this division line 13 and the public benefits received from those expenditures.

14 80207. Funds provided pursuant to this division, and any line 15 appropriation or transfer of those funds, shall not be deemed to be line 16 a transfer of funds for the purposes of Chapter 9 (commencing line 17 with Section 2780) of Division 3 of the Fish and Game Code.

18 80208. For grants awarded for projects under this division, the line 19 administering state agency may provide advanced payments in the line 20 amount of 25 percent of the grant award to the recipient, including line 21 state-related entities, to initiate the project in a timely manner. The line 22 administering state agency shall adopt additional requirements for line 23 the recipient of the grant regarding the use of the advanced line 24 payments to ensure that the moneys are used properly.

25 80209. (a) The proceeds of bonds issued and sold pursuant to line 26 this division, exclusive of refunding bonds issued and sold pursuant line 27 to Section 80292, shall be deposited in the Economic Recovery, line 28 Wildfire Prevention, Safe Drinking Water, Drought Preparation, line 29 and Flood Protection Fund, which is hereby created in the State line 30 Treasury. Moneys in the fund shall be available, upon appropriation line 31 by the Legislature, for purposes of this division.

32 (b) Proceeds of bonds issued and sold pursuant to this division 33 shall be allocated according to the following schedule:

34 (1) One billion six hundred twenty-five million dollars 35 (\$1,625,000,000) for wildfire prevention and climate risk reduction, 36 in accordance with Chapter 2 (commencing with Section 80220).

37 (2) One billion one hundred million dollars (\$1,100,000,000) 38 for the protection of coastal lands, bays, and oceans from climate 39 risks, in accordance with Chapter 3 (commencing with Section 40 80230).

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1 (3) One billion three hundred fifty-five million dollars 2 (\$1,355,000,000) for the protection of California’s water supplies 3 from multiyear droughts, reducing flood risk from extreme events, 4 and providing safe drinking water, in accordance with Chapter 4 5 (commencing with Section 80240).

6 (4) One billion three hundred million dollars (\$1,300,000,000) 7 for the protection of California’s wildlife, biodiversity, fisheries, 8 and working and agricultural lands from climate risks, in 9 accordance with Chapter 5 (commencing with Section 80260).

10 (5) One billion six hundred million dollars (\$1,600,000,000) 11 for regional climate resilience projects that address multiple risks, 12 in accordance with Chapter 6 (commencing with Section 80270).

13 80210. The Legislature may enact legislation necessary to line 14 implement programs funded by this division.

15 16 Chapter 2. 17 Reduction Wildfire Prevention and Climate Risk

18 19 80220. For purposes of this chapter, the following definitions line 20 apply:

21 (a) “Risk reduction buffer” means community design measures 22 that integrate greenspaces or open spaces that are managed to 23 reduce the spread of wildfires, and are located either between the 24 structures and the wildlands or are strategically interspersed among 25 the structures in a community to reduce structure vulnerability to 26 wildfire risks. Risk reduction buffers shall be designed to provide 27 additional benefits that may include shelter from natural disasters, 28 recreation, habitat, storm water capture, and active transportation.

29 (b) “Structure hardening” means the installation, replacement, 30 or retrofitting of building materials, systems, or assemblies used 31 in the exterior design and construction of existing nonconforming 32 structures with features that are in compliance with Chapter 7A 33 (commencing with Section 701A.1) of Title 24 of the California 34 Code of Regulations, or any appropriate successor regulatory code 35 with the primary purpose of reducing risk to structures from 36 wildfire or conforming to the low-cost retrofit list, and updates to 37 that list, developed pursuant to paragraph (1) of subdivision (c) of 38 Section 51189 of the Government Code.

39 80220.5. The sum of one billion six hundred twenty-five line 40 million dollars (\$1,625,000,000) shall be available, upon

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4 (a) The creation of risk reduction buffer between communities 5 and the wildland.

6 (b) The creation of strong local fire safe planning and risk 7 reduction work to improve community fire resilience.

8 (c) The improvement of forest and other habitat health to reduce 9 the risk of fire, reduce fire intensity, and restore historic ecosystem 10 function while improving water supply and water quality.

11 (d) The creation of cost-effective efforts to complete community 12 and structure hardening projects that target entire neighborhoods 13 or communities.

14 80221. (a) Of the funds made available by Section 80220.5, line 15 five hundred million dollars (\$500,000,000) shall be available to line 16 the Office of Emergency Services, in coordination and conjunction line 17 with the Department of Forestry and Fire Protection, for a line 18 prehazard mitigation grant program. The grant program shall be line 19 allocated to assist local and state agencies to leverage additional line 20 funds, including matching grants from federal agencies. The grant line 21 program shall fund efforts that include providing loans, rebates, line 22 direct assistance, and matching funds that prevent wildfires and line 23 reduce the risk of wildfires to communities, increasing community line 24 hardening. Eligible projects include, but are not limited to, the line 25 following:

26 (1) Grants to local agencies, state agencies, joint powers 27 authorities, and tribes for projects that reduce wildfire risks to 28 people and property consistent with an approved community 29 wildfire protection plan.

30 (2) Grants to local agencies, state agencies, joint power 31 authorities, tribes, resource conservation districts, fire safe councils, 32 and nonprofit organizations for hardening of critical community 33 infrastructure, evacuation centers, hardening projects that reduce 34 the risk of wildfire for entire neighborhoods and communities, risk 35 reduction buffers, and incentives to remove structures that 36 significantly increase hazard risk.

37 (b) The Office of Emergency Services and the Department of 38 Forestry and Fire Protection shall prioritize prehazard mitigation 39 grant funding applications from local agencies based on the "Fire

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1 Risk Reduction Community” list, upon development of that list, 2 pursuant to Section 4290.1.

3 (c) The Office of Emergency Services and the Department of 4 Forestry and Fire Protection shall provide technical assistance to 5 disadvantaged communities, vulnerable populations, including 6 those with access and functional needs, at-risk infrastructure, 7 socially disadvantaged farmers or ranchers, and economically 8 distressed areas to ensure the grant program reduces the 9 vulnerability of those most in need.

10 80222. Of the funds made available by Section 80220.5, one line 11 billion twenty-five million dollars (\$1,025,000,000) shall be made line 12 available to the Natural Resources Agency and to its departments, line 13 boards, and conservancies for projects and grants to improve local line 14 fire prevention capacity, improve forest health and resiliency, and line 15 reduce the risk of wildfire spreading into populated areas from line 16 wildlands. Where appropriate, projects may include activities on line 17 lands owned by the United States. The funding made available by line 18 this section shall be allocated as follows:

19 (a) Three hundred million dollars (\$300,000,000) shall be made 20 available to the Regional Fire and Forest Capacity Program to 21 increase regional capacity to prioritize, develop, and implement 22 projects that improve forest health and fire resilience, facilitate 23 greenhouse gas emissions reductions, and increase carbon 24 sequestration in forests throughout California. The funding shall 25 be allocated based, to the extent feasible, on the findings of the 26 review of the regional capacity required by Section 4123.7.

27 (b) Three hundred million dollars (\$300,000,000) shall be made 28 available to the Department of Forestry and Fire Protection to 29 support various long-term forest health projects, including 30 reforestation; conservation easements; activities that promote 31 long-term carbon storage; and upper watershed, riparian, mountain 32 meadow, and inland wetland restoration. Projects shall reflect the 33 concurrence of the Department of Fish and Wildlife and the water 34 board, respectively, when a project may affect their statutory 35 jurisdiction and shall be consistent with Section 4799.05.

36 (c) Three hundred million dollars (\$300,000,000) shall be made 37 available to forests and other habitats, including, but not limited 38 to, redwoods, conifers, oak woodlands, chaparral, deserts, and 39 coastal forest watershed improvement projects that include the use 40 of prescribed fire and improve water supply or water quality.

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1 Projects shall include the restoration of natural ecosystem functions 2 in high fire hazard areas and provide multiple benefits including, 3 but not be limited to, habitat protection, science-based fuel 4 reduction, watershed protection, carbon sequestration, protection 5 of older fire-resistant trees, and improved forest health. The Natural 6 Resources Agency shall require a contribution of matching funds 7 or in-kind work, as determined appropriate, from beneficiaries of 8 the watershed, which may include, but not limited to, water 9 districts, public utilities, local agencies, or private users. As a 10 condition of funds granted pursuant to this section, the Natural 11 Resources Agency shall ensure long-term benefits for projects 12 funded pursuant to this subdivision, including an ongoing 13 commitment to future maintenance and a commitment to long-term 14 increases in carbon sequestration.

15 (d) Fifty million dollars (\$50,000,000) shall be made available 16 to the Department of Forestry and Fire Protection to provide 17 funding to fire safe councils, nongovernmental organizations with 18 demonstrated expertise, and resource conservation districts for the 19 purchase of large equipment necessary to conduct fuel reduction 20 and forest health projects. The department shall develop funding 21 guidelines to ensure the equipment purchased receives necessary 22 maintenance by the owner, is used appropriately by trained 23 operators, provides public benefits, and is made available for fuel 24 reduction and forest health projects in a cost-effective manner. 25 Eligible equipment may include equipment for biomass utilization 26 and shall have a durability suitable for capital expenditure.

27 (e) Seventy-five million dollars (\$75,000,000) shall be made 28 available to the Sierra Nevada Conservancy for purposes of 29 watershed improvement, forest health, biomass utilization, and 30 forest restoration workforce development. Seventy percent of the 31 funds made available by this subdivision shall be made available 32 to the Sierra Nevada Watershed Improvement Program created by 33 Section 33345.1.

34 80223. Of the funds made available by Section 80220.5, not line 35 less than fifty million dollars (\$50,000,000) shall be allocated to line 36 the air board, in consultation with the Natural Resources Agency line 37 and the Department of Forestry and Fire Protection, to incentivize line 38 new projects in California that provide long-term capital line 39 infrastructure to convert forest and other vegetation waste removed line 40 for wildfire mitigation to beneficial uses that maximize reductions

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4 80224. Of the funds made available by Section 80220.5, fifty line 5 million dollars (\$50,000,000) shall be available to the Department line 6 of Parks and Recreation to plan for and implement projects to line 7 reduce the risks of fire and for the fire hardening of infrastructure line 8 for units of the state park system.

9 80225. To the extent feasible, a project whose application line 10 includes the use of services of the California Conservation Corps line 11 or certified community conservation corps, as defined in Section line 12 14507.5, shall be given preference for receipt of a grant under this line 13 division.

14 15 Chapter 3. 16 from Sea Level Rise and Other Climate Risks Protecting Coastal Lands, Bays, and Oceans

17 18 80230. The sum of one billion one hundred million dollars line 19 (\$1,100,000,000) shall be available, upon appropriation by the line 20 Legislature, for the protection and restoration of coastal and ocean line 21 resources from sea level rise, ocean acidification, and other impacts line 22 of climate change. The goal of this chapter is to provide funding line 23 for projects that slow the impacts of sea level rise, especially in line 24 combination with storm surges, with nature-based solutions; line 25 increase the ability of the ocean and coastal systems to capture line 26 and store carbon dioxide; and support sustainable fisheries.

27 80231. (a) Eligible projects under this chapter include, but are line 28 not limited to, projects to protect, restore, and increase the line 29 resilience of coastal and ocean ecosystems, such as beaches, bluffs, line 30 grasslands, chaparral, shrublands, forests, waters, coastal line 31 watersheds, wetlands, natural resources, fisheries, estuarine habitat, line 32 kelp forests, seagrass and eelgrass habitat, and wildlife in coastal line 33 areas. Projects may address the protection and resilience of public line 34 recreation and public access facilities.

35 (b) The following criteria shall be used for projects under this 36 chapter:

37 (1) Projects shall leverage local, nonbond state, federal, or 38 private funding of at least 50 percent for infrastructure projects.

39 (2) Projects should prioritize natural infrastructure. For projects 40 with multiple benefits to water supply, water quality, wildlife, and

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1 biodiversity, a match of at least 25 percent from local, state, federal, 2 or private funding is required.

3 (3) Projects leveraging ongoing state funding for carbon 4 sequestration, transportation, general funds shall be given priority.

5 (4) Up to 10 percent of project costs may be used for project 6 planning.

7 (5) Projects are required to demonstrate ongoing monitoring 8 and scientific review. Up to 5 percent of project funds may be used 9 for this purpose.

10 80232. (a) Of the funds made available by Section 80230, the line 11 sum of six hundred million dollars (\$600,000,000) shall be line 12 available to the State Coastal Conservancy, the California Coastal line 13 Commission, and the San Francisco Bay Conservation and line 14 Development Commission.

15 (b) Of the funds made available by subdivision (a), three 16 hundred million dollars (\$300,000,000) shall be available to the 17 State Coastal Conservancy for projects to protect, restore, and 18 increase the resilience of beaches, bays, coastal dunes, wetlands, 19 coastal forests, and coastal watershed resources pursuant to 20 Division 21 (commencing with Section 31000), including land 21 acquisition, or conservation easements on, land in or adjacent to 22 the California coastal zone with open space, recreational, 23 biological, cultural, scenic, or agricultural values, or lands adjacent 24 to marine protected areas, including marine conservation areas, 25 whose preservation will contribute to the ecological quality of 26 those marine protected areas.

27 (c) Of the funds made available by subdivision (a), one hundred 28 fifty million dollars (\$150,000,000) shall be available to the State 29 Coastal Conservancy for competitive grants for demonstration and 30 pilot projects that use natural infrastructure to protect critical 31 infrastructure that is vulnerable to sea level rise and flooding.

32 (d) Of the funds made available by subdivision (a), one hundred 33 million dollars (\$100,000,000) shall be available to the State 34 Coastal Conservancy for grants to remove outdated or obsolete 35 dams and water infrastructure. Up to 25 percent of the funds made 36 available in this subdivision may be awarded for the public benefits 37 associated with updating outdated dams and water infrastructure.

38 (e) Of the funds made available by subdivision (a), the sum of 39 thirty million dollars (\$30,000,000) shall be available to the 40 California Coastal Commission for grants for local adaptation

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1 planning and updating local coastal programs and twenty million 2 dollars (\$20,000,000) shall be available to the San Francisco Bay 3 Conservation and Development Commission for coastal planning 4 and projects within its jurisdiction.

5 80233. (a) Of the funds made available by Section 80230, the line 6 sum of two hundred million dollars (\$200,000,000) shall be line 7 available to the Ocean Protection Council.

8 (b) Of the amount made available by subdivision (a), one 9 hundred million dollars (\$100,000,000) shall be available for 10 deposit into the California Ocean Protection Trust Fund for 11 competitive grants consistent with Section 35650. Priority shall 12 be given to projects that assist coastal communities, including 13 those reliant on commercial fisheries, with adaptation to climate 14 change, including projects that address ocean acidification, 15 increasing ocean temperatures, sea level rise, and habitat restoration 16 and protection.

17 (c) Of the funds made available by subdivision (a), fifty million 18 dollars (\$50,000,000) shall be available for projects that increase 19 the ability of the ocean and coastal ecosystems to capture, 20 sequester, and store carbon dioxide.

21 80234. Of the funds made available by Section 80230, two line 22 hundred fifty million dollars (\$250,000,000) shall be available to line 23 the Natural Resources Agency and its departments, boards, and line 24 conservancies or the Ocean Protection Council for competitive line 25 grants to restore or enhance coastal and ocean ecosystems. No less line 26 than 50 percent of the funds allocated by this subdivision shall be line 27 for competitive grants for projects that use nature-based solutions line 28 to address climate change impacts to California’s ocean and coastal line 29 ecosystems, including, but not limited to, wetlands, estuarine line 30 habitat, kelp forests, seagrass habitat, eelgrass beds, and the state’s line 31 system of marine protected areas. Grant programs may be line 32 administered by the State Coastal Conservancy, the Department line 33 of Fish and Wildlife, the water board, or the Ocean Protection line 34 Council. The administering agency shall coordinate with all line 35 relevant state agencies, and relevant local, regional, and state line 36 conservancies.

37 80235. Of the funds made available by Section 80230, fifty line 38 million dollars (\$50,000,000) shall be available to the Department line 39 of Parks and Recreation to plan for and implement projects to line 40 reduce the risks of sea level rise for units of the state park system.

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1 80236. Projects funded pursuant to this chapter shall be line 2 consistent with climate and sea  
level rise policies and guidelines line 3 established by the California Coastal Commission, the Ocean  
line 4 Protection Council, the San Francisco Bay Conservation and line 5 Development Commission,  
and the State Coastal Conservancy, if line 6 applicable.

7 8 Chapter 4. 9 During Drought, Enhancing the State's Flood Protection, 10  
and Ensuring Safe Drinking Water Protecting California's Water Supply

11 12 80240. The sum of one billion three hundred fifty-five million line 13 dollars  
(\$1,355,000,000) shall be available, upon appropriation by line 14 the Legislature, for climate  
resilience related to the delivery of line 15 water.

16 80241. Projects funded under this chapter shall ensure access line 17 to safe drinking water  
and water supply in multiyear droughts, and line 18 provide for protection from flood risks,  
especially risks that are line 19 magnified by sea level rise, storm surges, and increased intensity line  
20 atmospheric rivers.

21 80242. (a) Before disbursing grants under this chapter, each line 22 state agency that receives  
funding to administer a competitive grant line 23 program under this division shall develop and adopt  
project line 24 solicitation and evaluation guidelines. The guidelines shall include line 25 monitoring  
and reporting requirements and may include a limitation line 26 on the dollar amount of grants to be  
awarded. If the state agency line 27 has previously developed and adopted project solicitation and  
line 28 evaluation guidelines that comply with the requirements of this line 29 section, it may use  
those guidelines.

30 (b) Guidelines adopted pursuant to subdivision (a) shall 31 encourage, where feasible, the  
inclusion of the following project 32 components:

33 (1) Efficient use and conservation of water supplies.

34 (2) The capture of stormwater to reduce stormwater runoff, 35 reduce water pollution, or  
recharge groundwater supplies, or a 36 combination thereof.

37 (3) Provision of safe and reliable drinking water supplies to 38 park and open-space  
visitors, and state fairgrounds that serve as 39 emergency evacuation facilities.

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1 (4) Support to groundwater sustainability agencies for regional 2 ground water sustainability.

3 (5) Increased climate resilience for wildlife and fish species.

4 80243. (a) Nothing in this chapter determines or alters water line 5 rights or water right priorities.

6 (b) Funds provided by this chapter shall not be used to acquire 7 land via eminent domain.

8 80244. An eligible applicant under this chapter is a public line 9 agency, joint powers authority, nonprofit organization, public line 10 utility, tribe, or mutual water company. To be eligible for funding line 11 under this chapter, a project proposed by a public utility that is line 12 regulated by the Public Utilities Commission or a mutual water line 13 company shall have a clear and definite public purpose and shall line 14 benefit the customers of the water system and not the investors.

15 80245. Of the funds made available by Section 80240, three line 16 hundred ninety-five million dollars (\$395,000,000) shall be line 17 available to the Department of Water Resources in collaboration line 18 with the water board, upon appropriation by the Legislature, for line 19 competitive grants for projects that support sustainable groundwater line 20 management implementation. These funds are dedicated to line 21 supporting local groundwater sustainability agencies implementing line 22 projects and programs related to the groundwater sustainability line 23 plans for critically overdrafted basins. This includes projects with line 24 multiple benefits that encourage redundancy in the regional water line 25 system, groundwater recharge, including infrastructure projects, line 26 and interties. Funding allocated pursuant to this section shall line 27 support the regional approach identified in the Water Resilience line 28 Portfolio and shall be used for comprehensive regional projects line 29 that include water efficiency, water infrastructure, flood control, line 30 and groundwater recharge. Projects shall demonstrate multiple line 31 water resilience benefits.

32 80246. Of the funds made available by Section 80240, three line 33 hundred sixty million dollars (\$360,000,000) shall be available to line 34 the water board, upon appropriation by the Legislature, for line 35 competitive grants or loans for the purposes described in Chapter line 36 5 (commencing with Section 79720) of Division 26.7 of the Water line 37 Code to help provide clean, safe, and reliable drinking water to all line 38 Californians.

39 80247. Of the funds made available by Section 80240, four line 40 hundred million dollars (\$400,000,000) shall be available to the

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7 (a) Multiple benefit river and urban stream parkway projects 8 that protect and restore riparian habitats, improve climate resilience, 9 enhance natural drainages, protect and restore watersheds, and 10 provide urban access, including for statewide obligations involving 11 multistate agreements.

12 (b) At least 60 percent of the funds shall be available to the 13 Natural Resources Agency for capital outlay projects that provide 14 air quality and habitat benefits and that implement state obligations 15 in arid, desert areas of the state.

16 80248. (a) Of the funds made available by Section 80240, one line 17 hundred fifty million dollars (\$150,000,000) shall be available for line 18 flood management projects that are components of multiple benefit line 19 flood management system improvements that reduce risks to public line 20 safety and provide improvement to wildlife habitat. Eligible project line 21 types include, but are not limited to, levee setbacks, projects line 22 connecting rivers with flood plains, enhancement of flood plains line 23 and bypasses, offstream groundwater recharge, and land line 24 acquisitions and easements necessary for these project types. To line 25 the extent feasible, project selection shall be guided by approved line 26 local hazard mitigation plans and preference shall be given to line 27 natural infrastructure projects. Eligible projects include any of the line 28 following:

29 (1) Multiple benefit flood management projects that reduce the 30 impacts of climate change on inland or coastal infrastructure, 31 communities, or ecosystems, and provide ecosystem, wildlife, or 32 groundwater recharge benefits.

33 (2) Natural infrastructure projects to reduce flood intensity and 34 slow watershed runoff.

35 (3) Projects that capture, clean, or otherwise productively use 36 stormwater.

37 (4) Projects that provide matching grants for, or otherwise 38 leverage funding from, the Federal Emergency Management 39 Agency, the United States Army Corps of Engineers, or other 40 federal mitigation and resilience funding.

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1 (5) Projects that provide benefits to fish, waterfowl, wildlife, 2 and anadromous and other  
native fish species along migratory 3 corridors.

4 (6) Projects that restore streams to a more natural state by 5 removing drainage  
obstructions, culverts, and paved channels to 6 enable more stormwater to be absorbed and  
gradually released by 7 soil and plants.

8 (b) Of the funds made available pursuant to this section, at least 9 fifty million dollars  
(\$50,000,000) shall be allocated for multiple 10 benefit flood management projects in urban  
coastal watersheds.

11 80249. Of the funds made available by Section 80240, fifty line 12 million dollars  
(\$50,000,000) shall be available to the Central line 13 Valley Flood Protection Board for further  
development of the State line 14 Plan of Flood Control, including the San Joaquin River and line 15  
Sacramento Valley flood risk management plans. The Central line 16 Valley Flood Protection Board  
shall ensure equitable distribution line 17 of funds.

18 80250. To the extent feasible, a project that includes water line 19 efficiencies, stormwater  
capture for infiltration or reuse, or carbon line 20 sequestration features in the project design may be  
given priority line 21 for grant funding under this chapter.

22 80251. Moneys allocated by this chapter shall not be used to line 23 fulfill any environmental  
mitigation requirements imposed by law, line 24 including paying for the costs of the design,  
construction, operation, line 25 mitigation, or maintenance of Delta conveyance facilities. Those line  
26 costs shall be the responsibility of the water agencies that benefit line 27 from the design,  
construction, mitigation, or maintenance of those line 28 facilities.

29 80252. To the extent feasible, a project whose application line 30 includes the use of services  
of the California Conservation Corps line 31 or certified community conservation corps, as defined in  
Section line 32 14507.5, and resource conservation districts, shall be given line 33 preference for  
receipt of a grant under this chapter.

34 35 Chapter 5. 36 Working Lands, and Agriculture from Climate Risks Protecting  
Fish, Wildlife, Natural Areas,

37 38 80260. The sum of one billion three hundred million dollars line 39 (\$1,300,000,000)  
shall be available, upon appropriation by the

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3 (a) Restore natural lands to better maintain ecosystem benefits 4 as climate conditions change.

5 (b) Enhance fish and wildlife corridors and habitat linkages to 6 enhance the ability of wildlife to adapt to changing climate 7 conditions.

8 (c) Protect our farms, ranches, and working lands from changing 9 climate conditions.

10 80261. (a) Of the funds made available by Section 80260, four line 11 hundred million dollars (\$400,000,000) shall be available to the line 12 Wildlife Conservation Board for the protection of California's fish line 13 and wildlife resources in response to changing climate conditions, line 14 as well as for restoration and stewardship projects that restore or line 15 manage land or habitat to improve its resilience to climate impacts line 16 and natural disasters. Eligible projects include, but are not limited line 17 to, the following:

18 (1) Salmon and other fishery preservation, enhancement, and 19 habitat restoration projects.

20 (2) Projects to protect and restore wetlands and other fish and 21 wildlife habitat, including, but not limited to, habitat used by 22 migratory birds.

23 (3) Projects for the protection and restoration of fish and wildlife 24 corridors and habitat linkages, the construction or repair of 25 corridors, and the removal or modification of barriers. Projects 26 may include planning, monitoring, and data collection necessary 27 to track movement of wildlife around and across transportation 28 facilities and to establish the best locations to construct wildlife 29 crossing features, including fish passage improvements.

30 (4) Land acquisition projects, including, but not limited to, those 31 that protect land from development or prevent the conversion of 32 rangeland, grazing land, or grassland to nonagricultural uses.

33 (5) Projects for conservation actions on private lands, including, 34 but not limited to, incentives, matching grants, and technical 35 assistance for private landowners to implement conservation 36 actions.

37 (6) Projects for the protection of threatened and endangered 38 species, including projects within natural community conservation 39 plans adopted pursuant to the Natural Community Conservation 40 Planning Act (Chapter 10 (commencing with Section 2800) of

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1 Division 3 of the Fish and Game Code) or habitat conservation 2 plans. Projects may include land acquisition through either 3 easement or fee title.

4 (7) Projects that include acquisition of water or water rights 5 from willing sellers, acquisition of land that includes water rights 6 or contractual rights to water, and other projects that provide water 7 for fish and wildlife or improve aquatic or riparian habitat 8 conditions.

9 (8) Projects for the development and implementation of regional 10 conservation investment strategies that include climate resilience 11 elements and are not otherwise funded by the state pursuant to 12 Section 800 of the Streets and Highways Code.

13 (9) Restoration activities to control or eradicate invasive plants 14 or insects that degrade wildlife corridors or habitat linkages, inhibit 15 the recovery of threatened or endangered species, or reduce the 16 climate resilience of a natural system and its species.

17 (10) Protection and restoration of redwood forests in order to 18 accelerate old growth characteristics, maximize carbon 19 sequestration, improve water quality, and build climate resilience.

20 (11) Protection and restoration of oak woodlands pursuant to 21 Section 1363 of the Fish and Game Code and grasslands pursuant 22 to Section 10330 of the Public Resources Code.

23 (b) Funding made available by subdivision (a) shall not be used 24 to offset mitigation obligations otherwise required, but may be 25 used as part of a funding partnership to enhance, expand, or 26 augment conservation efforts required by mitigation.

27 80262. Of the funds made available by Section 80260, one line 28 hundred million dollars (\$100,000,000) shall be available to the line 29 Wildlife Conservation Board for groundwater sustainability line 30 projects that provide wildlife habitat. Projects may support line 31 implementation of the Sustainable Groundwater Management Act line 32 (Part 2.74 (commencing with Section 10720) of Division 6 of the line 33 Water Code). Eligible projects include, but are not limited to, the line 34 following:

35 (a) Projects that create, protect, or restore permanent wildlife 36 habitat.

37 (b) Projects that permanently create, protect, or restore seasonal 38 wetland habitat that provides aquifer replenishment.

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1 (c) Projects that improve groundwater supply, including 2 groundwater recharge, improved baseflows in rivers and streams, 3 and groundwater supply improvement for fish and wildlife habitat.

4 (d) (1) Projects that convert land to lesser water use while 5 maintaining natural and working lands.

6 (2) Any groundwater recharge achieved under this section shall 7 remain in the basin to improve groundwater conditions. Payments 8 shall be linked to achievement and delivery of defined conservation 9 outcomes, the duration of those outcomes, and the commitment 10 of matching funds.

11 80263. Of the funds made available by Section 80260, one line 12 hundred million dollars (\$100,000,000) shall be available to the line 13 Department of Fish and Wildlife to improve the climate resilience line 14 of fish and wildlife habitat. Eligible projects include, but are not line 15 limited to, the following:

16 (a) Projects on lands managed by the Department of Fish and 17 Wildlife to reduce the risks of fire, flood, inundation, sea level 18 rise, and other risks associated with climate change and for the 19 protection and restoration of infrastructure and natural resources.

20 (b) Competitive grants for projects that enhance or restore inland 21 or diadromous native fish species habitat. Projects include, but are 22 not limited to, enhanced stream flows, improved fish passage, 23 reconnection of riverine and floodplain habitat, and other actions 24 to help fish adapt to climate change.

25 80264. To the extent feasible in implementing this chapter, a line 26 state agency receiving funding under this chapter shall seek to line 27 achieve wildlife conservation objectives through projects on public line 28 lands or voluntary projects on private lands. Projects on private line 29 lands shall be evaluated based on the durability of the benefits line 30 created by the investment. Funds may be used for payments for line 31 the protection or creation of measurable habitat improvements or line 32 other improvements to the condition of endangered or threatened line 33 species, including through the development and implementation line 34 of habitat credit exchanges.

35 80265. (a) Of the funds made available pursuant to Section line 36 80260, the sum of five hundred million dollars (\$500,000,000) line 37 shall be available to the Natural Resources Agency for line 38 conservancies specified in subdivision (b). The Natural Resources line 39 Agency shall allocate funds according to each conservancy's line 40 governing statutes and funds shall be for climate resilience and

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3 (b) The conservancy that are eligible for these funds include 4 Baldwin Hills Conservancy, State Coastal Conservancy, California 5 Tahoe Conservancy, Coachella Valley Mountains Conservancy, 6 Sacramento-San Joaquin Delta Conservancy, San Diego River 7 Conservancy, San Gabriel and Lower Los Angeles Rivers and 8 Mountains Conservancy, San Joaquin River Conservancy, Santa 9 Monica Mountains Conservancy, Sierra Nevada Conservancy, and 10 any subsequent conservancies approved by the Legislature, 11 including changes to those conservancies. The State Coastal 12 Conservancy’s allocation shall include projects for its San 13 Francisco Bay Area Conservancy Program and the Santa Ana 14 River Conservancy programs.

15 (c) The Natural Resources Agency, in consultation with the 16 Wildlife Conservation Board, shall allocate funds based on a review 17 of the strength of the information outlined in each conservancy’s 18 climate resiliency plan required pursuant to Section 80266. The 19 Natural Resources Agency shall allocate no less than ten million 20 dollars (\$10,000,000) of the funds made available pursuant to this 21 section to each conservancy.

22 (d) When allocating funds pursuant to this section, the Natural 23 Resources Agency shall give preference to all of the following:

24 (1) Projects that use natural infrastructure.

25 (2) Projects done jointly by more than one conservancy.

26 (3) Projects that maximize greenhouse gas reductions.

27 (4) Conservancies that provide technical assistance to 28 disadvantaged communities, vulnerable populations, including 29 those with access and functional needs, at-risk infrastructure, 30 socially disadvantaged farmers or ranchers, and economically 31 distressed areas.

32 (e) On or before March 1, 2021, the Natural Resources Agency 33 shall develop and provide guidelines for climate resiliency plans 34 to each conservancy.

35 (f) The Natural Resources Agency shall hold at least one public 36 workshop before allocating the funds made available pursuant to 37 this section and shall make information describing the final 38 allocation publicly available on its internet website.

39 80266. (a) On or before January 1, 2022, the Baldwin Hills line 40 Conservancy, State Coastal Conservancy, California Tahoe

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9 (1) Describe how the impacts of climate change relate to the 10 conservancy’s mission and how they will affect the lands within 11 its jurisdiction.

12 (2) Describe the conservancy’s past investment and work 13 addressing the impacts of climate change, reducing greenhouse 14 gas emissions, and improving climate resiliency.

15 (3) Outline a list of all projects or programs that the conservancy 16 would propose to fund with an allocation by the Natural Resources 17 Agency pursuant to Section 80265.

18 (4) Describe the potential benefits of each project or program 19 in increasing climate resilience and reducing the risks of climate 20 change impacts upon communities, fish and wildlife, and natural 21 resources.

22 (b) Each conservancy shall make the climate resiliency plan 23 available on its internet website and provide the climate resiliency 24 plan to the Natural Resources Agency.

25 80267. (a) For purposes of this section, “small- and line 26 medium-sized farms” means farms and ranches of 500 acres or line 27 less.

28 (b) Of the funds made available by Section 80260, two hundred 29 million dollars (\$200,000,000) shall be available, upon 30 appropriation by the Legislature, for purposes of protecting 31 California’s agricultural resources, open spaces, and lands from 32 climate resiliency. Projects pursuant to this chapter shall have 33 climate resiliency goals including:

34 (1) Improving soil health to allow for better water retention, 35 carbon sequestration, and reduced soil erosion to improve resiliency 36 from droughts and floods while improving water quality.

37 (2) Improve on-farm water efficiency to improve resiliency 38 from multiyear droughts.

39 (3) Improve the state’s ability to respond to risks from invasive 40 species.

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1 (c) Of the funds made available by subdivision (b), one hundred 2 fifty million dollars (\$150,000,000) shall be available to the 3 Department of Food and Agriculture for improvements in climate 4 resilience of agricultural lands and ecosystem health and allocated 5 to eligible projects as follows:

6 (1) (A) Fifty million dollars (\$50,000,000) for grants to promote 7 practices on farms and ranches that improve soil health, accelerate 8 atmospheric carbon removal or soil carbon sequestration, improve 9 water quality, enhance groundwater recharge and surface water 10 supplies, or improve fish or wildlife habitat.

11 (B) At least 35 percent of the funds allocated pursuant to this 12 paragraph shall be allocated to projects that provide direct and 13 meaningful benefits to farmers and ranchers in disadvantaged 14 communities.

15 (C) Priority shall be given to small- and medium-sized farms 16 and socially disadvantaged farmers and ranchers.

17 (2) (A) Forty million dollars (\$40,000,000) for grants to 18 promote on-farm water use efficiency with a focus on multiple 19 benefit projects that improve groundwater management, climate 20 resiliency, water quality, surface water use efficiency, drought and 21 flood tolerance, or water supply and water quality conditions for 22 fish and wildlife.

23 (B) At least 35 percent of the funds allocated pursuant to this 24 paragraph shall be allocated to projects that provide direct and 25 meaningful benefits to farmers and ranchers in disadvantaged 26 communities.

27 (C) Priority shall be given to small- and medium-sized farms 28 and socially disadvantaged farmers and ranchers.

29 (3) Forty million dollars (\$40,000,000) for projects that promote 30 the reduction of methane emissions from dairy and livestock 31 operations and improved water quality through alternative manure 32 management and handling, including, but not limited to, the 33 creation of composted manure products. Projects shall not include 34 the funding of anaerobic digesters.

35 (4) Twenty million dollars (\$20,000,000) to be deposited in the 36 Invasive Species Account established pursuant to Section 7706 of 37 the Food and Agricultural Code for purposes of funding invasive 38 species projects and activities recommended by the Invasive 39 Species Council of California. Priority shall be given to projects 40 that restore and protect ecosystem health.

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1 (d) Of the funds made available by subdivision (b), fifty million 2 dollars (\$50,000,000) shall be available to the Department of 3 Conservation for projects for the protection, restoration, and 4 enhancement of farmland and rangeland, including, but not limited 5 to, the acquisition of fee titles or easements, that improve climate 6 resilience, open-space soil health, atmospheric carbon removal, 7 soil carbon sequestration, erosion control, watershed restoration, 8 conservation projects, water quality, water retention, and provide 9 multiple benefits. In awarding funds for farmland and rangeland 10 projects pursuant to this section, the Department of Conservation 11 shall give preference to projects for small- and medium-sized farms 12 At least 35 percent of the funds allocated pursuant to this section 13 shall be allocated to projects that provide direct and meaningful 14 benefits to farmers and ranchers in severely disadvantaged 15 communities.

16 80268. Funds provided by this chapter shall not be expended line 17 to pay the costs of the design, construction, operation, mitigation, line 18 or maintenance of Delta conveyance facilities. Those costs shall line 19 be the responsibility of the water agencies that benefit from the line 20 design, construction, operation, mitigation, or maintenance of those line 21 facilities.

22 23 Chapter 6. 24 Resilience Strengthening California's Regional Climate

25 26 80270. The sum of one billion six hundred million dollars line 27 (\$1,600,000,000) shall be made available, upon appropriation by line 28 the Legislature, for the purposes of strengthening California's line 29 climate resilience based on projects tailored to its unique regions.

30 80271. (a) Of the funds made available by Section 80270, one line 31 billion three hundred million dollars (\$1,300,000,000) shall be line 32 available to the Strategic Growth Council for the reduction in the line 33 risk of climate impacts to communities, including, but not limited line 34 to, wildfire, sea level rise, and extreme heat events. The goal of line 35 these funds is to encourage the development and implementation line 36 of multiple-benefit, cross-sector projects that respond to the line 37 region's greatest climate vulnerabilities.

38 (b) Funds made available by this section shall be available to 39 regional climate networks to implement the highest priority projects 40 identified in approved regional climate adaptation action plans.

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1 (c) Funds made available by this section shall be for public 2 benefits associated with  
climate resiliency projects that reduce 3 climate vulnerabilities.

4 (d) Funds made available *available* by this section shall be 5 allocated to regional climate  
networks, as follows:

6 (1) At least 60 percent of funds shall be available to regional 7 climate networks based on  
the percentage of the state's population 8 included in the jurisdiction of the network's regional  
climate 9 adaptation action plan, but not less than two million dollars 10 (\$2,000,000) per  
network.

11 (2) The remaining funds may be provided to increase the size 12 of the awards under  
paragraph (1) to the extent the approved 13 regional climate adaptation action plan does any of  
the following:

14 (A) Protects vulnerable populations.

15 (B) Protects natural resources prioritized by the state.

16 (C) Enhances statewide climate adaptation strategies, as 17 identified by the most recent  
update of the Safeguarding California 18 Plan developed by the Natural Resources Agency.

19 (D) Reduces or sequesters carbon emissions.

20 (E) Scales to maximize effectiveness of response.

21 (F) Includes information regarding the regional climate 22 network's ability to secure  
matching funds for projects identified 23 within the plan.

24 80272. Of the funds made available by Section 80270, two line 25 hundred million dollars  
(\$200,000,000) shall be available to the line 26 Strategic Growth Council for a competitive grant  
program to reduce line 27 the urban heat island effect. Priority shall be given to projects that line 28  
provide multiple benefits, including rainwater capture, reduction line 29 of stormwater pollution, and  
increased use of natural spaces for line 30 urban vegetation and forestry.

31 80273. Of the funds made available by Section 80270, one line 32 hundred million dollars  
(\$100,000,000) shall be available, upon line 33 appropriation by the Legislature, to the Department  
of Food and line 34 Agriculture for grants to fairgrounds operated by the network of line 35  
California fairs for modifications or upgrades that do either or both line 36 of the following activities:

37 (a) Enhance the ability of those facilities to serve as multirole 38 community, staging,  
and evacuation centers to provide community 39 resilience benefits during a disaster, state of  
emergency, local 40 emergency, or public safety power shutoff event.

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1 (b) Deploy communications and broadband infrastructure at 2 those facilities to improve  
their capability to serve as a multirole 3 community, staging, and evacuation centers and enhance  
local 4 telecommunications service.

5 6 Chapter 7. Fiscal Provisions

7 8 80280. (a) Bonds in the total amount of six billion nine line 9 hundred eighty million  
dollars (\$6,980,000,000), not including the line 10 amount of any refunding bonds issued in  
accordance with Section line 11 80292, may be issued and sold to provide a fund to be used for line  
12 carrying out the purposes expressed in this division and to line 13 reimburse the General  
Obligation Bond Expense Revolving Fund line 14 pursuant to Section 16724.5 of the Government  
Code. The bonds, line 15 when sold, issued, and delivered, shall be and constitute a valid line 16 and  
binding obligation of the State of California, and the full faith line 17 and credit of the State of  
California is hereby pledged for the line 18 punctual payment of both the principal of, and interest  
on, the line 19 bonds as the principal and interest become due and payable.

20 (b) The Treasurer shall cause the issuance and sell the bonds 21 authorized by the  
committee pursuant to this section. The bonds 22 shall be issued and sold upon the terms and  
conditions specified 23 in a resolution to be adopted by the committee pursuant to Section  
24 16731 of the Government Code.

25 80281. The bonds authorized by this division shall be prepared, line 26 executed, issued, sold,  
paid, and redeemed as provided in the State line 27 General Obligation Bond Law (Chapter 4  
(commencing with line 28 Section 16720) of Part 3 of Division 4 of Title 2 of the Government line  
29 Code), as amended from time to time, and all of the provisions of line 30 that law, except  
subdivisions (a) and (b) of Section 16727 of the line 31 Government Code, apply to the bonds and to  
this division and are line 32 hereby incorporated in this division as though set forth in full in line 33  
this division.

34 80282. (a) Solely for the purpose of authorizing the issuance line 35 and sale, pursuant to the  
State General Obligation Bond Law line 36 (Chapter 4 (commencing with Section 16720) of Part 3  
of Division line 37 4 of Title 2 of the Government Code), of the bonds authorized by line 38 this  
division, the Economic Recovery, Wildfire Prevention, Safe line 39 Drinking Water, Drought  
Preparation, and Flood Protection Bond line 40 Finance Committee is hereby created. For purposes  
of this division,

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5 (b) The committee consists of the Director of Finance, the 6 Treasurer, the Controller, and  
the Secretary of the Natural 7 Resources Agency. Notwithstanding any other law, any member  
8 may designate a representative to act as that member in that 9 member’s place for all  
purposes, as though the member were 10 personally present.

11 (c) The Treasurer shall serve as the chairperson of the 12 committee.

13 (d) A majority of the committee may act for the committee.

14 80283. The committee shall determine whether or not it is line 15 necessary or desirable to  
issue bonds authorized by this division line 16 in order to carry out the actions specified in this  
division and, if line 17 so, the amount of bonds to be issued and sold. Successive issues line 18 of  
bonds may be authorized and sold to carry out those actions line 19 progressively, and it is not  
necessary that all of the bonds line 20 authorized to be issued be sold at any one time.

21 80284. For purposes of the State General Obligation Bond Law line 22 (Chapter 4  
(commencing with Section 16720) of Part 3 of Division line 23 4 of Title 2 of the Government  
Code), “board,” as defined in line 24 Section 16722 of the Government Code, means the Secretary of  
line 25 the Natural Resources Agency.

26 80285. There shall be collected each year and in the same line 27 manner and at the same  
time as other state revenue is collected, line 28 in addition to the ordinary revenues of the state, a sum  
in an amount line 29 required to pay the principal of, and interest on, the bonds each line 30 year. It  
is the duty of all officers charged by law with any duty line 31 regarding the collection of the revenue  
to do and perform each and line 32 every act that is necessary to collect that additional sum.

33 80286. Notwithstanding Section 13340 of the Government line 34 Code, there is hereby  
continuously appropriated from the General line 35 Fund in the State Treasury, for the purposes of  
this division, and line 36 without regard to fiscal years, an amount that will equal the total line 37 of  
the following:

38 (a) The sum annually necessary to pay the principal of, and 39 interest on, bonds issued  
and sold pursuant to this division, as the 40 principal and interest become due and payable.

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1 (b) The sum that is necessary to carry out Section 80289.

2 80287. The board may request the Pooled Money Investment line 3 Board to make a loan from  
the Pooled Money Investment Account, line 4 including other authorized forms of interim financing  
that include, line 5 but are not limited to, commercial paper, in accordance with line 6 Section 16312  
of the Government Code, for the purpose of carrying line 7 out this division. The amount of the  
request shall not exceed the line 8 amount of the unsold bonds that the committee has, by resolution,  
line 9 authorized to be sold for the purpose of carrying out this division, line 10 excluding any  
refunding bonds authorized pursuant to Section line 11 80292, less any amount loaned and not yet  
repaid pursuant to this line 12 section and withdrawn from the General Fund pursuant to Section line  
13 80289 and not yet returned to the General Fund. The board shall line 14 execute those documents  
required by the Pooled Money Investment line 15 Board to obtain and repay the loan. Any amounts  
loaned shall be line 16 deposited in the fund to be allocated in accordance with this line 17 division.

18 80288. Notwithstanding any other provision of this division, line 19 or of the State General  
Obligation Bond Law (Chapter 4 line 20 (commencing with Section 16720) of Part 3 of Division 4 of  
Title line 21 2 of the Government Code), if the Treasurer sells bonds pursuant line 22 to this chapter  
that include a bond counsel opinion to the effect line 23 that the interest on the bonds is excluded  
from gross income for line 24 federal tax purposes under designated conditions or is otherwise line  
25 entitled to any federal tax advantage, the Treasurer may maintain line 26 separate accounts for the  
bond proceeds invested and for the line 27 investment earnings on those proceeds and may use or  
direct the line 28 use of those proceeds or earnings to pay any rebate, penalty, or line 29 other  
payment required under federal law or take any other action line 30 with respect to the investment  
and use of those bond proceeds, as line 31 may be required or desirable under federal law in order to  
maintain line 32 the tax-exempt status of those bonds and to obtain any other line 33 advantage under  
federal law on behalf of the funds of this state.

34 80289. For purposes of carrying out this division, the Director line 35 of Finance may  
authorize the withdrawal from the General Fund line 36 of an amount or amounts not to exceed the  
amount of the unsold line 37 bonds that have been authorized by the committee to be sold for line 38  
the purpose of carrying out this division, excluding refunding line 39 bonds authorized pursuant to  
Section 80292, less any amount line 40 loaned pursuant to Section 80287 and not yet repaid and any  
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9 80290. All moneys deposited in the fund that are derived from line 10 premiums and accrued interest on bonds sold pursuant to this line 11 division shall be reserved in the fund and shall be available for line 12 transfer to the General Fund as a credit to expenditures for bond line 13 interest, except that amounts derived from premiums may be line 14 reserved and used to pay the cost of bond issuance before any line 15 transfer to the General Fund.

16 80291. Pursuant to the State General Obligation Bond Law line 17 (Chapter 4 (commencing with Section 16720) of Part 3 of Division line 18 4 of Title 2 of the Government Code), the cost of bond issuance line 19 shall be paid or reimbursed out of the bond proceeds, including line 20 premiums, if any. To the extent the cost of bond issuance is not line 21 paid from premiums received from the sale of bonds, these costs line 22 shall be allocated proportionally to each program funded through line 23 this division by the applicable bond sale.

24 80292. The bonds issued and sold pursuant to this division line 25 may be refunded in accordance with Article 6 (commencing with line 26 Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of line 27 the Government Code, which is a part of the State General line 28 Obligation Bond Law. Approval by the voters of the state for the line 29 issuance of the bonds under this division shall include approval line 30 of the issuance of any bonds issued to refund any bonds originally line 31 issued under this division or any previously issued refunding bonds. line 32 Any bond refunded with the proceeds of a refunding bond as line 33 authorized by this section may be legally defeased to the extent line 34 permitted by law in the manner and to the extent set forth in the line 35 resolution, as amended from time to time, authorizing that refunded line 36 bond.

37 80293. Notwithstanding Section 16727 of the Government line 38 Code, funds provided pursuant to this division may be used for line 39 grants and loans to nonprofit organizations to repay financing line 40 described in Section 22064 of the Financial Code related to projects

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3 80294. The proceeds from the sale of bonds authorized by this line 4 division are not “proceeds of taxes” as that term is used in Article line 5 XIII B of the California Constitution, and the disbursement of line 6 these proceeds is not subject to the limitations imposed by that line 7 article.

8 SEC. 3. Section 2 of this act shall take effect upon the approval line 9 by the voters of the Economic Recovery, Wildfire Prevention, Safe line 10 Drinking Water, Drought Preparation, and Flood Protection Bond line 11 Act of 2020, as set forth in Section 2 of this act.

12 SEC. 4. (a) (1) Notwithstanding Sections 9040, 9043, 9044, line 13 9061, and 9082 of the Elections Code, or any other law, Section line 14 2 of this act shall be submitted by the Secretary of State to the line 15 voters at the November 3, 2020, statewide general election.

16 (2) The requirement of Section 9040 of the Elections Code that line 17 a measure submitted to the people by the Legislature appear on line 18 the ballot of the November 3, 2020, statewide general election line 19 occurring at least 131 days after the adoption of the proposal by line 20 the Legislature shall not apply to Section 2 of this act.

21 (b) The Secretary of State shall include in the ballot pamphlets line 22 mailed pursuant to Section 9094 of the Elections Code the line 23 information specified in Section 9084 of the Elections Code line 24 regarding Section 2 of this act. If that inclusion is not possible, the line 25 Secretary of State shall publish a supplemental ballot pamphlet line 26 regarding Section 2 of this act to be mailed with the ballot line 27 pamphlet. If the supplemental ballot pamphlet cannot be mailed line 28 with the ballot pamphlet, the supplemental ballot pamphlet shall line 29 be mailed separately.

30 (c) Notwithstanding Section 9054 of the Elections Code or any line 31 other law, the translations of the ballot title and the condensed line 32 statement of the ballot title required pursuant to Section 9054 of line 33 the Elections Code for Section 2 of this act may be made available line 34 for public examination at a later date than the start of the public line 35 examination period for the ballot pamphlet.

36 (d) Notwithstanding Sections 13115 and 13117 of the Elections line 37 Code, Section 2 of this act and any other measure placed on the line 38 ballot by the Legislature for the November 3, 2020, statewide line 39 general election after the 131-day deadline set forth in Section line 40 9040 of the Elections Code shall be placed on the ballot, following

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1 all other ballot measures, in the order in which they qualified as 2 determined by chapter number.

3 SEC. 5. The provisions of this act are severable. If any line 4 provision of this act or its application is held invalid, that invalidity line 5 shall not affect other provisions or applications that can be given line 6 effect without the invalid provision or application.

*This act is an urgency statute necessary for the line 8 immediate preservation of the public peace, health, or safety within line 9 the meaning of Article IV of the California Constitution and shall line 10 go into immediate effect. The facts constituting the necessity are:*

*In order to ensure that the Economic Recovery, Wildfire line 12 Prevention, Safe Drinking Water, Drought Preparation, and Flood line 13 Protection Bond Act of 2020 is placed on the ballot for the line 14 November 3, 2020, statewide general election and that revenues line 15 from the sale of bonds authorized under the Economic Recovery, line 16 Wildfire Prevention, Safe Drinking Water, Drought Preparation, line 17 and Flood Protection Bond Act of 2020, if approved by the voters, line 18 are available as soon as possible to fund programs for the line 19 economic recovery of the state, it is necessary for this act to take line 20 effect immediately.*

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Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
June 30, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Susan Wengraf  
Subject: Support for AB-2501 COVID-19: Homeowner, Tenant, and Consumer relief

RECOMMENDATION

Adopt a Resolution in support of AB-2501: Homeowner, Tenant and Consumer Relief (Limón). Send a copy of the Resolution to Assemblymembers Limón, Skinner and Wicks and Governor Newsom.

AB-2501 provides for temporary forbearance and affordable post-forbearance repayment options for borrowers facing financial hardship during the COVID-19 emergency and 180 days thereafter, related to mortgages and vehicle financing. Tenants experiencing financial hardship would receive rent relief (deferment) and evictions would be prohibited, during the life of the mortgage forbearance.

FINANCIAL IMPLICATIONS

No financial implications to send resolution to Legislators.

BACKGROUND

The COVID-19 pandemic has severely shocked our state economy. Unemployment claims have reached unprecedented levels over the last three months, and the metric does not reflect the economic damage caused by salary and wage reductions that are not accounted for in unemployment data or the loss of income received by small business owners. This bill seeks to address the immediate threat to the financial well-being and health of California families.

AB-2501 (Limón) would provide a temporary reprieve from payment obligations related to mortgages, car loans, and payday loans. This bill does not cancel or forgive any scheduled payment obligation; rather, it provides a way for borrowers to defer payment to a later date when the immediate impacts of the pandemic have subsided. This bill would give California families a chance to weather the current storm without losing their homes and vehicles or ruining their financial well-being.

Specifically, AB-2501 would provide 18 months of forbearance, with possible extension, to homeowners and multifamily owners who are experiencing financial hardship due to COVID-19. The bill would require the multifamily borrower to provide rent relief (deferment) to tenants living on the property for the length of the forbearance. A

homeowner receiving forbearance would also be required to provide rent relief to tenants, if any, living in their home. Evictions would be prohibited during the forbearance period.

The bill also prohibits loan servicers of vehicle-secured credit from taking any action to repossess a mobile home or motor vehicle that secures a loan during the COVID-19 emergency and for 180 days after. It would require loan-servicers to provide 90 days forbearance to consumers who request it because they are experiencing financial hardship due to COVID-19. Servicers can apply up to 7% annual interest but cannot apply additional fees or penalties.

ENVIRONMENTAL SUSTAINABILITY

Keeping people housed in their homes is essential to the wellbeing of our environment

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

2: [AB-2501](#)

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

CITY OF BERKELEY SUPPORTS AB-2501

WHEREAS, The City of Berkeley's Public Health Officer, along with six SF Bay Area Counties, issued a stay at home order beginning March 17, 2020 to protect residents from contracting and spreading COVID-19; and

WHEREAS, that effective and necessary action, also taken by the Governor two days later, devastated Berkeley residents', and all Californians', ability to work, resulting in greater than 20 percent unemployment in the state; and

WHEREAS, AB-2501 seeks to address the immediate threat to the financial well-being and health of California families; and

WHEREAS, AB-2501 would provide 18 months of mortgage forbearance, with possible extension, to homeowners and multifamily owners who are experiencing financial hardship due to COVID-19; and

WHEREAS, AB-2501 would require borrowers who receive forbearance to provide rent relief (deferment) to tenants living on the property, as well as prohibit evictions for the length of the forbearance; and

WHEREAS, AB-2501 also prohibits loan servicers of vehicle-secured credit from taking any action to repossess a mobile home or motor vehicle that secures a loan during the COVID-19 emergency and for 180 days after.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it stands in full support of AB-2501 and commends Assemblymember Monique Limón for developing the legislation.

AMENDED IN ASSEMBLY JUNE 4,  
2020

AMENDED IN ASSEMBLY MAY 11,  
2020

california legislature—2019–20 regular session

**ASSEMBLY BILL**

**No. 2501**

Introduced by Assembly Member Limón

February 19, 2020

An act to add Title 19 (commencing with Section 3273.01) to Part 4 of Division 3 of the Civil Code, and to add ~~Sections 22698 and Section~~ 23039 to the Financial Code, relating to COVID-19 relief.

legislative counsel's digest

AB 2501, as amended, Limón. COVID-19: homeowner, tenant, and consumer relief.

(1) Existing law prescribes various requirements to be satisfied before the exercise of a power of sale under a mortgage or deed of trust. In this regard, existing law requires that a notice of default and a notice of sale be recorded and that specified periods of time elapse between the recording and the sale. Existing law establishes certain requirements in connection with foreclosures on mortgages and deeds of trust, including restrictions on the actions mortgage servicers while a borrower is attempting to secure a loan modification or has submitted a loan modification application. Existing law also imposes requirements on loans secured by liens on motor vehicles.

This bill would enact the COVID-19 Homeowner, Tenant, and Consumer Relief Law of 2020. The bill, with respect to residential mortgage loans, would prohibit a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent, as defined, from taking specified actions during the COVID-19 emergency and the 180-day period

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following the emergency. The bill would prohibit the above persons from commencing or continuing any judicial foreclosure action, recording a notice of default, or taking any action to evict a person following a foreclosure. The bill would also require the above persons to stay all foreclosure proceedings and time limits in a judicial or nonjudicial

foreclosure on a property. The bill would not apply these provisions to a mortgage secured by a dwelling that any of the above persons has determined, after exercising reasonable diligence, is vacant or abandoned.

The bill, with respect to residential mortgage loans, would authorize a borrower experiencing a financial hardship during the COVID-19 emergency ~~or the 180 days thereafter~~, to seek *request* forbearance from any mortgage obligation by submitting a request to the borrower's mortgage servicer. The bill would require the mortgage servicer to provide the forbearance requested for 180 days and to extend that timeframe if the borrower affirms that they continue to experience hardship. The bill would prohibit a mortgage servicer from misleading or making misrepresentations to a borrower about forbearance and repayment options.

The bill would require a borrower receiving a forbearance with respect to a mortgage secured by a dwelling that has a tenant, regardless of whether the borrower also lives in the dwelling, to provide the tenant with rent relief for not less than the forbearance period. The bill would require a mortgage servicer, during the COVID-9 emergency, to automatically grant a delinquent borrower on a mortgage obligation a 180-day forbearance, subject to extension. The bill would require a mortgage servicer, upon placing a mortgage obligation in forbearance, to provide the borrower written notification of the forbearance terms, treatment of payments, and other options available to the borrower at the end of the forbearance period.

The bill would prohibit a mortgage servicer from assessing, accruing, or applying fees, penalties, or additional interest to the borrower's account beyond specified scheduled or calculated amounts. The bill would require the mortgage servicer, if the borrower in forbearance makes payments to an impound account, to pay or advance the disbursements on or before relevant deadlines to avoid a penalty and would authorize the mortgage servicer to collect any resulting shortage or deficiency on that account for the borrower after the forbearance period ends. The bill would also require the mortgage servicer to evaluate the borrower's ability to return to making regular mortgage

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payments, and to take various steps to allow for modification of the borrower's loan. The bill would require a mortgage servicer that claims investor guidelines or applicable law prohibit implementation of postforbearance reinstatement to

notify the Commissioner of Business Oversight, as specified, and to present documentation, in accordance with procedures developed by the commissioner, subject to judicial review. The bill would require the mortgage servicer, if the borrower is unable to return to making regular mortgage payments, to evaluate all loan modification options, and, if the borrower qualifies, to implement the option with no penalties, late fees, or additional interest beyond specified scheduled amounts. The bill would also require a mortgage servicer, if a borrower does not qualify for modification, to evaluate the borrower for all available nonhome retention loss mitigation options before considering any foreclosure acts. The bill would require any notices or agreements to be provided in specified languages.

The bill would provide that a mortgage servicer that violates any of the above requirements forfeits their rights to commence a foreclosure on a borrower that is harmed by the violation, subject to the right to cure a violation and reinstate their rights. The bill would also make a violation of the above provisions an unfair and deceptive business practice, as well as a violation of other specified laws. The bill would authorize a borrower, if a trustee's deed upon sale has not been recorded, to bring an action for injunctive relief, and would establish various other legal remedies, including treble damages and attorney's fees and costs.

The bill, with respect to multifamily mortgage loans, would authorize a borrower to submit a request for forbearance to the borrower's mortgage servicer, affirming that the multifamily borrower is experiencing hardship during the COVID-19 emergency. The bill would require a mortgage servicer, upon request from a multifamily borrower, to request documentation of the financial hardship, provide the forbearance for not less than 180 days, subject to extension. The bill would require a multifamily borrower, during the forbearance term, to provide rent relief to tenants living in the property secured by the mortgage and would prohibit eviction for a tenant's nonpayment of rent or application or accrual of fees or other penalties on renters for nonpayment of rent. The bill would require a multifamily borrower to bring a loan placed in forbearance under these provisions current within a specified timeframe.

This bill, with respect to vehicle-secured credit obligations, would prohibit a servicer of vehicle-secured credit from taking any action to

repossess a mobilehome or motor vehicle that secures a loan during the COVID-19 emergency and for the 180-day period thereafter. The bill would authorize a consumer experiencing a financial hardship during the COVID-19 emergency to request forbearance from any vehicle-secured credit obligation, ~~regardless of delinquency status, obligation~~ by submitting a request to the servicer of vehicle-secured credit, affirming that the ~~borrower-consumer~~ is experiencing hardship. The bill would require a servicer of vehicle-secured credit to provide the forbearance requested for a period of 90 days, and to extend the forbearance period upon request, if the ~~borrower-consumer~~ affirms that they continue to experience hardship. The bill would *authorize a servicer of vehicle-secured credit to assess, accrue, or apply to a consumer's account a rate of interest of up to 7% per annum, but would* prohibit a servicer of vehicle-secured credit from assessing, accruing, or applying *additional* fees, penalties, or other interest to a ~~borrower's-consumer's~~ account beyond the amounts scheduled or calculated, as specified.

The bill would require the holder of a vehicle-secured credit obligation to evaluate a consumer's ability return to making regular payments before the completion of a forbearance period, and if the consumer is able to return to making regular payments, modify the consumer's vehicle-secured credit obligation to extend the term, modify the obligation, notify the borrower, and take other specified actions, including proceeding with a written notice of intent to repossess the vehicle only after the expiration of the COVID-19 emergency and the 180-day period thereafter. ~~The bill would also provide that a deficiency judgment shall not lie after the sale or disposition of a mobilehome or motor vehicle for failure by a consumer to make a payment after the sale or other disposition of a mobilehome or motor vehicle for failure by a consumer to make a payment that was due during the COVID-19 emergency or the 180-day period following the emergency unless the servicer of the vehicle-secured credit obligation has complied with these provisions. The bill would provide that a repossession of a mobilehome or motor vehicle by a servicer of a vehicle-secured credit obligation that has failed to comply with all of these provisions constitutes an acceptance of the collateral in full satisfaction of the vehicle-secured credit obligation.~~

~~(2) Existing law, commonly known as the Property Assessed Clean Energy (PACE) program, authorizes public agency officials and property owners, as provided, to enter into voluntary contractual assessments, known as PACE assessments, to finance the installation of distributed~~

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~~generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property.~~

~~Existing law, the California Financing Law (CFL), requires a program administrator who administers a PACE program on behalf of, and with the written consent of, a public agency to comply with specified requirements relating to the PACE program. Existing law requires a program administrator to be licensed by the Commissioner of Business Oversight under the CFL.~~

~~This bill would require a program administrator, during the COVID-19 emergency and the 180-day period thereafter, within 60 days after enactment of this bill, to notify each property owner with an outstanding assessment contract that the property owner is entitled to forbearance on the next annual PACE assessment owed pursuant to the assessment contract, if the property owner is facing a financial hardship due to the COVID-19 emergency. The bill would require the notification to specify how the property owner may elect to accept the offer of forbearance and would require a program administrator to provide forbearance on the next annual PACE assessment owed by a property owner that accepts such an offer. The bill would permit a program administrator under these circumstances to require the property owner to pay the amount of the forborne PACE assessment in the year following the scheduled end of the assessment contract and would prohibit a program administrator from charging additional fees or interest related to the forborne PACE assessment. The bill would also prohibit a program administrator from exercising any contractual rights of acceleration related to unpaid assessments during the COVID-19 emergency.~~

(3)

(2) The California Deferred Deposit Transaction Law provides for the licensure and regulation by the Commissioner of Business Oversight of persons engaged in the business of making or arranging deferred deposit transactions. A knowing and willful violation of the provisions of this law is a crime.

This bill, during the COVID-19 emergency and the 180-day period thereafter, would prohibit a fee for a deferred deposit transaction from exceeding 5% of the face amount of the check. The bill would require a licensee under that law to offer a customer the option to enter into a payment plan that provides an extension of time for repayment of an existing deferred deposit transaction in accordance with specified procedures. By expanding the scope of an existing crime, the bill would



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impose a state-mandated local program. The bill would also include related legislative findings.

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

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

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

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

- 1 SECTION 1. The Legislature finds and declares the
- 2 following:
- 3 (a) In late December 2019, several cases of unusual
- 4 pneumonia
- 5 began to emerge in the Hubei province of China. On
- 6 January 7,
- 7 2020, a novel coronavirus, SARS-CoV-2, was identified as
- 8 the
- 9 likely source of the acute respiratory disease now
- 10 known as
- 11 COVID-19.
- 12 (b) Infections have rapidly spread to other countries
- 13 throughout
- 14 the world, including the United States.
- 15 (c) On January 30, 2020, the World Health Organization
- 16 (WHO)
- 17 declared COVID-19 a Public Health Emergency of
- 18 International
- 19 Concern, and on January 31, 2020, the United States
- 20 Secretary of
- 21 Health and Human Services declared a public health
- 22 emergency.
- 23 (d) On March 4, 2020, California Governor Gavin
- 24 Newsom
- 25 declared a state of emergency to make additional
- 26 resources
- 27 available, formalize emergency actions already underway
- 28 across
- 29 multiple state agencies and departments, and help the state
- 30 prepare

17 for a broader spread of COVID-19.  
18 (e) On March 19, 2020, California Governor Gavin  
Newsom  
19 issued a stay at home order to protect the health and well-  
being of  
20 all Californians and to establish consistency across the  
state in  
21 order to slow the spread of the virus.  
22 (f) Due to the voluntary and mandatory actions by  
Californians  
23 to slow the spread of COVID-19, economic activity in the  
state  
24 has fallen precipitously.  
25 (g) In the seven weeks prior to May 1, 2020,  
approximately  
26 3,900,000 California workers filed claims for  
unemployment  
27 benefits, which represents 20 percent of the state's workforce.

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1 (h) The economic hardships brought on by the  
COVID-19  
2 pandemic mean that many California individuals and  
households  
3 are likely to have difficulty remaining current on monthly  
debt  
4 obligations through no fault of their own.  
5 (i) Temporary forbearance benefits not only borrowers, but  
also  
6 other creditors by avoiding downward collateral price  
spirals  
7 triggered by an increase in foreclosure or repossession  
activity.  
8 (j) Without forbearance, many borrowers are unlikely to  
pay  
9 their obligations according to their original terms and are  
likely to  
10 default on obligations or file for bankruptcy, resulting in  
reduced  
11 recoveries for creditors, and in the case of bankruptcy, no  
recovery  
12 of unaccrued interest.  
13 (k) With forbearance, creditors are likely to realize  
greater  
14 long-term value because borrowers will be more likely to  
repay  
15 their obligations after the major disaster or emergency has  
subsided.

16 (l) Ensuring that homeowners and tenants are able to  
17 remain in  
18 their residences helps to minimize the spread of the  
19 novel  
20 coronavirus and protects the public health.

21 (m) Providing forbearance and an opportunity to repay  
22 amounts  
23 owed after the emergency subsidies will position  
24 California  
25 consumers, households, and businesses for a stronger  
26 economic  
27 recovery than the state would otherwise realize if no action  
28 were  
29 taken.

30 (n) Without emergency action to prevent it, delinquent  
31 loan  
32 payments will likely lead to mass foreclosures, evictions,  
33 and  
34 repossessions that will harm the health, safety, and  
welfare of  
Californians today and for years after the pandemic ends.

35 (o) The Legislature hereby finds and declares that  
36 there is a  
37 current and immediate threat to the public health,  
38 safety, and  
39 welfare and a need for immediate preservation of the public  
40 peace,  
41 health, or safety that warrants this urgency legislation,  
42 which  
43 finding is based upon the facts stated in the recitals above.

44 SEC. 2. Title 19 (commencing with Section 3273.01) is  
45 added  
46 to Part 4 of Division 3 of the Civil Code, to read:

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1 TITLE 19. COVID-19 HOMEOWNER, TENANT, AND  
2 CONSUMER RELIEF LAW OF 2020  
3

4 Chapter 1. Title and Definitions  
5

6 3273.01. This title is known and may be cited as  
7 the  
8 “COVID-19 Homeowner, Tenant, and Consumer Relief  
9 Law of 2020.”

9 3273.1. For purposes of this title, the following  
definitions

10 apply:

11 (a) "Borrower" means any natural person who is a mortgagor  
12 or trustor and who is potentially eligible for any federal, state, or  
13 proprietary foreclosure prevention alternative program offered by,  
14 or through, the borrower's mortgage servicer. "Borrower" shall  
15 not include any of the following:

16 (1) An individual who has surrendered the secured property as  
17 evidenced by either a letter confirming the surrender or delivery  
18 of the keys to the property to the mortgagee, trustee, beneficiary,  
19 or authorized agent.

20 (2) An individual who has contracted with an organization,  
21 person, or entity whose primary business is advising people who  
22 have decided to leave their homes on how to extend the foreclosure  
23 process and avoid their contractual obligations to mortgagees.

24 (b) "Consumer" means a person obligated to repay a  
25 vehicle-secured credit obligation.

26 (c) "COVID-19 emergency" means the period that begins upon  
27 the date of the enactment of this title and ends on the date that the  
28 state declares the emergency related to the COVID-19 disease has  
29 ended.

30 (d) "Impound account" means a type of account for payment  
31 of taxes on real property, insurance premiums, or other purposes  
32 relating to the property. Such an account may be structured as an  
33 impound, trust, or other type of account.

34 (e) "Mobilehome" means a structure designed for human  
35 habitation and for being moved on a street or highway under permit  
36 pursuant to Section 35790 of the Vehicle Code. Mobilehome  
37 includes a manufactured home, as defined in Section 18007 of the  
38 Health and Safety Code, and a mobilehome, as defined in Section  
39 18008 of the Health and Safety Code, but, except as provided in  
40 subdivision (b), does not include a recreational vehicle, as defined

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1 in Section 799.29 of this code and Section 18010 of the  
Health  
2 and Safety Code or a commercial coach as defined in  
Section  
3 18001.8 of the Health and Safety Code.

4 (f) "Mortgage servicer" means a person or entity who  
directly  
5 services a loan, or who is responsible for interacting with  
the  
6 borrower, managing the loan account on a daily basis  
including  
7 collecting and crediting periodic loan payments, managing

any  
 8 escrow account, or enforcing the note and security instrument,  
 9 either as the current owner of the promissory note or as the current  
 10 owner’s authorized agent. “Mortgage servicer” also means a  
 11 subservicing agent to a master servicer by contract. “Mortgage  
 12 servicer” shall not include a trustee, or a trustee’s authorized agent,  
 13 acting under a power of sale pursuant to a deed of trust.  
 14 (g) “Motor vehicle” means a vehicle required to be registered  
 15 under the Vehicle Code that is bought for use primarily for personal  
 16 or family purposes, and does not mean any vehicle that is bought  
 17 for use primarily for business or commercial purposes or a  
 18 mobilehome, as defined in Section 18008 of the Health and Safety  
 19 Code that is sold on or after July 1, 1981. “Motor vehicle” does  
 20 not include any trailer that is sold in conjunction with a vessel and  
 21 that comes within the definition of “goods” under Section 1802.1.  
 22 (h) “Multifamily borrower” means a borrower of a residential  
 23 mortgage loan that is secured by a lien against a property  
 24 comprising five or more dwelling units.  
 25 (i) “Servicer of vehicle-secured credit” means either:  
 26 (1) The entity that is servicing the vehicle-secured credit  
 27 obligation for the holder.  
 28 (2) The holder, if it is servicing the obligation.  
 29 (j) “Vehicle-secured credit obligation” means *a form of credit*  
 30 *owed by a natural person, not to include artificial entities, such*  
 31 *as partnerships, corporations, trusts, estates, cooperatives,*  
 32 *associations or entities created by statute, such as governmental*  
 33 *agencies, that is either:*  
 34 (1) A loan for ~~personal, family, or household purposes~~ that is  
 35 secured by a mobilehome or motor vehicle.  
 36 (2) A conditional sale contract as defined by subdivision (a) of  
 37 Section 2981.  
 38 3273.2. (a) The provisions of this title apply to specified  
 39 obligations, as follows:

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1 (1) Article 1 (commencing with Section 3273.10) of  
 2 Chapter 2  
 3 shall apply to a mortgage or deed of trust that is  
 4 secured by  
 5 residential property containing no more than four dwelling  
 6 units.  
 7 (2) Article 2 (commencing with Section 3273.20) of  
 8 Chapter 2  
 9 shall apply to a mortgage or deed of trust that is  
 10 secured by  
 11 residential property containing five or more dwelling units.

7 (3) Chapter 3 (commencing with Section 3273.30) shall  
 8 apply  
 9 to a vehicle-secured credit obligation that was outstanding  
 10 as of  
 11 the enactment of this title.  
 12 (b) Notwithstanding subdivision (a), Chapter 3 shall apply to  
 13 all nonpurchase money loans where the lender obtains a security  
 14 interest in a motor vehicle.  
 15 (b)  
 16 (c) The provisions of this title apply to the specified persons,  
 17 as follows:  
 18 (1) Chapter 2 (commencing with Section 3273.10) shall apply  
 19 to a depository institution chartered under federal or state law, a  
 20 person licensed pursuant to Division 9 (commencing with Section  
 21 22000) or Division 20 (commencing with Section 50000) of the  
 22 Financial Code, or a person licensed pursuant to Part 1  
 23 (commencing with Section 10000) of Division 4 of the Business  
 24 and Professions Code.  
 25 (2) Chapter 3 (commencing with Section 3273.30) shall apply  
 26 to a holder of a conditional sales contract as defined by the  
 27 Automobile Sales Finance Act (Chapter 2b (commencing with  
 28 Section 2981) of Title 14), ~~a person licensed pursuant to covered~~  
 29 ~~by the licensing requirements of~~ Division 9 (commencing with  
 30 Section 22000) of the Financial Code, or a depository institution  
 31 chartered under federal or state  
 32 law.

Chapter 2. Mortgages

32

33 Article 1. Residential Mortgage Loans

34

35 3273.10. (a) A mortgage servicer, mortgagee, trustee,  
 36 beneficiary, or authorized agent shall not do any of the following  
 37 during the COVID-19 emergency and the 180-day period following  
 38 that emergency:  
 39 (1) Commence or continue any judicial foreclosure action.  
 40 (2) Record a notice of default pursuant to Section 2924.

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1 (3) Take any action to evict a person following a  
 2 foreclosure.  
 3 (b) A mortgage servicer, mortgagee, trustee,  
 4 beneficiary, or  
 5 authorized agent shall stay all foreclosure proceedings and  
 6 time

4 limits in a judicial or nonjudicial foreclosure on a property  
 5 during  
 6 the COVID-19 emergency and the 180-day period following  
 7 that  
 8 emergency. All time periods established under the state  
 9 foreclosure  
 10 law for a borrower to respond, cure a default, redeem, or  
 11 take any  
 12 action shall be stayed during the COVID-19 emergency and  
 13 the  
 14 180-day period following that emergency.

15 (c) This section does not apply to a mortgage that is  
 16 secured by  
 17 a dwelling that the mortgage servicer, mortgagee,  
 18 trustee,  
 19 beneficiary, or authorized agent has determined, after  
 20 exercising  
 21 reasonable diligence, is vacant or abandoned.

22 ~~3273.11. (a) A borrower experiencing a financial  
 23 hardship  
 24 during the COVID-19 emergency or the 180 days following  
 25 that  
 26 emergency may request forbearance from any mortgage  
 27 obligation,  
 28 regardless of delinquency status, by submitting a request  
 29 to the  
 30 borrower's mortgage servicer, either orally or in writing,  
 31 affirming  
 32 that the borrower is experiencing hardship during the  
 33 COVID-19  
 34 emergency. A borrower shall not be required to provide  
 35 any  
 36 additional documentation to receive a forbearance.~~

37 *3273.11. (a) During the COVID-19 emergency, a  
 38 borrower  
 39 may request forbearance from any mortgage  
 40 obligation by  
 41 submitting a request to the borrower's mortgage servicer,  
 42 either  
 43 orally or in writing, affirming that the borrower is  
 44 experiencing  
 45 a financial hardship that prevents the borrower from making  
 46 timely  
 47 payments on the mortgage obligation due, directly or  
 48 indirectly,  
 49 to the COVID-19 emergency.*

50 *(b) Pursuant to a borrower submitting a request for  
 51 forbearance,  
 52 a mortgage servicer may require the borrower to provide a  
 53 written  
 54 attestation subject to the following requirements:  
 55 (1) The attestation shall include only the following text:*

33 *“I, [borrower name], attest that I am experiencing a financial  
hardship  
34 that prevents me from making timely payments on my  
mortgage  
35 obligation due, directly or indirectly, to the  
COVID-19  
36 emergency.”*  
37 *(2) The mortgage servicer shall notify the borrower of  
the  
38 attestation requirement and the wording set forth in  
paragraph  
39 (1) and provide clear directions for how the attestation  
shall be  
40 delivered to the mortgage servicer.*

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1 *(3) The mortgage servicer shall provide forbearance for a  
period  
2 of no less than 30 days before canceling the forbearance  
due to a  
3 borrower failing to provide the attestation required by  
the  
4 mortgage servicer.*  
5 *(4) The mortgage servicer shall not require the borrower  
to  
6 provide any additional information or documentation besides  
the  
7 attestation described in paragraph (1).*  
8 ~~(b)~~  
9 *(c) A mortgage servicer shall provide the forbearance  
requested  
10 pursuant to subdivision (a) for a period of 180 days. If the borrower  
11 affirms that they continue to experience hardship within the 30  
12 days prior to the expiration of the initial forbearance period, the  
13 mortgage servicer shall extend the forbearance period upon request  
14 of the borrower for an additional 180 days. At the borrower’s  
15 request, either the initial or extended period of forbearance may  
16 be shortened.*  
17 ~~(e)~~  
18 *(d) A mortgage servicer shall not mislead or make  
19 misrepresentations to a borrower about any of the following:  
20 (1) Options for forbearance provided by state or federal law.  
21 (2) Options for repayment after a forbearance period ends  
22 provided by state or federal  
23 law.* ~~(d)~~  
24 *(e) A borrower receiving a forbearance under this article with  
25 respect to a mortgage secured by a dwelling that has a tenant,*



26 whether or not the borrower also lives in the dwelling, shall provide  
27 the tenant with rent relief for a period of not less than the period  
28 covered by the forbearance.

29 3273.12. (a) Notwithstanding any other state law governing  
30 forbearance relief, during the COVID-19 emergency, a mortgage  
31 servicer shall automatically grant a borrower who is or becomes  
32 60 days or more delinquent on a mortgage obligation a 180-day  
33 forbearance, which may be extended upon request of the borrower  
34 for an additional 180 days. Such a borrower may elect to continue  
35 making regular payments by notifying their mortgage servicer of  
36 their election.

37 (b) Upon placing a mortgage obligation in forbearance pursuant  
38 to subdivision (a), a mortgage servicer shall provide the borrower  
39 written notification of the forbearance terms, including treatment  
40 of payments to an impound account during the forbearance period,

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1 and a complete and accurate description of the loss  
mitigation and  
2 reinstatement options that will be available to the borrower at  
the  
3 end of the forbearance period.

4 (c) Any payments made by the borrower during the  
forbearance  
5 period shall be credited to the borrower's account in  
accordance  
6 with Section 129F of the Truth in Lending Act (15 U.S.C.  
Sec.  
7 1639f) or as the borrower may otherwise instruct that is  
consistent  
8 with the terms of the mortgage loan contract.

9 3273.13. (a) Upon receiving a request for forbearance  
from a  
10 borrower under Section 3273.11 or placing a borrower in automatic  
11 forbearance under Section 3273.12, a mortgage servicer shall  
12 provide the forbearance for not less than 180 days, and an  
13 additional 180 days at the request of the borrower, provided that  
14 the borrower will have the option to discontinue the forbearance  
15 at any time.

16 (b) During the period of a forbearance under this article, a  
17 mortgage servicer shall not assess, accrue, or apply to a borrower's  
18 account any fees, penalties or additional interest beyond the  
19 amounts scheduled or calculated as if the borrower made all  
20 contractual payments on time and in full under the terms of the  
21 mortgage contract in effect at the time the borrower enters into the  
22 forbearance.

23 (c) If a borrower in forbearance under this article is required to  
24 make payments to an impound account, the mortgage servicer shall

25 pay or advance the disbursements on or before any relevant  
26 deadlines to avoid a penalty, regardless of the status of the  
27 borrower's payments. The mortgage servicer may collect any  
28 resulting shortage or deficiency in the impound account from the  
29 borrower after the forbearance period ends in any of the following  
30 manners at the borrower's election:

- 31 (1) In a lump sum.
- 32 (2) Amortized over 60 months.
- 33 (3) Capitalized into the loan.

34 3273.14. (a) Before the completion of a forbearance period  
35 provided by this article, a mortgage servicer shall evaluate the  
36 borrower's ability to return to making regular mortgage payments.

37 (b) If the borrower is able to return to making regular mortgage  
38 payments based on the evaluation required by subdivision (a), the  
39 mortgage servicer shall:

- 40 (1) Either:

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1 (A) Modify the borrower's loan to extend the term for the  
2 same  
3 period as the length of the forbearance, with all payments that  
4 were  
5 not made during the forbearance distributed at the same  
6 intervals  
7 as the borrower's existing payment schedule and evenly  
8 distributed  
9 across those intervals, with no penalties, late fees,  
10 additional  
11 interest accrued beyond the amounts scheduled or  
12 calculated as if  
13 the borrower made all contractual payments on time and in  
14 full  
15 under the terms of the mortgage contract in effect at the  
16 time the  
17 borrower entered into the forbearance, and with no  
18 modification  
19 fee charged to the borrower, or

20 (B) If the borrower elects to modify the loan to  
21 capitalize a  
22 resulting impound account shortage or deficiency, the  
23 mortgage  
24 servicer may modify the borrower's loan by reamortizing the  
25 total  
26 unpaid principal balance and extending the term of the  
27 loan  
28 sufficient to maintain the regular mortgage payments.

29 (C) A mortgage servicer that claims investor guidelines  
30 or any

17 applicable law prohibits the mortgage servicers from  
 18 implementing  
 19 a postforbearance reinstatement option described in  
 20 subparagraphs  
 21 (A) and (B) shall notify the borrower and the  
 22 Commissioner of  
 23 Business Oversight of the claim at the time of an  
 24 offer of  
 25 forbearance. Failure to make that disclosure shall have the  
 26 effect  
 27 of a designation by the servicer that it has the  
 28 authority to  
 29 implement the provisions of this section. At the time of an  
 30 offer  
 31 of forbearance, the servicer claiming such an exception  
 32 shall  
 33 present documentation of the ground for the exception  
 34 to the  
 35 borrower and the Commissioner of Business Oversight.  
 36 The  
 37 Commissioner of Business Oversight shall develop a  
 38 procedure  
 39 for reviewing and determining the validity of such  
 40 exception  
 41 requests and an affected borrower shall have the  
 42 opportunity to  
 43 participate in the review. Determinations by the  
 44 Commissioner of  
 45 Business Oversight shall be subject to judicial review.  
 46 (2) Notify the borrower in writing of the extension  
 47 or  
 48 modification required by paragraph (1), including provision  
 49 of a  
 50 new payment schedule and date of maturity, and that the  
 51 borrower  
 52 shall have the election of prepaying the suspended  
 53 payments at  
 54 any time, in a lump sum or otherwise.  
 55 (c) If the borrower is unable to return to making  
 56 regular  
 57 mortgage payments based on the evaluation required by  
 58 subdivision 39 (a):

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1 (1) The mortgage servicer shall evaluate the borrower  
 2 for all  
 3 loan modification options, without regard to whether the  
 4 borrower

3 has previously requested, been offered, or provided a  
4 loan  
5 modification or other loss mitigation option and without  
6 any  
7 requirement that the borrower come current before that  
8 evaluation  
9 or as a condition of eligibility for the modification. A  
10 modification  
11 may include any of the following:  
12 (A) Further extending the borrower's repayment period.  
13 (B) Reducing the principal balance of the loan.  
14 (C) Any other modification or loss mitigation options  
15 available  
16 to the servicer under the terms of any investor  
17 requirements and  
18 existing laws and policies.  
19 (2) If the borrower qualifies for a modification  
20 described in  
21 paragraph (1), the mortgage servicer shall implement the  
22 option,  
23 with no penalties, late fees, additional interest beyond the  
24 amounts  
25 scheduled or calculated as if the borrower made all  
26 contractual  
27 payments on time and in full under the terms of the  
28 mortgage  
29 contract in effect at the time the borrower entered  
30 into the  
31 forbearance, and with no modification fees charged to the  
32 borrower.  
(d) If a mortgage servicer determines that a borrower  
does not  
qualify for a modification after the mortgage servicer  
conducts the  
evaluations required by this section, the mortgage servicer  
shall  
evaluate the borrower for all available nonhome retention  
loss  
mitigation options before considering any foreclosure acts  
upon  
the expiration of 180 days after the COVID-19 emergency.  
3273.15. (a) Any notices or agreements required by this  
article  
shall be provided in the languages described in Section 1632.  
(b) A mortgage servicer shall communicate about  
forbearance  
and loan modification options described in this article in  
the  
borrower's preferred language when the mortgage  
servicer  
regularly communicates with the borrower in that language.  
3273.16. Nothing in this article shall relieve a mortgage

servicer 33 of its obligations under Section 2923.5, 2923.55,  
2923.6, 2923.7,  
34 2924.9, 2924.10, 2924.11, 2924.17, or 2924.18.

35 3273.17. (a) The Legislature finds and declares that  
any duty  
36 mortgage servicers may have to maximize net present value  
under  
37 their pooling and servicing agreements is owed to all  
parties in a  
38 loan pool, or to all investors under a pooling and  
servicing  
39 agreement, not to any particular party in the loan pool or  
investor  
40 under a pooling and servicing agreement, and that a  
mortgage

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1 servicer acts in the best interests of all parties to the loan  
pool or  
2 investors in the pooling and servicing agreement if it agrees  
to or  
3 implements a forbearance, loan modification or workout plan  
for  
4 which both of the following apply:

- 5 (1) The loan is in payment default, or payment  
default is  
6 reasonably foreseeable.
- 7 (2) Anticipated recovery under the forbearance and  
loan  
8 modification plan exceeds the anticipated recovery  
through  
9 foreclosure on a net present value basis.

10 (b) It is the intent of the Legislature that a mortgage servicer  
11 offer a borrower a forbearance and loan modification or workout  
12 plan if such a plan is consistent with the mortgage servicer's  
13 contractual or other authority.

14 3273.18. (a) (1) A mortgage servicer that violates any of the  
15 requirements of this article shall forfeit any rights to commence a  
16 foreclosure on a borrower that is harmed by the violation.

17 (2) Notwithstanding paragraph (1), the mortgage servicer shall  
18 have a right to cure any violation and reinstate their rights to  
19 commence a foreclosure on the borrower. In order to cure the  
20 violation, the mortgage servicer shall provide the borrower with  
21 compensation, which may include refunds, forbearance, or any  
22 other form of compensation, so that the borrower is returned to a  
23 state similar to that which the borrower would have been if the  
24 mortgage servicer did not violate this article.

25 (b) A violation of any provision of this article shall be deemed  
26 an unfair and deceptive business practice pursuant to Section 17200  
27 of the Business and Professions Code. Such violations include,  
28 but are not limited to, the following:

29 (1) A false statement, misrepresentation, or concealment by a  
30 mortgage servicer related to the availability of postforbearance  
31 payment options.

32 (2) A misrepresentation or concealment related to a requirement  
33 that a borrower pay a lump sum at the end of a forbearance period.

34 (3) A claim of a restriction placed on a mortgage servicer by an  
35 investor that is not provided accurately or timely according to the  
36 provisions of this article.

37 (c) A violation of a provision of this article shall be deemed a  
38 violation of the law pursuant to which a mortgage servicer is  
39 licensed, and such a violation shall be subject to the enforcement  
40 authority provided to the licensing agency by the licensing law.

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1 (d) A violation of Section 4022 of the federal CARES  
Act

2 (Public Law 116-136) shall be a violation of the state  
licensing

3 law pursuant to which a mortgage servicer is licensed.

4 3273.19. (a) (1) If a trustee's deed upon sale has not  
been

5 recorded, a borrower may bring an action for injunctive  
relief to

6 enjoin a material violation of this article.

7 (2) Any injunction shall remain in place and any trustee's  
sale

8 shall be enjoined until the court determines that the  
mortgage

9 servicer has corrected and remedied the violation or  
violations

10 giving rise to the action for injunctive relief. An enjoined entity  
11 may move to dissolve an injunction based on a showing that the  
12 material violation has been corrected and remedied.

13 (b) After a trustee's deed upon sale has been recorded, a  
14 mortgage servicer shall be liable to a borrower for actual economic  
15 damages pursuant to Section 3281, resulting from a material  
16 violation of this article by that mortgage servicer where the  
17 violation was not corrected and remedied prior to the recordation  
18 of the trustee's deed upon sale. If the court finds that the material  
19 violation was intentional or reckless, or resulted from willful  
20 misconduct by a mortgage servicer, the court may award the  
21 borrower the greater of treble actual damages or statutory damages  
22 of fifty thousand dollars (\$50,000).

23 (c) No violation of this article shall affect the validity of a sale

24 in favor of a bona fide purchaser and any of its encumbrancers for  
25 value without notice.

26 (d) The rights, remedies, and procedures provided to borrowers  
27 by this section are in addition to and independent of any other  
28 rights, remedies, or procedures under any other law. Nothing in  
29 this section shall be construed to alter, limit, or negate any other  
30 rights, remedies, or procedures provided to borrowers by law.

31 (e) A court may award a prevailing borrower reasonable  
32 attorney’s fees and costs in an action brought pursuant to this  
33 section. A borrower shall be deemed to have prevailed for purposes  
34 of this subdivision if the borrower obtained injunctive relief or  
35 was awarded damages pursuant to this  
section. 36

37 Article 2. Multifamily Mortgage Loans

38

39 3273.20. (a) A multifamily borrower may submit a request  
40 for forbearance to the borrower’s mortgage servicer, either orally

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1 or in writing, affirming that the multifamily borrower  
is  
2 experiencing hardship during the COVID-19 emergency.

3 (b) A multifamily borrower shall have the option to  
discontinue  
4 the forbearance at any time.

5 3273.21. Upon receipt of an oral or written request  
for

6 forbearance from a multifamily borrower, a mortgage  
servicer

7 shall request documentation of the financial hardship,  
provide the

8 forbearance for not less than 180 days, and provide the  
forbearance

9 for an additional 180 days upon the request of the borrower at  
least

10 30 days prior to the end of the initial forbearance period.

11 3273.22. During the term of forbearance under this article, a  
12 multifamily borrower shall provide rent relief to any tenants living  
13 in the property that secures the mortgage and may not evict a tenant  
14 for nonpayment of rent or apply or accrue any fees or other  
15 penalties on renters for nonpayment of rent.

16 3273.23. A multifamily borrower shall bring a loan placed in  
17 forbearance under this article current within the earlier of 12  
18 months after the conclusion of the forbearance period or within  
19 10 days of the receipt by the multifamily borrower of any business  
20 interruption insurance proceeds.

21 3273.24. A mortgage servicer of a federally backed multifamily  
22 mortgage loan that complies with Section 4023 of the federal  
23 CARES Act (Public Law 116-136) shall be deemed to be in  
24 compliance with this  
25 article.

26 Chapter 3. Vehicle-secured credit obligations

27

28 3273.30. A servicer of vehicle-secured credit may not take any  
29 action to repossess the mobilehome or motor vehicle that secures  
30 a loan during the COVID-19 emergency and for the 180-day period  
31 following that emergency, including providing a verbal or written  
32 notice of intent to repossess the mobilehome or motor vehicle.

33 ~~3273.31. (a) A consumer experiencing a financial hardship  
34 during the COVID-19 emergency may request forbearance from  
35 any vehicle-secured credit obligation, regardless of delinquency  
36 status, by submitting a request to the servicer of vehicle-secured  
37 credit, either orally or in writing, affirming that the borrower is  
38 experiencing hardship during the COVID-19 emergency. A  
39 borrower shall not be required to provide any additional  
40 documentation to receive such forbearance.~~

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1 3273.31. (a) *If a servicer of vehicle-secured credit  
2 complies  
3 with all provisions of this section, the servicer may proceed  
4 with  
5 a repossession of a mobilehome or motor vehicle that  
6 secures a  
7 vehicle-secured credit obligation due to a consumer failing  
8 to  
9 make a scheduled payment pursuant to the vehicle-secured  
10 credit  
11 obligation.*  
12 (b) *During the COVID-19 emergency, a consumer may  
13 request  
14 forbearance from a vehicle-secured credit obligation by  
15 submitting  
16 a request to the servicer of the vehicle-secured credit, either  
17 orally  
18 or in writing, affirming that the consumer is  
19 experiencing a  
20 financial hardship that prevents the consumer from making  
21 timely  
22 payments on the vehicle-secured credit obligation due,  
23 directly or  
24 indirectly, to the COVID-19 emergency.*



14 (c) Pursuant to a consumer submitting a request  
described in  
15 subdivision (b), a servicer of vehicle-secured credit may  
require  
16 the consumer to provide a written attestation subject  
to the  
17 following requirements:  
18 (1) The attestation shall include only the following text:  
"I,  
19 [consumer name], attest that I am experiencing a  
financial  
20 hardship that prevents me from making timely payments  
on my  
21 vehicle-secured credit obligation due, directly or indirectly, to  
the  
22 COVID-19 emergency."  
23 (2) The servicer shall notify the consumer of the  
attestation  
24 requirement and provide clear directions for how the  
attestation  
25 shall be delivered to the servicer.  
26 (3) The servicer shall provide forbearance for a period  
of no  
27 less than 30 days before canceling the forbearance due  
to a  
28 consumer failing to provide the attestation required by the  
servicer.  
29 (4) The servicer shall not require the consumer to  
provide any  
30 additional information or documentation besides the  
attestation  
31 described in paragraph (1)  
32 (b)  
33 (d) A servicer of vehicle-secured credit shall provide  
the  
34 forbearance requested pursuant to subdivision (a) for a  
period of  
35 90 days. If the ~~borrower~~ consumer affirms that they  
continue to  
36 experience hardship within the 30 days prior to the  
expiration of  
37 the initial forbearance period, the servicer of vehicle-secured  
credit  
38 shall extend the forbearance period upon request of the  
~~borrower~~  
39 consumer for an additional 90 days. Those forbearance  
periods  
40 shall continue to be extended upon request of the  
~~borrower~~

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1 ~~throughout the duration of the COVID-19 emergency and~~  
2 ~~the~~  
3 ~~180-day period following that emergency. consumer up~~  
4 ~~to a~~  
5 ~~cumulative total of 270 days of forbearance.~~

6 (e) During the period of a forbearance under this  
7 chapter, a  
8 servicer of vehicle-secured credit ~~shall not~~ may assess,  
9 accrue, or  
10 apply to a ~~borrower's~~ consumer's account a rate of interest  
11 of up  
12 to 7 percent per annum, but shall not assess, accrue, or  
13 apply to  
14 a consumer's account any additional fees, penalties, or  
15 additional  
16 interest beyond the amounts scheduled or calculated as  
17 if the  
18 borrower-consumer made all contractual payments on time  
19 and in  
20 full under the terms of the vehicle-secured credit obligation  
21 contract  
22 in effect at the time the ~~borrower-consumer~~ enters  
23 into the  
24 forbearance.

25 3273.32. (a) Before the completion of a forbearance  
26 period  
27 provided by this article, the holder of a vehicle-secured  
28 credit  
29 obligation shall evaluate a consumer's ability to return to  
30 making  
31 regular payments.

32 (b) If the consumer is able to return to making regular  
33 payments  
34 based on the evaluation required by subdivision (a), the  
35 holder of

36 the vehicle-secured credit obligation shall:

37 (1) Modify the consumer's vehicle-secured credit  
38 obligation to  
39 extend the term for the same period as the length of the  
40 forbearance,  
41 with all payments that were not made during the  
42 forbearance  
43 distributed at the same intervals as the consumer's existing  
44 payment  
45 schedule and evenly distributed across those intervals,  
46 with no  
47 penalties, late fees, or additional interest accrued

beyond the  
 28 amounts scheduled or calculated as if the consumer  
       made all  
 29 contractual payments on time and in full under the terms  
       of the  
 30 vehicle-secured credit obligation contract in effect at the  
       time the  
 31 consumer entered into the forbearance, and with no  
       modification  
 32 fee charged to the consumer.  
 33 (2) Notify the borrower in writing of the modification  
       required  
 34 by paragraph (1), including provision of a new payment  
       schedule  
 35 and date of maturity, and that the consumer shall have the  
       election  
 36 of prepaying the suspended payments at any time, in a  
       lump sum  
 37 or otherwise.  
 38 (3) Not require the consumer to waive any other claim  
       provided  
 39 by law in order to accept the terms of a modification.

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~~1 (c) If the consumer is not able to return to making  
       regular  
 2 payments based on the evaluation required by subdivision  
       (a), the  
 3 holder of the vehicle-secured credit obligation may proceed  
       with  
 4 a written notice of intent to repossess the vehicle as  
       required by  
 5 law only after the expiration of the COVID-19 emergency and  
       the  
 6 180-day period following that emergency.  
 7 3273.33. Notwithstanding Sections 2983.2 or 2983.8, or  
       any  
 8 other provision of law, no deficiency judgment shall lie in  
       any  
 9 event after the sale or other disposition of a mobilehome or  
       motor  
 10 vehicle for failure by a consumer to make a payment that  
       was due  
 11 during the COVID-19 emergency or the 180-day period  
       following  
 12 that emergency unless the servicer of the vehicle-secured  
       credit  
 13 obligation has complied with all provisions of this~~

~~chapter. A~~

14 ~~repossession of a mobilehome or motor vehicle by a  
servicer of a~~

15 ~~vehicle-secured credit obligation that has failed to comply  
with~~

16 ~~all the provisions of this chapter shall constitute an  
acceptance of~~

17 ~~the collateral in full satisfaction of the vehicle-secured  
credit~~

18 ~~obligation as provided by Section 9620 of the Commercial  
Code.~~

19 3273.34. The provisions of this title are severable. If  
any

20 provision of this title or its application is held invalid,  
that

21 invalidity shall not affect other provisions or applications that  
can

22 be given effect without the invalid provision or application.

23 ~~SEC. 3. Section 22698 is added to the Financial Code, to  
read:~~

24 ~~22698. (a) Notwithstanding any other provision of this  
chapter,~~

25 ~~the following shall apply during the COVID-19 emergency  
and~~

26 ~~the 180-day period following that emergency:~~

27 ~~(1) Within 60 days of enactment of this section, a  
program~~

28 ~~administrator shall notify each property owner with an  
outstanding~~

29 ~~assessment contract that the property owner is  
entitled to~~

30 ~~forbearance on the next annual PACE assessment owed  
pursuant~~

31 ~~to the assessment contract if the property owner is facing a  
financial~~

32 ~~hardship, directly or indirectly, due to the COVID-19  
emergency.~~

33 ~~The notification shall specify how the property owner may  
elect~~

34 ~~to accept the offer of forbearance.~~

35 ~~(2) A program administrator shall provide forbearance  
on the~~

36 ~~next annual PACE assessment owed by a property  
owner that~~

37 ~~accepts the offer pursuant to paragraph (1).~~

38 ~~(3) A program administrator may require the property  
owner to~~

39 ~~pay the amount of the forborne PACE assessment in the  
year~~

40 ~~following the scheduled end of the assessment contract. A  
program~~

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1 administrator may not charge additional fees or interest  
related to  
2 the forbore PACE assessment.

3 (4) A program administrator shall not exercise any  
contractual  
4 rights of acceleration related to unpaid assessments  
during the

5 COVID-19 emergency.

6 (b) For the purposes of this section, "COVID-19  
emergency"

7 means the period that begins upon the date of the  
enactment of

8 this section and ends on the date that the state  
declares the

9 emergency related to the COVID-19 disease has ended.

10 SEC. 4.

11 SEC. 3. Section 23039 is added to the Financial Code, to read:

12 23039. (a) Notwithstanding any other provision of this  
13 division, the following shall apply during the COVID-19  
14 emergency and the 180-day period following such emergency:

15 (1) A fee for a deferred deposit transaction shall not exceed 5  
16 percent of the face amount of the check.

17 (2) A licensee shall offer a customer the option to enter into a  
18 payment plan that provides an extension of time for repayment of  
19 an existing deferred deposit transaction. The payment plan shall  
20 include the following terms:

21 (A) The plan shall not contain any additional fee or charge of  
22 any kind.

23 (B) The plan shall provide the customer with the option to repay  
24 the outstanding amount of the existing deferred deposit transaction  
25 over a 60-day period in four equal installments.

26 (3) At least three days prior to the date to which deposit of check  
27 has been deferred (due date) according to the agreement provided  
28 by the licensee to the customer pursuant to subdivision (e) of  
29 Section 23035, a licensee shall notify a customer of their option  
30 to enter into a payment plan pursuant to paragraph (1). If at any  
31 time, the customer attempts to pay the licensee for an outstanding  
32 amount of an existing deferred deposit transaction, the licensee  
33 shall immediately notify the customer of their option to enter into  
34 a payment plan pursuant to paragraph (1).

35 (4) A licensee shall not enter into a deferred deposit transaction  
36 with a customer within 14 days of the customer fully repaying a  
37 previous transaction.

38 (5) A licensee shall not charge any late fee for the return of a  
39 dishonored check by a depository institution in a deferred deposit  
40 transaction.

1

(b) For the purposes of this section, "COVID-19 emergency"

2 means the period that begins upon the date of the  
3 enactment of  
4 this section and ends on the date that the state  
5 declares the

6 emergency related to the COVID-19 disease  
7 has ended. 8 ~~SEC. 5.~~

9 ~~SEC. 4.~~ The provisions of this act are severable.  
10 If any

11 provision of this act or its application is held invalid, that  
12 invalidity

13 shall not affect other provisions or applications that can  
14 be given

15 effect without the invalid provision or  
16 application. 17 ~~SEC. 6.~~

18 ~~SEC. 5.~~ No reimbursement is required by this act  
19 pursuant to

20 Section 6 of Article XIII B of the California Constitution  
21 because

22 the only costs that may be incurred by a local agency  
23 or school

24 district will be incurred because this act creates a new  
25 crime or

26 infraction, eliminates a crime or infraction, or changes the  
27 penalty

28 for a crime or infraction, within the meaning of Section  
29 17556 of

30 the Government Code, or changes the definition of a  
31 crime within

32 the meaning of Section 6 of Article XIII B of the  
33 California

34 Constitution.

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CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
DISTRICT 7

02a.19

CONSENT CALENDAR  
June 30, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Rigel Robinson  
Subject: Support for ACA 5: California Act for Economic Prosperity

RECOMMENDATION

Adopt a resolution in support of ACA 5, which would place a measure on the statewide ballot to repeal Proposition 209 (1996) and allow the State of California to pursue minority equal opportunity and access initiatives in public employment, education, and contracting. Send copies of the resolution to Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, Lorena Gonzalez, and Buffy Wicks, and State Senator Nancy Skinner.

BACKGROUND

Assembly Constitutional Amendment (ACA) 5, introduced by Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, and Lorena Gonzalez, would initiate a ballot measure for the November 3, 2020 general election to repeal Proposition 209, the ban on affirmative action.

Proposition 209, known as the California Civil Rights Initiative, was approved by voters on the November 1996 ballot by a margin of 54 to 46 percent.<sup>1</sup> The proposition added Section 31 to Article I of the California Constitution, which reads, “The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”<sup>2</sup> Today, California is one of only eight states to ban affirmative action.<sup>3</sup>

The consequences of Proposition 209 are evident right here in Berkeley. Black students at UC Berkeley made up 6.7 percent of all enrolled California resident freshmen in 1995. Two years after the proposition’s passage, this figure dropped to only 3.7 percent.<sup>4</sup> In Fall 2019, Black students made up only 2.8% of all new freshman

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<sup>1</sup> <https://escholarship.org/content/qt5580z80z/qt5580z80z.pdf>

<sup>2</sup>

[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=)

<sup>3</sup> <https://www.jamesgmartin.center/2019/10/did-you-know-eight-states-ban-affirmative-action-in-college-admissions/>

<sup>4</sup> <https://www.dailycal.org/2018/02/02/prop-209-affirmative-action-uc-berkeley-enrollment/>

enrollment.<sup>5</sup> A report from the Race and Equity Center at the University of Southern California named UC Berkeley as the worst UC campus for Black students, based on equity indicators such as percentage of Black students, graduation rates, and representation in faculty.<sup>6</sup> According to a statement by the Cal Black Student Union, UC Berkeley also has “the highest gap between Black student enrollment and the racial demographic of the surrounding area,” showing that historically Black neighborhoods in Berkeley and Oakland are not being adequately served by institutions of higher education.<sup>7</sup>

Proposition 209 has devastated universities’ ability to serve Black students and non-Black students of color. In a single year following its passage, UC Berkeley’s admission rate dropped 29.3 percent for Black applicants, 32.2 percent for Native American applicants, 31.4 percent for Chicanx applicants, and 6.9 percent for Latinx applicants.<sup>8</sup> The affirmative action ban stifled recruitment and retention efforts for underrepresented minorities, including Southeast Asian, Pacific Islander, and Native Hawaiian students.<sup>9</sup> The passage of ACA 5 would bring justice to these communities and help achieve Chancellor Carol Christ’s goal of making UC Berkeley a Hispanic Serving Institution (HSI) by 2027.<sup>10</sup>

ACA 5, which would also empower local governments to actively pursue minority equal opportunity and access initiatives in their hiring processes, is aligned with the City of Berkeley’s commitment to equal opportunity and diversity in our workforce.

Prior to the passage of Proposition 209, the opportunity gap faced by women and people of color had shrunk considerably. Two and a half decades later, these same populations are worse off due to the persistent discrimination that this proposition has failed to uproot. Proposition 209 has deprived minority and women-owned businesses of equal opportunities to fully contribute to our state’s economic growth.

Despite the climb of California’s Latinx population, they remain heavily underrepresented in state jobs. The amount of Black state workers has decreased since 1996 while the number of non-minority males increased, especially in executive leadership positions. The number of women employed in the construction industry had initially increased by 26 percent between 1990 and 1996; it declined by 33 percent after the passage of Proposition 209. Finally, minority and women business enterprises

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<sup>5</sup> <https://opa.berkeley.edu/uc-berkeley-fall-enrollment-data>

<sup>6</sup> <https://www.sfgate.com/bayarea/article/Worst-public-California-schools-black-students-Cal-13264172.php>

<sup>7</sup> <https://twitter.com/CalBSU/status/1048022055193464833/photo/1>

<sup>8</sup> <http://reappropriate.co/2014/03/the-effect-of-prop-209-on-uc-admissions-and-campus-diversity-edu4all-noliesnohate-sca5/>

<sup>9</sup> <https://diversity.universityofcalifornia.edu/files/documents/prop-209-summary.pdf>

<sup>10</sup> <https://chancellor.berkeley.edu/task-forces/hispanic-serving-institution-task-force>



(MWBES), which had been erasing the disparity between their availability and their utilization, were heavily impacted. Some never recovered, resulting in a loss of \$1.1 billion annually for MWBEs.

Allowing gender, racial, and ethnic diversity to be considered as one of many factors in public employment, contracting, and education will strengthen the City's ability to equitably serve its residents. As a city that is home to one of the largest public universities in California and committed to equal opportunity, the City of Berkeley should adopt a resolution in support of ACA 5 and send copies of the resolution to Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, Lorena Gonzalez, and Buffy Wicks, and State Senator Nancy Skinner.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Resolution

2: Bill text

[http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200ACA5](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200ACA5)

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

RESOLUTION IN SUPPORT OF ACA 5, THE CALIFORNIA ACT FOR ECONOMIC PROSPERITY

WHEREAS, in 1996, Governor Pete Wilson spearheaded the passage of Proposition 209, preventing equal opportunity in contracting, hiring, and education in city, county, public university system, community college district, school district, special district, and other government agencies; and

WHEREAS, California is one of only eight states that outlaw policies to promote equal opportunities, and states with affirmative action policies see greater gains for women and students, businesses, and people of color; and

WHEREAS, Black students at UC Berkeley made up only 2.8% of all new freshman enrollment in Fall 2019, down from 6.7% in 1995, resulting in a report naming UC Berkeley as the worst UC campus for Black students despite its proximity to historically Black neighborhoods in Berkeley and Oakland; and

WHEREAS, Proposition 209 has devastated universities' ability to serve Black students and non-Black students of color, stifling admission rates and recruitment and retention efforts for Black, Native American, Latinx, Southeast Asian, Pacific Islander, and Native Hawaiian communities; and

WHEREAS, repealing Proposition 209 would level the playing field for women in government contracts, where women and people of color have lost \$1.1 billion annually, and especially in the University of California system, where women make up 54 percent of students, yet only account for 33 percent of tenured faculty and 39 percent of senior leadership; and

WHEREAS, Assembly Constitution Amendment No. 5 (ACA 5) will repeal Proposition 209 and reinstate affirmative action in public contracting, hiring and public education, which is estimated to generate an additional \$138 billion in personal income for California families; and

WHEREAS, the current COVID-19 pandemic has had a demonstrated and disproportionate impact on minority-owned small businesses and an equitable economic recovery must include targeted, race-conscious governmental intervention; and

WHEREAS now, more than ever, we must support and pass ACA 5 in order to ensure that the most impacted communities receive equitable support and to take a strong stance against racism, sexism, and xenophobia, and the current policies on the federal level that use race and gender to divide our communities.

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley supports ACA 5, the California Act for Economic Prosperity, on the statewide ballot to allow gender, racial, and ethnic diversity to be considered as one of many factors in public employment, education, and contracting.

A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by repealing Section 31 of Article I thereof, relating to government preferences.

ACA 5, as amended, Weber. Government preferences.

The California Constitution, pursuant to provisions enacted by the initiative Proposition 209 in 1996, prohibits the state from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. The California Constitution defines the state for these purposes to include the state, any city, county, public university system, community college district, school district, special district, or any other political subdivision or governmental instrumentality of, or within, the state.

This measure would repeal these provisions. The measure would also make a statement of legislative findings in this regard.





Fair Campaign Practices Commission

02a.21

PUBLIC HEARING  
June 30, 2020

To: Honorable Mayor and Members of the City Council  
From: Fair Campaign Practices Commission  
Submitted by: Brad Smith, Chair, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act; Amending Berkeley Municipal Code Chapter 2.12

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC or Commission) at its regular meeting of April 23, 2020.

**Action:** M/S/C (McLean/O'Donnell) to approve the amendments with changes.

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

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

Under the provisions of the Berkeley Election Reform Act (BERA) known as the Berkeley Fair Elections Act of 2016 (BMC §§ 2.12.490 et seq.), a candidate who wishes to participate in the City's public financing program must file with the Commission an application for certification to participate in the program. (BMC § 2.12.500.A.1.) The Commission is required to certify an applicant's eligibility at the earliest practicable time. (BMC § 2.12.500.B.) The City is required to make the initial payment of Fair Elections

funds to the qualified candidate within seven business days of certification by the Commission. (BMC § 2.12.505.E.)

When the Berkeley Fair Elections Act was initially passed, the Commission was also required to verify that an applicant candidate's qualified contributions met all application requirements, authorize the initial distribution of Fair Elections funds to the candidate, and provide any candidate who has been denied payment of funds with a written determination. At its April 18, 2019 meeting, the Commission determined that the Fair Elections process could be more effectively and efficiently run if these three roles were carried out by City staff, rather than the Commission. As a result, the Commission passed an amendment to BERA to authorize City staff to carry out these three roles. That amendment was subsequently passed by the City Council.

At its February 20, 2020 meeting, the Commission discussed the ways in which retaining the requirement that the Commission, rather than staff, must certify a candidate's initial application can cause delays in candidates being certified and receiving funds. The process also sometimes necessitates that, in the interest or expediency or fairness, the Commission hold special meetings to review and approve a candidate's application. This can result in significant time and resources being expended by staff and commissioners to schedule, notice and attend a special meeting simply to approve a single public financing application. Moreover, ensuring commissioner availability, setting an agenda and providing adequate notice for a special meeting can lengthen the time a candidate must wait to receive Fair Elections funds.

Under current practice, the Office of the City Clerk reviews and verifies candidates' applications prior to certification by the Commission. At its April 23, 2020 meeting, the Commission adopted amendments to BERA which would allow City staff to also certify applications without Commission action, and subsequently report those certifications to the Commission.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

The proposed amendments ensure that public financing applications can be reviewed and certified in a more efficient and streamlined manner while retaining Commission oversight of the process.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices Commission, 981-6998

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

Attachments:

1: Ordinance

ORDINANCE NO. XXXXXXXX -N.S.

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

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

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

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

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

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

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

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

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

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

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

a) Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's



- signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.
- b) A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.
- 4) Maintain such records of receipts and expenditures as required by the Commission;
- 5) Obtain and furnish to the Commission or City staff any information itthey may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such Commission or City staff;
- 6) Not make expenditures from or use his or her personal funds or funds jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a monetary or non-monetary contribution to his or her controlled committee of \$250 or less. Contributions from a participating candidate to his or her own controlled committee are not eligible for matching funds.
- 7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with a fair market value not greater than fifty dollars (\$50). The aggregate value of all contributions from any individual must not be greater than fifty dollars (\$50);
- 8) Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with fair market value not greater than fifty dollars (\$50) to such candidate's controlled committee.
- 9) Not accept loans from any source.
- 10) The CommissionCity has the authority to approve a candidate's application for public financing, despite a violation by the candidate related to participation and qualification in the public financing program, if the violation is minor in scope and the candidate demonstrates a timely, good-faith effort to remedy the violation. The Commission mayshall adopt regulations setting forth guidelines for what constitutes a minor violation under this provision. (Ord. 7674-NS § 1, 2019: Ord. 7564-NS § 7, 2017: Ord. 7524-NS § 3.6 (part), 2016)

B. At the earliest practicable time after a candidate files with the ~~Commission~~City a written application for certification as a participating candidate, the ~~Commission~~City shall certify that the candidate is or is not eligible. Eligibility can be revoked if the Commission determines that a candidate has committed a substantial violation of the requirements of this Act, in which case all Fair Elections funds shall be repaid. ~~Such a determination shall be made by the Commission.~~

C. At the discretion of the Commission or at the applying candidate's request, the City's denial of eligibility is subject to review by the Commission. The Commission's determination is final except that it is subject to a prompt judicial review pursuant to Section 2.12.235.

D. If the ~~City or~~ Commission determines that a candidate is not eligible, the candidate is not required to comply with provisions of this Act applicable only to participating candidates.

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

**2.12.505 Fair Elections fund payments.**

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

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

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

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

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

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

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

E. The City shall make an initial payment of Fair Elections funds within seven business days of the ~~Commission's~~City's certification of a participating candidate's eligibility, or as soon thereafter as is practicable. City staff shall report a certification or denial to the Commission no later than the Commission's next regular meeting, consistent with the Brown Act.

F. The Commission shall establish a schedule for the submission of Fair Elections funds payment requests, permitting a candidate to submit a Fair Elections funds payment request at least once per month. However, the Commission shall schedule a minimum of three payment request submission dates within the thirty days prior to an election.

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

H. Unspent funds of any Participating Candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed

shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election. (Ord. 7674-NS § 2, 2019: Ord. 7564-NS § 8, 2017: Ord. 7524-NS § 3.6 (part), 2016)

## NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

### AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

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

The hearing will be held on **June 30, 2020**, at 6:00 p.m.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **June 18, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

#### **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 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://us02web.zoom.us/j/xxxxxxx>. 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: xxxxxxxx. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to [council@cityofberkeley.info](mailto:council@cityofberkeley.info) in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become**

**part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** June 19, 2020 – The Berkeley Voice

Pursuant to Berkeley Municipal Code section 2.12.051

~~~~~  
I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on June 18, 2020.

Mark Numainville, City Clerk



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
June 30, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Cheryl Davila (Author)
Subject: Resolution to Incorporate the Practice of 1 Minute and 46 seconds of Mindfulness into City Council Meetings

RECOMMENDATION

Adopt a resolution to amend the City Council Meeting Agendas and Council Rules of Procedures to include one minute and forty-six seconds of silence to adopt mindfulness into Council meetings to remember the loss of lives due to police violence.

BACKGROUND

According to the University of California at Berkeley's Greater Good Magazine, mindfulness means "maintaining a moment-by-moment awareness of your thoughts, feelings, bodily sensations, and surrounding environment, through a gentle, nurturing lens." Mindfulness involves acceptance without judgment of our thoughts and feelings and tuning into what we are sensing in the present moment rather than rehashing the past or imaging the future.¹

While mindfulness and meditation has its roots in the religion of Buddhism, mindfulness as a secular practice was popularized by Jon Kabat-Zinn, who launched the Mindfulness-Based Stress Reduction program at the University of Massachusetts Medical School in 1979. Mindfulness is noted to improve well-being, physical health, and mental health.² The adoption of mindfulness practices are specifically beneficial for strengthening the immune system, reducing stress, and enhancing attentiveness.

Particularly relevant to the role of city governance, mindfulness has been found to increase altruism and compassion,³ reduce implicit bias,⁴ increase emotional resilience when confronted with negative feedback,⁵ and to help leaders be more confident and act in line with their values.⁶ Due to its benefits, mindfulness has been deployed in a multitude of institutions such as

¹ <https://greatergood.berkeley.edu/topic/mindfulness/definition>

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3679190/>

³ https://greatergood.berkeley.edu/article/item/meditation_causes_compassionate_action

⁴ https://greatergood.berkeley.edu/article/item/can_mindfulness_help_reduce_racism

⁵ https://greatergood.berkeley.edu/article/item/can_mindfulness_help_students_cope_with_failure

⁶ https://greatergood.berkeley.edu/article/item/can_mindfulness_help_you_be_more_authentic

schools,⁷ prisons,⁸ sports,⁹ hospitals,¹⁰ and even municipal governments, like San Jose, where Mindful Mondays has been promoted by the city.¹¹

Currently, the Berkeley City Council meetings run continuously for five hours or more on Tuesday evenings, with only a brief 10-minute pause for captioning. Incorporating mindfulness practices into the City Council meeting may increase Councilmember's ability to focus on the topics brought before them, alleviate stress or anxiety over decision-making, facilitate Councilmembers being more fully present and emotionally available to the public, and allow for greater creativity when generating solutions for how best to serve the constituency.

The adoption of mindfulness practices has the potential to improve the overall experience and efficacy of governing by reducing the physiological impacts of stress on members of City staff, elected officials, and the community. By reducing the physiological impairments of stress and cognitive fatigue better decision-making might occur. Given these potential benefits, a change to the structure and order of City Council meetings are proposed to include two-minutes of mindfulness at the beginning of the meeting and following ceremonial items, two minutes of mindfulness after reconvening from the captioner's break, and the ability of any Councilmember to request taking a mindfulness pause during the Consent or Action Calendar.

Section II. Meetings, Part D of the Berkeley City Council Rules of Procedure and Order¹² would be amended to read as follow:

"D. Council Meeting Conduct of Business: The agenda for the regular business meetings shall include the following: **One minute and forty-six seconds of silence and mindfulness**; 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."

Section III. Agenda, Part E Agenda Sequence and Order of Business of the Berkeley City Council Rules of Procedure and Order would be amended to read as follow:

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

1. Preliminary Matters: (Ceremonial, **One minute and forty-six seconds of silence and mindfulness**, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
2. Consent Calendar
3. Action Calendar
 - a) Appeals

⁷ <https://www.mindfulschools.org/>

⁸ <https://www.prisonmindfulness.org/about-us/>

⁹ <https://www.apa.org/news/press/releases/2017/08/mindfulness-method>

¹⁰ <https://hospitalnews.com/mindfulness-quiet-revolution/>

¹¹ <https://www.sanjoseca.gov/Home/Components/Calendar/Event/1760/4738>

¹² https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/City%20Council%20Rules%20of%20Procedure%20-%20Feb%2011%202020%20-%20FINAL.pdf

- b) Public Hearings
- c) Continued Business
- d) Old Business
- e) New Business
- 4. Information Reports
- 5. Non-Agenda Public Comment
- 6. Adjournment

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

- 1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY TO INCORPORATE THE PRACTICE OF 1 MINUTE AND 46 SECONDS OF MINDFULNESS INTO CITY COUNCIL MEETINGS

WHEREAS, Mindfulness is a secular practice of focusing attention onto your thoughts, emotions, and bodily sensations in a moment-to-moment methodology that allows for greater awareness of yourself and your surroundings; and

WHEREAS, The practice of mindfulness has many noted benefits, including boosting the immune system, reducing stress, and enhancing attentiveness; and

WHEREAS, Due to the efficacy of mindfulness, its practices have been adopted in a wide array of institutions that serve impacted populations, such as schools, hospitals, and prisons; and

WHEREAS, Physiological impacts of stress have the ability to diminish the City Staff and Council's ability to effectively carry out the tasks associated with complex decision making; and

WHEREAS, Mindfulness practices have been shown to be an effective method to reduce stress levels in other workplaces; and

WHEREAS, Mindfulness might improve the working conditions during Berkeley City Council meetings by allowing Councilmembers and City Staff to become fully present and attentive at the beginnings of meetings, and more compassionate and self-aware when engaging with the public; and

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley will incorporate two minutes of mindfulness practice into the agenda of City Council meetings, wherein Councilmembers and members of the public are invited to hold a moment of silence to check in with their bodies and mind before embarking on the often arduous work of city governance; and

BE IT FURTHER RESOLVED, Section II. Meetings, Part D of the Berkeley City Council Rules of Procedure and Order is amended to read:

“D. Council Meeting Conduct of Business: The agenda for the regular business meetings shall include the following: **One minute and forty-six seconds of silence and mindfulness**; 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.”

BE IT FURTHER RESOLVED, Section III. Agenda, Part E Agenda Sequence and Order of Business of the Berkeley City Council Rules of Procedure and Order IS amended to read:

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

1. Preliminary Matters: (Ceremonial, **One minute and forty-six seconds of silence and mindfulness**, 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

BE IT FINALLY RESOLVED, These changes to the Agenda will begin at the next scheduled Council meeting and the City Council will include one minute and forty-six seconds of silence and mindfulness as part of the City Council Agenda.



02a.26

Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
June 30, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila (Author) and Ben Bartlett (Co-Sponsor)

Subject: Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley.

RECOMMENDATION

Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley, and commit to eliminate all socioeconomic barriers to health equity. In addition:

1. Declare the resolution an emergency measure for the immediate preservation of public peace, property, health, or safety, especially during the COVID-19 pandemic and it shall take effect and be in force immediately upon its adoption.
2. Budget Referral to convene a series of town hall sessions for all community members, City workers, and small business owners to discuss the concerns of people of color and marginalized community members, and develop strategies and programs (especially Mental Health Programs for the unhoused stay housed) for greater inclusivity, understanding, empathy, compassion, and unity. The purpose of these meetings should be to strengthen anti-racist capacity building and commitments within the city. This can be done by discussing the current quantitative and qualitative reality of racial justice and injustice, racism and non-racism in all areas of city life toward developing measures to ensure the achievement racial equity in Berkeley. These town halls, strategies and programs could include: the definition and lived experience of racism in systemic and institutional forms the effects and trauma caused by them, and provide resources to combat implicit bias on all levels. Community partners to consider to facilitate such workshops include Beyond Diversity: Courageous Conversations About Race and Showing Up for Racial Justice (SURJ).
3. City Council will establish a working group to promote racial equity as well as the development of programs to address racial equity in this City.
4. Direct the City Manager or his/her designee to record COVID-19 data by race/ethnicity and to explore greater health disparities that have emerged as a result of this crisis.
5. Direct the City Manager or his/her designee to hold several fundraisers at town hall sessions for black-owned small businesses, research of state and federal RFPs for the purpose of grants acquisitions for program development in the City of Berkeley that have been affected by Covid-19 and/or recent protests.
6. Direct the City Manager or his/her designee to prepare a Health in All Policies Ordinance (see attached City of Richmond Ordinance) for Council review and adoption, critically evaluating the public health impact of all legislative and budgetary proposals, especially upon people of color and marginalized community members.
7. Direct the City Manager or his/her designee to adopt a mandatory requirement of 16 hours of ongoing annual online and in-person training on implicit bias, cultural sensitivity, and cultural humility for City Employees, commissioners, and community members; and

8. Direct the City Manager or his/her designee in partnership with the Berkeley Public Health Division and the Mental Health Division to develop a Strategic Plan for Health Equity, with the inclusion of a diverse group of staff with expertise in this subject matter and begin immediate implementation of recommendations.
9. Submit copies of this resolution to State Assemblymember Buffy Wicks, State Senator Nancy Skinner, Congresswoman Barbara Lee, Alameda County Supervisor Keith Carson, as well as various organizations such as the Berkeley NAACP, the African American Holistic Resource Center Steering Committee, and Healthy Black Families.

BACKGROUND

There is clear data that proves racism negatively impacts the lives of people of color in the City of Berkeley and throughout the County and Nation.

Almost all 400 years of African American's experience was under enslavement and Jim Crow laws and upheld White Supremacy that provided preferential opportunity to some, while at the same time subjected people of color, especially African Americans to hardship and disadvantages in all areas of life.

Racism – not race - causes disproportionately high rates of homelessness, incarceration, poor education and health outcomes, and economic hardship for African Americans in this country.

Racism acts on systemic, institutional, and interpersonal levels, all of which operate throughout time and across generations.

Racism is an organized social system in which a dominant group categorizes and ranks people into social groups, “races”, and uses its power to devalue, disempower, and differentially allocate valued societal resources and opportunities to groups classified as inferior. Racism can act in multiple domains, including structural/institutional, cultural, and individual-level discrimination, reinforcing ideologies of inferiority and hierarchy in media images, laws, interpersonal interactions, and opportunities. Structural or institutional racism embeds racism into policies and practices in society that provide advantages for racial groups deemed superior, while oppressing, disadvantaging, or neglecting racial groups viewed as inferior. Structural racism results in differential access to housing, employment, education, healthy food, clean air and drinking water, and exposure to violence, thus has a significant impact on public health.

Structural racism has profound public health impacts. Now, in this critical moment of a global pandemic caused by COVID-19, previous health disparities are being exacerbated by the lack of infrastructure and provisions of basic resources afforded to marginalized communities. While coronavirus does not seem to discriminate against whom it infects, it does have differential impacts on people who were already in a compromised position in society, due to socioeconomic factors, access to healthcare and housing, and suffering from a compromised immune system due to the effects of stress, the trauma experience of discrimination and the impacts of living in communities that are disproportionately impacted by environmental injustice.

Reports are emerging, highlighting the disparity in the rates of COVID-19 outcomes for communities of color. Cities like Milwaukee, Washington DC, Detroit, Chicago, and New Orleans have experienced a disproportionate morbidity and mortality for black residents due to Coronavirus. The Congressional Black Caucus has called for all states to track public health data regarding coronavirus by race and ethnicity¹. To this point, Representative Robin Kelly, Chair of the Congressional Black Caucus Healthcare Braintrust, stated: “the reason more Blacks are dying from COVID-19 is a result of a history of structural racism, environmental injustice, income inequality, and the lack of resources in Black communities, which have led to

¹ <https://cbc.house.gov/news/documentsingle.aspx?DocumentID=2174>

the prominence of health-related risk factors such as diabetes and hypertension.” According to data from the Centers for Disease Control, almost one-third of infections nationwide have affected black-Americans, even though blacks only represent 13% of the U.S. population. Additionally, an analysis done by the Associated Press found that nearly one-third of those who passed due to COVID-19 across the country are black.

Racism Forms Defined:

- **Racism** - Racism is the belief that groups of humans possess different behavioral traits corresponding to physical appearance, and can be divided based on the superiority of one race over another.^{[1][2][3][4]} It may also mean prejudice, discrimination, or antagonism directed against other people because they are of a different race or ethnicity.^{[2][3]} Modern variants of racism are often based in social perceptions of biological differences between peoples. These views can take the form of social actions, practices or beliefs, or political systems in which different races are ranked as inherently superior or inferior to each other, based on presumed shared inheritable traits, abilities, or qualities.^{[2][3][5]}
- **Environmental racism** - Environmental racism is a concept used to describe environmental injustice that occurs in practice and in policy within a racialized context.^[1] In a national context, environmental racism criticizes inequalities between urban and exurban areas after white flight. Charges of environmental racism can also prompt usages of civil rights legislation like the Civil Rights Act of 1964 to prosecute environmental crimes in the areas in which racialized people live. Internationally, environmental racism can refer to the effects of the global waste trade, like the negative health impact of the export of electronic waste to China from developed countries.
- **Institutional/systemic racism** - Institutional racism (also known as systemic racism) is a form of racism expressed in the practice of social and political institutions. It is reflected in disparities regarding wealth, income, criminal justice, employment, housing, health care, political power, and education, among other factors. The term "institutional racism" was coined by Stokely Carmichael and Charles V. Hamilton. Carmichael and Hamilton wrote that while individual racism is often identifiable because of its overt nature, institutional racism is less perceptible because of its "less overt, far more subtle" nature. Institutional racism "originates in the operation of established and respected forces in the society, and thus receives far less public condemnation than [individual racism]".^[2]
- **Interpersonal racism** - Interpersonal racism is a component of individual-level racism and has been defined as “directly perceived discriminatory interactions between individuals whether in their institutional roles or as public and private individuals” (Krieger, 1999, p. 301). Interpersonal racism includes maltreatment that the targeted individual attributes, at least in part, to conscious or unconscious racial/ethnic bias on the part of the perpetrator of the maltreatment.
- **Internalized racism** - Internalized racism is a form of internalized oppression, defined by sociologist Karen D. Pyke as the "internalization of racial oppression by the racially subordinated."^[1] In her study *The Psychology of Racism*, Robin Nicole Johnson emphasizes that internalized racism involves both "conscious and unconscious acceptance of a racial hierarchy in which whites are consistently ranked above people of color."^[2] These definitions encompass a wide range of instances, including, but not limited to, belief in negative racial stereotypes, adaptations to white cultural standards, and thinking that supports the status quo (i.e. denying that racism exists).^[3]
- **Structural racism** - Structural Racism in the U.S. is the normalization and legitimization of an array of dynamics – historical, cultural, institutional, and interpersonal – that routinely advantage whites while producing cumulative and chronic adverse outcomes for people of color. It is a system of hierarchy and inequity, primarily characterized by white supremacy – the preferential treatment, privilege, and power for white people at the expense of Black, Latino, Asian, Pacific Islander, Native American, Arab, and other racially oppressed people.

- **Prejudice** - Prejudice^[1] is an affective feeling towards a person based on their perceived group membership. The word is often used to refer to a preconceived, usually unfavorable, evaluation of another person based on that person's political affiliation, sex, gender, beliefs, values, social class, age, disability, religion, sexuality, race/ethnicity, language, nationality, beauty, occupation, education, criminality, sport team affiliation or other personal characteristics.^[2]
- **Discrimination** - In human social behavior, discrimination is prejudiced treatment or consideration of, or making a distinction towards, a being based on the group, class, or category to which they are perceived to belong. These include age, caste, criminal record, height, disability, family status, gender identity, gender expression, generation, genetic characteristics, marital status, nationality, color, race and ethnicity, religion, sex and sex characteristics, sexual orientation, social class, species, as well as other categories. Discrimination consists of treatment of an individual or group, based on their actual or perceived membership in a certain group or social category, "in a way that is worse than the way people are usually treated".^[1] It involves the group's initial reaction or interaction going on to influence the individual's actual behavior towards the group leader or the group, restricting members of one group from opportunities or privileges that are available to another group, leading to the exclusion of the individual or entities based on illogical or irrational decision making.^[2]
- **Systemic Racism:** Systemic racism today is composed of intersecting, overlapping, and codependent racist institutions, policies, practices, ideas, and behaviors that give an unjust amount of resources, rights, and power to white people while denying them to people of color. Developed by sociologist Joe Feagin, systemic racism is a popular way of explaining, within the social sciences and humanities, the significance of race and racism both historically and in today's world. Feagin describes the concept and the realities attached to it in his well-researched and readable book, *Racist America: Roots, Current Realities, & Future Reparations*. In it, Feagin uses historical evidence and demographic statistics to create a theory that asserts that the United States was founded in racism since the Constitution classified black people as the property of whites. Feagin illustrates that the legal recognition of racialized slavery is a cornerstone of a racist social system in which resources and rights were and are unjustly given to white people and unjustly denied to people of color. (thoughtco.com)
- **Islamophobia** - Islamophobia is the fear, hatred of, or prejudice against the Islamic religion or Muslims generally, especially when seen as a geopolitical force or the source of terrorism.
- **Xenophobia** - Xenophobia is the fear or hatred of that which is perceived to be foreign or strange. It is an expression of the perceived conflict between an ingroup and an outgroup and may manifest in suspicion by one of the other's activities, a desire to eliminate their presence, and fear of losing national, ethnic, or racial identity.
- **Anti-semitism** - Antisemitism is hostility to, prejudice, or discrimination against Jews.^{[1][2][3]} A person who holds such positions is called an antisemite. Antisemitism is generally considered to be a form of racism. Antisemitism may be manifested in many ways, ranging from expressions of hatred of or discrimination against individual Jews to organized pogroms by mobs, state police, or even military attacks on entire Jewish communities.
- **Intersectionality** - Intersectionality is a theoretical framework for understanding how aspects of one's social and political identities (e.g., gender, race, class, sexuality, disability, etc.) might combine to create unique modes of discrimination. It aims to broaden the agenda of the first waves of feminism, which largely focused on the experiences of white, middle-class women. The broad agenda means that intersectionality is used to find combinations of injustices that are felt by members of society. For example, a black woman might face discrimination from a company that is not distinctly due to her race (because the company does not discriminate against black men) nor her gender (because the company does not discriminate against white

women), but by a unique combination of the two. Intersectional feminism aims to separate itself from white feminism by acknowledging the fact that all women have different experiences and identities.^[1] It is a qualitative analytic framework that identifies how interlocking systems of power affect those who are most marginalized in society.^[2]

- **“ISM”** - a system of oppression based on target identity (race, sex, etc)

Racism, sexism, heterosexism (homophobia), ageism, ableism, classism, xenophobia, religious prejudice, and other forms of oppression have damaged us all. All the -isms are connected.

Beyond this, the COVID-19 (Coronavirus) Pandemic has unleashed an increased amount of racism in this country. There have been a number of documented instances of harassment and physical violence targeting Asian people since the outbreak of the coronavirus, as well as the use of stigmatizing terms like “Chinese Virus” to denote COVID-19. The President of the United States has continued to spew hate, racism, xenophobia, and Islamophobia since he began campaigning for office. COVID-19 has exacerbated the President’s racism towards our commUNITY members, and throughout the world, as a number of violent attacks have been made towards Asian Americans.

The World Health Organization defines “public health” as “the art and science of preventing disease, prolonging life and promoting health through the organized efforts of society” and those efforts “aim to provide conditions under which people can... be healthy, improve their health and well-being, or prevent the deterioration of their health.”

The United States Office of Disease Prevention recognizes that discrimination negatively impacts health outcomes.

The negative repercussions of historical racism, including but not limited to, discriminatory lending practices of the 20th century known as “redlining,” impact current outcomes regarding access to nutritious food, economic security, educational achievement, rates of lead poisoning, and infant mortality.

Research indicates that adverse childhood experiences are disproportionately experienced by black children when compared to white children thus having negative impacts on academic, behavioral, and physical health outcomes of black children.

Statistics show a national disparity between black and white infant mortality rates, and the State consistently ranks among the worst states concerning black infant mortality rates.

The rates of chronic diseases, including asthma, diabetes, and hypertension, are significantly higher in predominantly black neighborhoods.

The Department of Health and Human Services defines the social determinants of health as conditions in the environments in which people are born, live, learn, work, play, worship, and age, which affect a wide range of health, functioning, and quality-of-life outcomes and risks. Social determinants of health include access to resources like safe and affordable housing, education, public safety, availability of healthy foods, local emergency/health services, and environments free of life-threatening toxins. Beyond genetic predispositions or individual life choices, the World Health Organization notes that the social determinants of health predict a person’s life expectancy. By these means, structural racism threatens public health by hindering equitable access to the social determinants of health.

Utilizing an intersectional framework, it is clear that discrimination based on race can be linked to disadvantages for a number of people with marginalized identities, in particular the poor or unhoused, queer and trans, disabled, Muslim, immigrant, and Indigenous communities.JP

Massar' because higher levels of discrimination are associated with an elevated risk to a broad range of diseases, for instance, contraction of heart disease, cancer, and HIV. And everyday over 200 Black people die prematurely due to health inequities between Whites and Blacks.

Like many cities in the United States, the City of Berkeley has a long history of racism. Studies conducted on Berkeley's employment practices and modes of policing have demonstrated structural racism and discrimination at the core of the City's functions. Waves of racial housing segregation, codified by redlining in the past, and currently operating through gentrification and displacement, is a major factor influencing racial/ethnic disparities in health outcomes. The 2018 Berkeley Health Status Report demonstrated that within the City of Berkeley, African Americans and other People of Color die prematurely and are more likely to experience a wide variety of adverse health conditions throughout their lives. Specifically, Black people make up a disproportionately high percentage of the city's homeless population, are less likely to attain higher education, are more likely to live in poverty, and have poorer health outcomes, morbidity, and mortality from cardiovascular disease, heart disease, cancers, and birth complications.

The Alameda County Department of Public Health has demonstrated racial/ethnic health disparity in our community, noting a 17-year difference in life expectancy between a child born in West Oakland and the Oakland Hills. Supervisor Keith Carson has begun a process of trying to address health inequities through the launch of the Health Matters Initiative.

Additionally, the City of Richmond also views racism as a major threat to public health and has adopted a Health in all Policies Ordinance in order to rectify health inequities. Other cities throughout the United States, like Kansas City, Milwaukee, Pittsburgh, and Cleveland, have also come to view racism as a public health crisis, passing legislation to turn the tide and ensure everyone (regardless of their race or ethnicity) has the opportunity to live healthy, fulfilling lives.

On any given night, more than 1,000 Berkeley residents do not have shelter (i.e. living outdoors in tents, on sidewalks, or in vehicles) according to the Alameda County 2019 Point-In-Time Count. A growing number of residents are housing insecure and at risk of becoming homeless. A majority of unhoused Berkeley residents are people of color, seniors, and disabled. Many have passed away.

The City of Berkeley should follow the example of other cities that have declared racism as a threat to public health. We should adopt a Health in All Policies Ordinance, and take all necessary legislative steps to ensure health equity in our city. Minimally this will involve the curation of a number of town hall sessions to hear the concerns of marginalized community members and with careful collaborations, develop a strategic plan for health equity. Additionally, the City should provide training on ways to reduce implicit bias for City employees and interested members of the community. This will allow us to critically evaluate our prejudices and take the initiative to reduce bias and remove racist barriers to the social determinants of health.

The City must recognize that racism is a public health crisis that affects all members of our society both locally and nationwide and deserves action from all levels of government and civil society.

The time is *now* to declare racism as a public health threat in our community. The time has come to change business as usual. We must confront the systemic racism that has permeated society throughout our lifetime. Because in the words of Ibram X. Kendi, "the only way to undo racism is to consistently identify and describe it - and then to dismantle it."

The City Council should support the establishment of a working group to address these issues and to: seek solutions to reshape the discourse and actively engage all citizens in racial justice work; continue to work to build alliances with organizations that are confronting racism and

encourage partners to recognize racism as a public health crisis; continue to promote racially equitable economic and workforce development; continue to promote racially equitable hiring and promotion of all employees including City employees; and advocate and draft relevant policies that prioritize the health of people of color and mitigate exposure to adverse childhood experiences and trauma in childhood.

California Government Code 54956.5 states: "An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body."

With multiple crises to contend with (COVID-19 pandemic, racism, etc), and all the reasons stated earlier, it is the utmost urgency to declare racism as a nuisance and a crisis to public health and safety in the City of Berkeley, as well as adopt it as an emergency measure for the immediate preservation of public peace, property, health or safety.

FISCAL IMPACTS OF RECOMMENDATION

It is estimated \$50,000 for hiring of facilitators and the coordination of 3-5 town hall sessions.

ENVIRONMENTAL SUSTAINABILITY

With a focus on health equity and the adoption of a 'Health in All Policies' ordinance, a number of environmental benefits should result in the City, including reduced air pollution, cleaner waterways, and reduced greenhouse gas emissions by being proactive about ending environmental racism.

CONTACT PERSON

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ATTACHMENTS:

1. Resolution
2. Racism - Public Health Crisis, published on May 5, 2017
Leslie Gregory, Founder and Director of Right to Health in Portland, Oregon
https://www.youtube.com/watch?v=9oKg-870R3I&feature=emb_title
3. City of Richmond Health in All Policies Ordinance:
<http://www.ci.richmond.ca.us/ArchiveCenter/ViewFile/Item/6999>

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1. Williams, David R., Jourdyn A. Lawrence, and Brigette A. Davis. "Racism and health: evidence and needed research." *Annual review of public health* 40 (2019): 105-125.
2. Smedley, Audrey, and Brian D. Smedley. "Race as biology is fiction, racism as a social problem is real: Anthropological and historical perspectives on the social construction of race." *American Psychologist* 60.1 (2005): 16.
3. Paradies, Yin, et al. "Racism as a determinant of health: a systematic review and meta-analysis." *PloS one* 10.9 (2015): e0138511.
4. <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health>
5. <http://www.ci.richmond.ca.us/2574/Richmond-Health-Equity-Partnership-RHEP>
6. http://www.euro.who.int/_data/assets/pdf_file/0003/109146/E89260.pdf
7. <http://www.ci.richmond.ca.us/DocumentCenter/View/27173/Tool-Kit-DRAFT-52813-v3?bidId=>
8. <https://triblive.com/local/pittsburgh-alleggheny/pittsburgh-councilmen-want-racism-to-be-treated-as-a-public-health-crisis/>
9. <https://ips-dc.org/racism-is-a-public-health-crisis/>
10. <https://www.kansascity.com/opinion/editorials/article234471712.html>
11. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3945449/>

12. https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/health-status-summary-report-2018.pdf
13. <https://www.berkeleyside.com/2018/09/20/redlining-the-history-of-berkeleys-segregated-neighborhoods>
14. https://www.urbandisplacement.org/sites/default/files/images/urban_displacement_project_-_executive_summary.pdf
15. <https://www.urbandisplacement.org/rentchangemap>
16. <https://www.cdc.gov/healthyplaces/healthtopics/gentrification.htm>
17. https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Mason%20Tillman%20Associates%20Report%20051614.pdf
18. <https://www.berkeleyside.com/wp-content/uploads/2018/05/Berkeley-Report-May-2018.pdf>
19. <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>
20. <http://www.ihl.org/communities/blogs/how-to-reduce-implicit-bias>
21. https://cbc.house.gov/uploadedfiles/cbc-cbc_health_braintrust_racial_disparities_letter_to_cdc.pdf
22. <https://www.nationalgeographic.com/history/2020/04/coronavirus-disproportionately-impacts-african-americans/#close>
23. <https://societyforhealthpsychology.org/resources/research-advocacy/diversity-racism/interpersonal/>
24. <https://www.racialequitytools.org/resourcefiles/Definitions-of%20Racism.pdf>
25. <https://cbc.house.gov/news/documentsingle.aspx?DocumentID=2174>

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

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY TO DECLARE RACISM AS A PUBLIC HEALTH CRISIS, A THREAT AND SAFETY ISSUE IN THE CITY OF BERKELEY

WHEREAS, Racism is defined as “an organized social system in which the dominant racial group categorizes and ranks people into social groups called “races” and uses its power to devalue, disempower, and differentially allocate valued societal resources and opportunities to groups defined as inferior”²; and

WHEREAS, Racism can take on many principal domains, including structural/institutional, cultural, and individual-level discrimination; and

WHEREAS, Racism is the belief that groups of humans possess different behavioral traits corresponding to physical appearance, and can be divided based on the superiority of one race over another. Racism Forms are defined as:

² Williams, David R., Jourdyn A. Lawrence, and Brigette A. Davis. "Racism and health: evidence and needed research." *Annual review of public health* 40 (2019): 105-125.

Environmental racism - a concept used to describe environmental injustice that occurs in practice and in policy within a racialized context.^[1]

Institutional/systemic racism - Institutional racism (also known as systemic racism) is a form of racism expressed in the practice of social and political institutions.

Interpersonal racism - a component of individual-level racism and has been defined as "directly perceived discriminatory interactions between individuals whether in their institutional roles or as public and private individuals" (Krieger, 1999, p. 301).

Internalized racism - a form of internalized oppression, defined by sociologist Karen D. Pyke as the "internalization of racial oppression by the racially subordinated."

Structural racism - the normalization and legitimization of an array of dynamics – historical, cultural, institutional, and interpersonal – that routinely advantage whites while producing cumulative and chronic adverse outcomes for people of color.

Prejudice - an affective feeling towards a person based on their perceived group membership.

Discrimination - prejudiced treatment or consideration of, or making a distinction towards, a being based on the group, class, or category to which they are perceived to belong.

Systemic Racism: composed of intersecting, overlapping, and codependent racist institutions, policies, practices, ideas, and behaviors that give an unjust amount of resources, rights, and power to white people while denying them to people of color.

Islamophobia - the fear, hatred of, or prejudice against the Islamic religion or Muslims generally, especially when seen as a geopolitical force or the source of terrorism.

Xenophobia - the fear or hatred of that which is perceived to be foreign or strange. It is an expression of the perceived conflict between an ingroup and an outgroup and may manifest in suspicion by one of the other's activities, a desire to eliminate their presence, and fear of losing national, ethnic, or racial identity.

Anti-semitism - hostility to, prejudice, or discrimination against Jews.^{[1][2][3]} A person who holds such positions is called an antisemite. Antisemitism is generally considered to be a form of racism. Antisemitism may be manifested in many ways, ranging from expressions of hatred of or discrimination against individual Jews to organized pogroms by mobs, state police, or even military attacks on entire Jewish communities.

Intersectionality - a theoretical framework for understanding how aspects of one's social and political identities (e.g., gender, race, class, sexuality, disability, etc.) might combine to create unique modes of discrimination.

"ISM" - a system of oppression based on target identity (race, sex, etc)

WHEREAS, Racism, sexism, heterosexism (homophobia), ageism, ableism, classism, xenophobia, religious prejudice, and other forms of oppression have damaged us all. All the - isms are connected; and

WHEREAS, Structural racism is supported by and reinforced in multiple societal systems, including the housing, labor, and credit markets, as well as education, criminal justice, the economy, and health care systems; and

WHEREAS, Sequencing the human genome has revealed that racial groups are not genetically discrete, reliably measured, or scientifically meaningful, and thus "race" is a social construction, not a biological category³; and

WHEREAS, A number of epidemiological studies have demonstrated the negative impacts of racism on both physical and mental health⁴, with racism acting through a number of pathways to

³ Smedley, Audrey, and Brian D. Smedley. "Race as biology is fiction, racism as a social problem is real: Anthropological and historical perspectives on the social construction of race." *American Psychologist* 60.1 (2005): 16.

⁴ Paradies, Yin, et al. "Racism as a determinant of health: a systematic review and meta-analysis." *PLoS one* 10.9 (2015): e0138511.

increase stress and allostatic load, which have been associated with chronic disease and mortality, diminish participation in healthy behaviors, and result in greater exposure to physical violence; and

WHEREAS, almost all of the 400 years of Black American's experience under slavery and Jim Crow laws has allowed preferential opportunity to some while at the same time subjected people of color to hardship and disadvantage in all areas of life; and

WHEREAS, still now, racism – not race- causes disproportionately high rates of homelessness, incarceration, poor education and health outcomes, and economic hardship for African Americans; and

WHEREAS, racism acts on systemic, institutional, interpersonal level and psychological levels, all of which operate throughout time and across generations; and

WHEREAS, this Council believes that the time is now to declare racism a public health crisis in our community; and

WHEREAS, the World Health Organization defines “public health” as “the art and science of preventing disease, prolonging life and promoting health through the organized efforts of society” and those efforts “aim to provide conditions under which people can... be healthy, improve their health and well-being, or prevent the deterioration of their health”; and

WHEREAS, the United States Office of Disease Prevention recognizes that discrimination negatively impacts health outcomes; and

WHEREAS, the Social Determinants of Health – the social and material factors that influence health outcomes - impact life-long outcomes beginning even before birth; and

WHEREAS, the negative repercussions of historical racism, including but not limited to discriminatory lending practices of the 20th century known as “redlining,” impact current outcomes regarding access to nutritious food, economic security, educational achievement, rates of lead poisoning, wealth accumulation, and infant mortality; and

WHEREAS, research indicates that adverse childhood experiences are disproportionately experienced by black children when compared to white children thus having negative impacts on academic, behavioral, and physical health outcomes of black children; and

WHEREAS, The United States Department of Health and Human Services defines social determinants of health as “conditions in the environments in which people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks,” and has highlighted access to resources like safe and affordable housing, education, public safety, availability of healthy foods, local emergency/health services, and environments free of life-threatening toxins as major foci for community health promotion⁵; and

WHEREAS, Principally racism works to compromise public health by hindering equitable access to housing, employment, education, and safety, which are social determinants of health; and

WHEREAS, On any given night, more than 1,000 Berkeley residents do not have shelter (i.e. living outdoors in tents, on sidewalks, or in vehicles) according to the Alameda County 2019 Point-In-Time Count. A growing number of residents are housing insecure and at risk of

⁵ <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health>

becoming homeless. A majority of unhoused Berkeley residents are people of color, seniors, and disabled. Many have passed away; and

WHEREAS, The Alameda County Public Health Department has stated their vision for health equity in our county, declaring that “every resident – no matter who you are, where you live, how much money you make, or the color of your skin – should have the opportunity to lead a healthy, fulfilling, and productive life”; and

WHEREAS, The neighboring City of Richmond has established a Health Equity Partnership with the goal of addressing “avoidable inequalities by equalizing the conditions for health for all groups, especially for those who have experienced socioeconomic disadvantage or historical injustices (such as racism)”⁶ and adopted a Health in All Policies Ordinance; and

WHEREAS, Health in All Policies is a healthcare framework proposed by the World Health Organization, also known as “healthy public policy,” which acknowledges health begins in the places that people live, work, learn, worship, and play, and more so than individual choices, health is influenced by a plethora of societal factors, such as policies related to agriculture, education, the environment, fiscal planning, housing, and transport⁷; and

WHEREAS, The City of Richmond has developed a toolkit for implementation of Health in All Policies and views this ordinance as an “integrated and comprehensive approach to bring health, well-being, and equity considerations into the development and implementation of policies, programs, and services of traditionally non-health related government systems or agencies”⁸

WHEREAS, Other cities in the country have introduced legislation declaring racism a threat to public health, for instance, Pittsburgh, PA,⁹ proposed a trio of bills that would declare racism a public health crisis in the City, establish a leadership forum, and invest in a fund to eliminate racial inequalities and barriers; and

WHEREAS, Milwaukee, WI,¹⁰ passed legislation declaring racism a public health crisis and is undergoing a process to advocate for policies that improve health for communities of color and will train city employees to understand how racism impacts residents; and

WHEREAS, Kansas City, MI,¹¹ introduced a resolution likewise declaring racism a public health crisis, tasking the city manager to establish a comprehensive plan to address inequities that leave black men and other people of color vulnerable to early death; and

WHEREAS, Cleveland, OH, passed a resolution also declaring racism to be a public health crisis, creating a working group to promote racial equity in their City that seeks solutions to reshape the discourse and actively engage all citizens in racial justice work; continues to work to build alliances with organizations that are confronting racism and encourage partners to recognize racism as a public health crisis; continues to promote racially equitable economic and workforce development; continues to promote racially equitable hiring and promotion of all employees including City employees; and advocates and draft relevant policies that prioritize the health of people of color and mitigate exposure to adverse childhood experiences and trauma in childhood; and

⁶ <http://www.ci.richmond.ca.us/2574/Richmond-Health-Equity-Partnership-RHEP>

⁷ http://www.euro.who.int/_data/assets/pdf_file/0003/109146/E89260.pdf

⁸ <http://www.ci.richmond.ca.us/DocumentCenter/View/27173/Tool-Kit-DRAFT-52813-v3?bidId=>

⁹ <https://triblive.com/local/pittsburgh-allegheeny/pittsburgh-councilmen-want-racism-to-be-treated-as-a-public-health-crisis/>

¹⁰ <https://ips-dc.org/racism-is-a-public-health-crisis/>

¹¹ <https://www.kansascity.com/opinion/editorials/article234471712.html>

WHEREAS, Increasing opportunities for good health requires investment in the municipality and community infrastructure by facilitating access to parks, safe walkable streets, grocery stores, quality housing, public transportation, good jobs, strong local business, and financial institutions, as well as clean air and water; and

WHEREAS, The Alameda County Place Matters Initiative¹², spearheaded by Supervisor Keith Carson, was successful in its attempts to address and analyze social determinants of health, including criminal justice, economics, education, housing, land-use, and transportation; and

WHEREAS, The City of Berkeley's Strategic Plan includes goals to 'Champion and demonstrate social and racial equity' and 'Be a global leader in... advancing environmental justice'; and

WHEREAS, The City of Berkeley Health Status Report of 2018¹³ demonstrated that in Berkeley, African Americans and other People of Color die prematurely and are more likely than White people to experience a wide variety of adverse health conditions throughout their lives; and

WHEREAS, The Health Status Report specifically highlights how African Americans make up a disproportionately high percentage of Berkeley's homeless population (50%), earn 3.4x less than White families, are 2.8x less likely to have a college degree, and have a 9x higher teenage birth rate than White families, and additionally, at every life-stage African Americans have poorer health outcomes, including lower birth weight, cardiovascular disease, heart disease, cancer, asthma, and hypertension; and

WHEREAS, Berkeley's historical legacy of redlining (the process by which mortgage lenders determined the value of neighborhoods and whether to provide loans in those areas according to the racial composition and socioeconomic status of residents) has had a lingering impact of racial/ethnic segregation and the ability of Black families to build intergenerational wealth through home-ownership, particularly in South Berkeley and District 2¹⁴; and

WHEREAS, Gentrification, the process by which the influx of capital and higher-income, higher educated residents, move into working-class neighborhoods, has strongly impacted the Bay Area and has resulted in displacement (forced movement attributable to changes in housing conditions) in 48% of neighborhoods¹⁵; and

WHEREAS, Between the years 2000-2015, Berkeley (specifically District 2), has experienced a change in median rent over 50%, resulting in displacement of low-income communities of color¹⁶; and

WHEREAS, The Center for Disease Control has linked gentrification with negative health outcomes for women, children, the elderly, and racial/ethnic minorities, through processes which trigger stress, and increase exposure to injury, violence and crime, mental health disorders, and social and environmental hazards¹⁷; and

¹² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3945449/>

¹³ https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/health-status-summary-report-2018.pdf

¹⁴ <https://www.berkeleyside.com/2018/09/20/redlining-the-history-of-berkeley-segregated-neighborhoods>

¹⁵ https://www.urbandisplacement.org/sites/default/files/images/urban_displacement_project_-_executive_summary.pdf

¹⁶ <https://www.urbandisplacement.org/rentchangemap>

¹⁷ <https://www.cdc.gov/healthyplaces/healthtopics/gentrification.htm>

WHEREAS, The City of Berkeley as an employer has come under scrutiny for the way it has discriminated against Black employees, warranting investigations by an outside consulting firm (Mason Tillman)¹⁸ to assess the response to labor grievances raised by people of color; and

WHEREAS, An investigative study by the Center for Policing Equity also demonstrated discrimination by Berkeley Police in their detainment and treatment of people color, noting that Black people were 6.5x more likely to be stopped by BPD than White people while driving, and 4.5x more likely to be stopped on foot, and additionally Black people were 4x more likely to be searched compared to Whites¹⁹; and

WHEREAS, In addition to struggling with racism, the City of Berkeley is confronted with issues of Islamophobia, xenophobia, transphobia, and the dehumanization of homeless people; and

WHEREAS, Implicit bias is defined as the attitudes or stereotypes that affect our understanding, actions, and decisions in a subconscious manner, encompassing both favorable and unfavorable assessments that cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, gender, and appearance²⁰; and

WHEREAS, A number of tools, programs, and trainings exist to help individuals and organizations reduce their implicit bias, with strategies involving stereotype replacement, counter-stereotypic imaging, individuation, perspective taking, increasing opportunities for contact with individuals from different groups, and partnership building²¹; and

WHEREAS, The Congressional Black Caucus sent a letter to the Center of Disease Control asking for states to report statistics of COVID-19 morbidity and mortality by race and ethnicity, and data emerged that Black people in Milwaukee and Illinois are dying of coronavirus at disproportionately high rates²²; and

WHEREAS, The Centers for Disease Control finds that almost one-third of infections nationwide have affected black-Americans, even though blacks only represent 13% of the U.S. population; nearly one-third of those who passed due to COVID-19 across the country are black; and

WHEREAS, this Council recognizes that racism is a public health crisis that affects all members of our society both locally and nationwide and deserves action from all levels of government and civil society; and

WHEREAS, this Council supports the establishment of a working group to address these issues and to: seek solutions to reshape the discourse and actively engage all citizens in racial justice work; continue to work to build alliances with organizations that are confronting racism and encourage partners to recognize racism as a public health crisis; continue to promote racially equitable economic and workforce development in the city; continue to promote racially equitable hiring and promotion of all employees including City employees; and advocate and draft relevant policies that prioritize the health of people of color and mitigate exposure to adverse childhood experiences and trauma in childhood; and

¹⁸ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Mason%20Tillman%20Associates%20Report%20051614.pdf

¹⁹ <https://www.berkeleyside.com/wp-content/uploads/2018/05/Berkeley-Report-May-2018.pdf>

²⁰ <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>

²¹ <http://www.ihl.org/communities/blogs/how-to-reduce-implicit-bias>

²² https://cbc.house.gov/uploadedfiles/cbc-cbc_health_braintrust_racial_disparities_letter_to_cdc.pdf

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley declare racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley, and commit to eliminate all socioeconomic barriers to health equity;

BE IT FURTHER RESOLVED, Declare the resolution an emergency measure for the immediate preservation of public peace, property, health, or safety, especially during the COVID-19 pandemic and it shall take effect and be in force immediately upon its adoption.

BE IT FURTHER RESOLVED, A Budget Referral to convene a series of town hall sessions for all community members, City workers, and small business owners to discuss the concerns of people of color and marginalized community members, and develop strategies and programs (especially Mental Health Programs for the unhoused stay housed) for greater inclusivity, understanding, empathy, compassion, and unity. The purpose of these meetings should be to strengthen anti-racist capacity building and commitments within the city. This can be done by discussing the current quantitative and qualitative reality of racial justice and injustice, racism and non-racism in all areas of city life toward developing measures to ensure the achievement racial equity in Berkeley. These town halls, strategies and programs could include: the definition and lived experience of racism in systemic and institutional forms the effects and trauma caused by them, and provide resources to combat implicit bias on all levels. Community partners to consider to facilitate such workshops include Beyond Diversity: Courageous Conversations About Race and Showing Up for Racial Justice (SURJ).

BE IT FURTHER RESOLVED, City Council will establish a working group to promote racial equity as well as the development of programs to address racial equity in this City.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to record COVID-19 data by race/ethnicity and to explore greater health disparities that have emerged as a result of this crisis.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to hold several fundraisers at town hall sessions for black-owned small businesses, research of state and federal RFPs for the purpose of grants acquisitions for program development in the City of Berkeley that have been affected by Covid-19 and/or recent protests.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to prepare a Health in All Policies Ordinance (see attached [City of Richmond Ordinance](#)) for Council review and adoption, critically evaluating the public health impact of all legislative and budgetary proposals, especially upon people of color and marginalized community members.

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee to adopt a mandatory requirement of 16 hours of ongoing annual online and in-person training on implicit bias, cultural sensitivity, and cultural humility for City Employees, commissioners, and community members; and

BE IT FURTHER RESOLVED, Direct the City Manager or his/her designee in partnership with the Berkeley Public Health Division and the Mental Health Division to develop a Strategic Plan for Health Equity, with the inclusion of a diverse group of staff with expertise in this subject matter and begin immediate implementation of recommendations.

BE IT FURTHER RESOLVED, Submit copies of this resolution to State Assemblymember Buffy Wicks, State Senator Nancy Skinner, Congresswoman Barbara Lee, Alameda County Supervisor Keith Carson, as well as various organizations such as the Berkeley NAACP, the African American Holistic Resource Center Steering Committee, and Healthy Black Families.

https://www.youtube.com/watch?v=9oKg-870R3I&feature=emb_title



Leslie Gregory
Founder/Director - RIGHT TO HEALTH

Racism - Public Health Crisis

1,354 views · May 5, 2017

👍 14 👎 0 ➦ SHARE ≡+ SAVE ...



White On Race
14 subscribers

SUBSCRIBE

Leslie Gregory, founder and director of Right to Health in Portland, Oregon, makes her case to the CDC (Center for Disease Control) for racism being a public health threat.

ORDINANCE NO. 27-15 N.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF RICHMOND AMENDING ARTICLE IX OF THE MUNICIPAL CODE OF THE CITY OF RICHMOND. THIS ORDINANCE AMENDS THE HEALTH IN ALL POLICIES ORDINANCE.

The Council of the City of Richmond do ordain as follows:

Section I. Amendment of Chapter 9.15. Chapter 9.15 of the Municipal Code of the City of Richmond is hereby amended to read as follows:

CHAPTER 9.15

HEALTH IN ALL POLICIES

Sections:

9.15.010 Findings

9.15.020 Definitions

9.15.030 Health in All Policies Implementation

9.15.010 Findings.

- (a) Health starts where we live, learn, work and play, and everyday decisions within the City of Richmond can promote greater health and equity.
- (b) All Richmond residents should have the opportunity to make the choices that allow them to live a long, healthy life, regardless of their job, neighborhood of residence, level of education, immigration status, sexual orientation, ethnic background or religion.
- (c) Good health enhances quality of life, improves workforce productivity, increases the capacity for learning, strengthens families and communities, supports environmental sustainability and helps reduce overall economic and social insecurity.
- (d) In the City of Richmond, those at greatest risk for poor health outcomes are low-income residents of color, especially African Americans residents, who have a shorter life expectancy than other county residents.
- (e) In comparison to other cities in Contra Costa County, Richmond residents experience the highest proportion of deaths from diabetes, a higher than average rate of children requiring hospitalization due to asthma, and the second highest number of hospitalizations for mental health disorders and substance abuse.
- (f) Richmond residents are also disproportionately affected by heart disease, cancer and stroke.
- (g) Recognizing the presence of critical health disparities in the community and the opportunity to intervene on health outcomes, the City has developed and defined public health broadly in the Community Health and Wellness Element of the General Plan 2030.
- (h) Health in All Policies is an approach to operationalizing the vision of health laid out in the Richmond General Plan 2030 and to creating institutional change by prioritizing health and health equity in all policies.
- (i) Health in All Policies is fundamentally about creating systems-level change both within City departments and in the community.
- (j) In developing strategies to address health disparities, it is important to recognize that at its heart, promoting equity is not just about providing more services.

- (k) It is also about how services are developed, prioritized and delivered.
- (l) The Health in All Policies strategy guides the City of Richmond on how to address the social determinants of health, or the root causes of current health disparities in the development, prioritization and delivery of these services and policies.
- (m) The City of Richmond's Health in All Policies is designed to be consistent with the State of California's Health in All Policies Plan and the California Health and Safety Code Section 131019.5.

9.15.020 Definitions.

The definitions in this section apply throughout this ordinance unless the context clearly requires otherwise:

- (a) "Health in All Policies" (HiAP) is both a process and a goal.
 - (1) The goal of HiAP is to address inequities at the systems, policy and structural levels to eliminate the resulting health disparities.
 - (2) At the root of the HiAP is an approach to improving health of all people by incorporating health considerations into collaborative decision-making across sectors, agencies, and departments. HiAP brings city departments and community groups together to identify ways in which all policies can take health outcomes into consideration. The HiAP process places health at the center of all work, and through discussion and compromise, gains stakeholder buy-in from all agencies, groups, and departments.
 - (3) Health in All Policies works to create a new policy and organizing framework within city government and beyond in the community. It emphasizes the consequences of public policies, plans, and programs on health determinants, and aims to improve health outcomes at all levels of government within the city and those agencies responsible for serving Richmond residents.
 - (4) Robust stakeholder engagement is essential for ensuring that Health in All Policies is responsive to community needs. Community-based knowledge provides important information about opportunities and barriers for health and insight into the ways in which policies may impede or promote health.
- (b) "Health" is not simply the absence of disease, but the state of complete physical, mental, cultural and social well-being. HiAP is based on the premise that good health is fundamental for a strong economy and vibrant society, and that health outcomes are largely dependent on the social determinants of health, which in turn are shaped by decisions made within the health sector and internally and externally outside of the health sector.
- (c) "Health equity" refers to efforts to ensure that all people have full and equal access to opportunities that enable them to lead healthy lives, while respecting differences that include but are not limited to culture, language, race, gender, sexuality, economic status, citizenship, ability, age and religion.
 - (1) Health equity entails focused societal efforts to address avoidable inequalities by equalizing the conditions for health for all groups, especially for those who have experienced socioeconomic disadvantage or historical injustices.
 - (2) These communities include, but are not limited to women, people of color, low-income individuals and families, individuals who have been incarcerated, individuals with disabilities, individuals with mental health

conditions, children, youth and young adults, seniors, immigrants and refugees, individuals who are limited-English proficient (LEP), and lesbian, gay, bisexual, transgender, questioning, intersex and asexual (LGBTQIA) communities, or combinations of these populations.

- (d) “Health disparities” are differences of presence of disease, health outcomes, or access to care among distinct segments of the population, including differences that occur by race or ethnicity, gender identity, sexual orientation, education or income, immigration status, age, disability or functional impairment, or geographic location, or the combination of any of these factors.
- (e) “Health inequities” are health disparities resulting from factors that are systemic and avoidable and, therefore, considered unjust or unfair.
- (f) Determinants of health equity include the social, economic, geographic, political, institutional and physical environmental conditions that lead to the creation of a fair and just society.
- (g) “Social determinants of health” refer to everything outside of direct health care services, such as the conditions in the environment in which people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks. The social determinants of health include but are not limited to:
 - (1) The availability of resources to meet our daily needs (e.g. safe housing, access to healthy and affordable food).
 - (2) Access to educational, economic, and job opportunities that lead to sustainable employment.
 - (3) Neighborhood safety and communities free of crime, violence, and social disorder (e.g. presence of trash and other forms of blight); and
 - (4) Accessible built environments that promote health and safety, including improved pedestrian, bicycle, and automobile safety, parks and green space, and healthy school siting.
 - (5) Social norms and attitudes (e.g. discrimination and racism), socioeconomic conditions (e.g. concentrated poverty and the chronically stressful conditions that accompany it).
- (h) “Toxic stress” refers to prolonged and repeated exposure to multiple negative factors, especially in early childhood. Contributing factors include but are not limited to racial profiling, poor air quality, residential segregation and economic insecurity. Toxic stress has known physical and mental health impacts and contributes to a host of chronic conditions such as heart disease and diabetes. Toxic stress has also been shown to have negative intergenerational health effects. Toxic stress does not refer to individual stressful events, but rather the unrelieved accumulation of these events over one’s life.

9.15.030 Health in All Policies Implementation.

To effectively implement and maintain Health in All Policies the City shall:

- (a) Apply health equity and social justice foundational practices to City actions and endeavor to integrate these practices into the city’s strategic, operational and business plans; management and reporting systems for accountability and performance; and budgets in order to eliminate inequities and create opportunities for all people and neighborhoods;

- (b) Use the Health in All Policies Strategy Document as the guiding plan for implementing Health in All Policies in the City. The strategy document will outline the vision, mission and goals, and identify a timeline as well as the process to reach these goals. The strategy document will be a living plan that is designed to grow over time as progress is made and the needs of the community and City change;
- (c) Establish the Interdepartmental Health in All Policies Team. The Interdepartmental team will be comprised of representatives from each department within the City and are responsible for:
 - (1) Selecting health and health equity indicators for each department to track as a way of prioritizing goals and measuring progress aligned with existing City guiding documents (General Plan, 5 Year Strategic Business Plan, etc.);
 - (2) Attending regularly scheduled Interdepartmental Team meetings chaired by the City Manager's office;
 - (3) Reporting to the Interdepartmental Team on progress and challenges from his or her respective department;
 - (4) Working with his or her respective department to integrate and track health equity indicators for his or her department;
 - (5) Committing to attending ongoing health equity training, such as health equity impact assessments; and
 - (6) Assisting with the writing of the Tri-Annual HiAP Report and provide a report with the adoption of the City budget.
- (d) Design and publish a tri-annual report on the status of health and health equity in the City of Richmond and progress of HiAP implementation for the City Council, city staff, community organizations, residents, businesses, and other governmental agencies within the City.
 - (1) Implementation will be measured based on health and health equity indicators selected by the Interdepartmental HiAP Team.
 - (2) In addition to reporting on indicators, the Tri-Annual Report will include any updates to the HiAP strategy document.
- (e) Develop and implement an ongoing community engagement plan to work directly with stakeholders throughout the process of the HiAP Strategy development and implementation to ensure that perspectives are consistently understood, considered, and reflected in decisions. The goal is to partner with stakeholders in each aspect of decision making in order to develop and implement collaborative solutions.

Section II. Severability.

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

Section III. Effective Date.

This Ordinance becomes effective 30 days after its final passage and adoption.

First read at a regular meeting of the Council of the City of Richmond held on November 24, 2015, and finally passed and adopted at a regular meeting thereof held on December 15, 2015, by the following vote:

- AYES: Councilmembers Bates, Beckles, Martinez, McLaughlin, Pimplé, Vice Mayor Myrick, and Mayor Butt.
- NOES: None.
- ABSTENTIONS: None.
- ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

TOM BUTT

Mayor

Approved as to form:

BRUCE GOODMILLER

City Attorney

State of California }
 County of Contra Costa } : ss.
 City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 27-15 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on December 15, 2015.



 Pamela Christian, City Clerk of the City of Richmond



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

02a.27

CONSENT CALENDAR
 June 30, 2020

To: Honorable Mayor and Members of the City Council
 From: Councilmembers Rigel Robinson (Author) and Ben Bartlett (Co-Sponsor)
 Subject: Ordinance: Public Right to Identify Officers

RECOMMENDATION

Adopt an ordinance prohibiting law enforcement from obscuring or failing to wear their identification, such as name and badge number, when it is required to be displayed, with additional penalties when done during the commission of a crime or violation of City or Department regulation or procedure, and refer to the City Manager to update City policy regarding undercover and plainclothes officers in crowd control situations to comply with the ordinance.

BACKGROUND

In response to the police murders of George Floyd, Breonna Taylor, and countless other Black victims of police brutality and racism, hundreds of thousands of people have taken to the streets to demand change. From these protests emerged a troubling trend of law enforcement officers covering their badge numbers and name tags while on duty at protests and other crowd situations.

During the New York City protests, several NYPD officers wore “mourning bands” on their badges to honor their colleagues who had passed away from COVID-19. These bands were placed in a way that covered their badge numbers, in direct violation of NYPD Patrol Guide Section 204-17.¹

In the City of Seattle, several SPD officers covered their badge numbers with black electrical tape to serve as makeshift mourning bands. There is currently no City or Department policy preventing officers from doing so. In a press conference, Seattle Mayor Jenny Durkan asserted that officers are allowed to cover their badge numbers because they are required to wear their names on the left side of their uniforms.²

In response to protests in Washington, D.C., the Trump administration deployed federal law enforcement officers in riot gear with no name tags, badge numbers, or other identifiable markings, who refused to disclose which agency they were representing.³ Others reported sightings of officers, again with no identifying markers, armed with riot

¹ <https://www.documentcloud.org/documents/6936059-National-Lawyers-Guild-Letter-to-NYPD.html>

² <https://southseattleemerald.com/2020/06/01/spd-officers-only-required-to-display-last-name-and-first-initial-despite-potential-name-overlap/>

³ <https://www.nytimes.com/2020/06/04/us/politics/unidentified-police-protests.html>

shields labeled “MILITARY POLICE.” Members of the press and a representative from the National Guard later confirmed that these two groups of unidentified officers were both affiliated with the Bureau of Prisons.

Members of the public have a right to identify officers. It is the interest of preserving accountability and building community trust that a member of the public can easily identify an officer’s agency, name, and badge number. At the very least, officers without clear identification can cause civilian confusion, prevent officers from recognizing officers from other agencies, allow officers to evade consequences and accountability, and erode public trust.

In the most egregious of cases, such as with the Trump administration’s deployment of entirely unidentified officers, this practice can spark fears of unauthorized, non-state-sanctioned, often right-wing militias entering protests and acting with impunity. This is not uncommon in large protests or crowds, where members of III% and other far-right militia groups have been known to show up in riot gear. The practice of allowing unidentified law enforcement officers “functionally allows any unidentifiable individual to more easily pretend to be law enforcement.”⁴

The Berkeley Police Department’s current policy can be found in Policy 429.9, “General Event Procedures,” which states that “(a) Employees dispatched or pre-assigned to a crowd situation shall be in a department approved uniform appropriate for their assignment. 1. Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn.”

In the case of the NYPD, police officers obscured their badge numbers even when explicitly prohibited by their Patrol Guide. It is crucial to not only implement policies banning the obscuring of identification for the sake of transparency, accountability, and democracy, but to also ensure that violation of such policies is met with appropriate consequences.

FINANCIAL IMPLICATIONS

Negligible.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

⁴ <https://www.washingtonpost.com/politics/2020/06/03/dangerous-new-factor-an-uneasy-moment-unidentified-law-enforcement-officers/?fbclid=IwAR2WBP97c1n-WtXu4iu9W5by16ThRcBplMDSWIF4J9yvATMcmqEuTLyMt8>

Attachments:

1: Ordinance

2: BPD Policy 429 "First Amendment Assemblies"

[https://www.cityofberkeley.info/uploadedFiles/Police/Level_3 -
_General/429%20First_Amendment_Assemblies.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/429%20First_Amendment_Assemblies.pdf)

ORDINANCE NO. -N.S.

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

Section 1. That Berkeley Municipal Code Chapter 13.111 is added to read as follows:

**Chapter 13.111
Obscuring of Police Officers' Identifying Information**

13.111.010 Findings and Purpose.

- A. In enacting this Chapter, the City finds that, in order for the public to have trust in the Berkeley Police Department, it is essential that individual members of the Department be accountable for their actions as officers and that the public, should they be abused or treated unjustly by a member of the Department, be able to report that conduct, and the officer responsible for that conduct, to the appropriate oversight body.
- B. In order for this accountability to take place, officers on duty must be identifiable to the public, by both name and badge number. In recognition of this need, a variety of departmental policies require officers to display their name and badge number on different places on their uniform and in different circumstances.
- C. The failure of an officer to properly display their identification corrodes the basic trust of the people in their government and undermines the mechanisms of accountability that have been put in place to ensure that officers uphold the values and standards of the City of Berkeley.
- D. It is the purpose of this Chapter to ensure that officers display their identification at all times when it is required under departmental and City policy, and that failure to do so is properly penalized.

13.111.020 Definitions.

- A. "City Policy" shall mean any ordinance, resolution, administrative regulation, departmental policy, or any other official expression of City procedures, policies, or practices.
- B. "Department" shall mean the Berkeley Police Department.
- C. "Officer" shall mean any sworn officer of the Berkeley Police Department.

13.111.030 Display of Identifying Information.

- A. Officers shall, at all times when they are on duty, be identifiable to the public by name and badge number.
- B. Officers shall observe all City policies on the form and placement of their identifying information.

13.111.040 Exceptions.

- A. Officers may refrain from displaying identifying information only when undercover or in plainclothes as explicitly authorized by City policy.
- B. This exception shall not apply in crowd control settings. No City policy shall authorize undercover or plainclothes officers in crowd control settings.

13.111.050 Penalties.

- A. Violation of section 13.111.030 shall be an infraction.
- B. The willful or repeated violation of section 13.111.030 shall be a misdemeanor and grounds for termination from the Department.
- C. Violation of section 13.111.030 by an officer while that officer is committing a crime or violating City policy shall be a misdemeanor and grounds for immediate termination.

13.111.060 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of 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.



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

02a.28

CONSENT CALENDAR
 June 30, 2020

To: Honorable Mayor and Members of the City Council
 From: Councilmembers Rigel Robinson (Author) and Ben Bartlett (Co-Sponsor)
 Subject: Resolution: No Police Revolving Door

RECOMMENDATION

Adopt a resolution designating a history of serious misconduct and the act of previously resigning in the middle of a serious misconduct investigation as immediate disqualifiers in the Berkeley Police Department recruitment and selection process.

BACKGROUND

Senate Bill 1421, which went into effect in 2019, allows the public and the press to access police misconduct records that were previously undisclosed.¹ In the process of reviewing this data, new light has been shed on the “revolving door” of police brutality, in which police officers fired for misconduct are simply re-hired by another jurisdiction.

A San Jose State police officer, fired in 2017 for excessive use of force, was then hired by the Los Gatos-Monte Sereno Police Department. An Alameda County deputy sheriff, fired in 2015 for soliciting prostitution and filing a false police report, was later hired by the Pinole Police Department.² An SFPD officer resigned one day before the Internal Affairs division ruled to discipline him for his fatal shooting of Luis Gongora Pat, a homeless man.³ He was immediately hired by the Antioch Police Department, escaping the 45-day suspension and any consequences for his actions.

This revolving door phenomenon raises serious concerns about the ability of police departments to maintain accountability, create trust in the community, and eliminate police brutality and misconduct. Given the longstanding history of racial bias in policing and use of force nationwide, public trust is already badly damaged between law enforcement and many communities of color, particularly Black communities.

Furthermore, officers with histories of misconduct often cannot carry out a key part of their job: testifying in court. In *Brady v. Maryland* (1963), the Supreme Court ruled that prosecutorial suppression of evidence that could benefit the defendant violates the Due

¹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1421

² <https://www.mercurynews.com/2019/07/23/editorial-records-expose-revolving-door-for-bad-california-cops/>

³ <https://www.nbcbayarea.com/investigations/sf-officer-jumps-to-another-department-before-being-disciplined-for-a-shooting/2304029/>

Process Clause of the Fourteenth Amendment.⁴ Police officers' credibility can be called into question if they have a documented history of misconduct or dishonesty, which can jeopardize their testimonies and entire cases.

San Francisco Supervisor Shamann Walton introduced a resolution on June 2, 2020, attached below, "urging the city's Civil Service Commission to prohibit the Police and Sheriff's Departments from hiring law enforcement personnel with histories of serious misconduct."⁵

The City of Berkeley should follow suit by adopting the attached resolution and amending BPD Policy 1000, "Recruitment and Selection," to prohibit the hiring of any police officer who has a history of serious misconduct or who has previously resigned in the midst of a serious misconduct investigation.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Resolution

2: BPD Policy 1000 "Recruitment and Selection"

https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/1000%20Recruitment_and_Selection.pdf

3: Proposed San Francisco Resolution

<https://sfgov.legistar.com/View.ashx?M=F&ID=8582276&GUID=8C81E0F1-7BDA-4F2D-888E-F90F6E1807A5>

⁴ <https://www.law.cornell.edu/supremecourt/text/373/83>

⁵ <https://www.sfchronicle.com/bayarea/article/SF-supervisor-wants-a-ban-on-hiring-of-police-15311973.php>

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

BANNING THE HIRING OF POLICE OFFICERS WITH A HISTORY OF SERIOUS MISCONDUCT

WHEREAS, the Berkeley Police Department (BPD) is entrusted with keeping all community members in the City of Berkeley safe and enforcing laws; and

WHEREAS, all residents of Berkeley equally deserve to feel safe when interacting with police and should be able to trust that the officers tasked with protecting them have no prior history of excessive force, racial bias, or other significant misconduct; and

WHEREAS, there is a national crisis over repeated instances of police brutality and killings of Black people and persons of color; and

WHEREAS, there is a longstanding history of racial bias in policing nationwide, especially towards Black people; and

WHEREAS, George Floyd, a Black man, was killed by a Minneapolis Police Officer who kneeled on his neck for over eight minutes while he struggled to breathe and who had 17 prior complaints against him, had been responsible for multiple officer-involved shootings, but was permitted to remain on the police force; and

WHEREAS, the Council of the City of Berkeley acknowledges that communities of color have borne the burdens of inequitable social, environmental, economic, and criminal justice policies, practices, and investments, and that the legacy of these injustices has caused deep racial disparities throughout the juvenile justice and criminal justice system; and

WHEREAS, members of the public cannot fully trust law enforcement officers or feel safe if they are uncertain whether an officer with whom they interact had a prior history of significant misconduct or abuse; and

WHEREAS, it is difficult, and in some cases prohibited, especially under California law for members of the public to know about prior complaints or findings related to law enforcement officer misconduct; and

WHEREAS, public trust, including in the City of Berkeley, is badly damaged between law enforcement and many of the communities they serve, particularly communities of color; and

WHEREAS, the Council of the City of Berkeley aspires to hold the Berkeley Police Department to the highest standard of professionalism and integrity.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Berkeley Police Department Policy 1000 be amended as follows:

Recruitment and Selection

1000.1 PURPOSE AND SCOPE

This policy provides a framework for employee recruiting efforts and identifying job-related standards for the selection process. This policy supplements the rules that govern employment practices for the Berkeley Police Department and that are promulgated and maintained by the Personnel and Training Bureau.

1000.2 POLICY

In accordance with applicable federal, state and local law, the Berkeley Police Department provides equal opportunities for applicants and employees, regardless of race, gender expression, age, pregnancy, religion, creed, color, national origin, ancestry, physical or mental handicap, genetic information, veteran status, marital status, sex or any other protected class or status. The Department does not show partiality or grant any special status to any applicant, employee or group of employees unless otherwise required by law.

The Department will recruit and hire only those individuals who demonstrate a commitment to service and who possess the traits and characteristics that reflect personal integrity and high ethical standards.

1000.3 RECRUITMENT

The Professional Standards Division Captain should employ a comprehensive recruitment and selection strategy to recruit and select employees from a qualified and diverse pool of candidates

The strategy should include:

- (a) Identification of racially and culturally diverse target markets.
- (b) Use of marketing strategies to target diverse applicant pools.
- (c) Expanded use of technology and maintenance of a strong internet presence. This may include an interactive department website and the use of department-managed social networking sites, if resources permit.
- (d) Expanded outreach through partnerships with media, community groups, citizen academies, local colleges, universities and the military.
- (e) Employee referral and recruitment incentive programs.
- (f) Consideration of shared or collaborative regional testing processes.

The Professional Standards Division Captain shall avoid advertising, recruiting and screening practices that tend to stereotype, focus on homogeneous applicant pools or screen applicants in a discriminatory manner.

The Department should strive to facilitate and expedite the screening and testing process.

1000.4 SELECTION PROCESS

The Department shall actively strive to identify a diverse group of candidates that have in some manner distinguished themselves as being outstanding prospects. Minimally, the Department should employ a comprehensive screening, background investigation and selection process that assesses cognitive and physical abilities and includes review and verification of the following:

- (a) A comprehensive application for employment (including previous employment, references, current and prior addresses, education, military record)
- (b) Driving record
- (c) Reference checks
- (d) Employment eligibility, including U.S. Citizenship and Immigration Services (USCIS) Employment Eligibility Verification Form I-9 and acceptable identity and employment authorization documents consistent with Labor Code § 1019.1. This required documentation should not be requested until a candidate is hired. This does not prohibit obtaining documents required for other purposes.
- (e) Information obtained from public internet sites
- (f) Financial history consistent with the Fair Credit Reporting Act (FCRA) (15 USC § 1681et seq.)
- (g) Local, state and federal criminal history record checks
- (h) Computer Voice Stress Analysis (CVSA) exam (when legally permissible) (Labor Code § 432.2)
- (i) Medical and psychological examination (may only be given after a conditional offer of employment)
- (j) Hiring authority review
- (k) Records of police misconduct

1000.4.1 VETERAN'S PREFERENCE

Qualifying veterans of the United States Armed Forces who receive a passing score on an entrance examination shall be ranked in the top rank of any resulting eligibility list. The veteran's preference shall also apply to a widow or widower of a veteran or a spouse of a 100 percent disabled veteran (Government Code § 18973.1).

1000.5 BACKGROUND INVESTIGATION

Every candidate shall undergo a thorough background investigation to verify his/her personal integrity and high ethical standards, and to identify any past behavior that may be indicative of the candidate's unsuitability to perform duties relevant to the operation of the Berkeley Police Department (11 CCR 1953).

The narrative report and any other relevant background information shall be shared with the psychological evaluator. Information shall also be shared with others involved in the hiring process if it is relevant to their respective evaluations (11 CCR 1953).

1000.5.1 NOTICES

Background investigators shall ensure that investigations are conducted and notices provided in accordance with the requirements of the FCRA and the California Investigative Consumer Reporting Agencies Act (15 USC § 1681d; Civil Code § 1786.16).

1000.5.2 STATE NOTICES

If information disclosed in a candidate's criminal offender record information (CORI) is the basis for an adverse employment decision, a copy of the CORI shall be provided to the applicant (Penal Code § 111105).

1000.5.3 REVIEW OF SOCIAL MEDIA SITES

Due to the potential for accessing unsubstantiated, private or protected information, the Professional Standards Division Captain shall not require candidates to provide passwords, account information or access to password-protected social media accounts (Labor Code § 980).

The Professional Standards Division Captain should consider utilizing the services of an appropriately trained and experienced third party to conduct open source, internet-based searches and/or review information from social media sites to ensure that:

- (a) The legal rights of candidates are protected.
- (b) Material and information to be considered are verified, accurate and validated.
- (c) The Department fully complies with applicable privacy protections and local, state and federal law.

Regardless of whether a third party is used, the Professional Standards Division Captain should ensure that potentially impermissible information is not available to any person involved in the candidate selection process.

1000.5.4 DOCUMENTING AND REPORTING

The background investigator shall summarize the results of the background investigation in a narrative report that includes sufficient information to allow the reviewing authority to decide whether to extend a conditional offer of employment. The report shall not include any information that is prohibited from use, including that from private social media sites, in making employment decisions. The report and all supporting documentation shall be included in the candidate's background investigation file (11 CCR 1953).

1000.5.5 RECORDS RETENTION

The background report and all supporting documentation shall be maintained in accordance with the established records retention schedule.

1000.5.6 BACKGROUND INVESTIGATION UPDATE

A background investigation update may, at the discretion of the Chief of Police, be conducted in lieu of a complete new background investigation on a peace officer candidate who is reappointed within 180 days of voluntary separation from the Berkeley Police Department or is transferred to a different department within the City as provided in 11 CCR 1953(f).

1000.6 DISQUALIFICATION GUIDELINES

As a general rule, performance indicators and candidate information and records shall be evaluated by considering the candidate as a whole, and taking into consideration the following:

- Age at the time the behavior occurred
- Passage of time
- Patterns of past behavior
- Severity of behavior
- Probable consequences if past behavior is repeated or made public

- Likelihood of recurrence
- Relevance of past behavior to public safety employment
- Aggravating and mitigating factors
- Other relevant considerations

A candidate's qualifications will be assessed on a case-by-case basis, using a totality-of-the-circumstances framework.

1000.6.1 DISQUALIFICATION FOR PAST MISCONDUCT

Notwithstanding section 1000.6 of this Policy, a candidate shall be immediately disqualified if:

- (1) The applicant has been the subject of a sustained finding or two unsustained complaints by different complainants against the applicant by any law enforcement agency or oversight agency, following an investigation and opportunity for administrative appeal by the applicant, that the applicant, while employed as a peace officer, engaged in serious misconduct, which includes but is not limited to the following: use of excessive force, racial bias, sexual assault, discrimination against any person or group based on race, gender, religion, nationality, or sexual orientation, or dishonesty directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence; or
- (2) The applicant resigned or retired from their employment as a peace officer in any jurisdiction during the pendency of a disciplinary proceeding related to alleged serious misconduct by the applicant while they were employed as a peace officer, and the proceeding was suspended or terminated as a result of the applicant's resignation or retirement, until such a time that the applicant has been exonerated for the pending allegation.

1000.7 EMPLOYMENT STANDARDS

All candidates shall meet the minimum standards required by state law (Government Code §1029; Government Code § 1031; 11 CCR 1950 et seq.). Candidates will be evaluated based on merit, ability, competence and experience, in accordance with the high standards of integrity and ethics valued by the Department and the community. The California Commission on Peace Officer Standards and Training (POST) developed a Job Dimensions list, which is used as a professional standard in background investigations.

Validated, job-related and nondiscriminatory employment standards shall be established for each job classification and shall minimally identify the training, abilities, knowledge and skills required to perform the position's essential duties in a satisfactory manner. Each standard should include performance indicators for candidate evaluation. The Personnel and Training Bureau should maintain validated standards for all positions.

1000.7.1 STANDARDS FOR OFFICERS

Candidates shall meet the minimum standards established by POST (Government Code § 1029; Government Code § 1031; 11 CCR 1950 et seq.):

- (a) Free of any felony convictions
- (b) Citizen of the United States, or permanent resident alien eligible for and has applied for citizenship

- (c) At least 21 years of age at time of appointment
- (d) Fingerprinted for local, state and national fingerprint check
- (e) Good moral character as determined by a thorough background investigation (11 CCR1953)
- (f) High school graduate, passed the GED or other high school equivalency test and completed at least 60 college semester units or 90 college quarter units
- (g) Free from any physical, emotional or mental condition which might adversely affect the exercise of police powers (11 CCR 1954; 11 CCR 1955)
- (h) Candidates must also satisfy the POST selection requirements, including (11 CCR1950 et seq.):
 - 1. Reading and writing ability assessment (11 CCR 1951)
 - 2. Oral interview to determine suitability for law enforcement service (11 CCR1952)

In addition to the above minimum POST required standards, candidates may be subjected to additional standards established by the Department (Penal Code § 13510(d)).

1000.7.2 STANDARDS FOR DISPATCHER

Candidates shall satisfy the POST selection requirements, including (11 CCR 1956):

- (a) A verbal, reasoning, memory and perceptual abilities assessment (11 CCR 1957)
- (b) An oral communication assessment (11 CCR 1958)
- (c) A medical and psychological evaluation (11 CCR 1960)

02a.29



Lori Droste
Councilmember, District 8

ACTION CALENDAR

June 30, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Lori Droste (Author) and Councilmembers Rigel Robinson (Co-Sponsor) and Rashi Kesarwani (Co-Sponsor)

Subject: Commission Reorganization for Post-COVID19 Budget Recovery

RECOMMENDATION

- 1) Reorganize existing commissions with the goal of achieving 20 total commissions.
- 2) Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions.
- 3) Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions.
- 4) Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.

PROBLEM/SUMMARY STATEMENT

Demand for city workers staffing commissions is larger than the City's ability to supply it at an acceptable financial and public health cost. Thirty-seven commissions require valuable city staff time and funding that could be better spent providing essential services. The COVID-19 pandemic has impacted the City of Berkeley in a myriad of ways, resulting in enormous once-in-a-lifetime socioeconomic and public health impacts. While the City Manager and department heads are addressing how to best prepare and protect our residents, particularly our most vulnerable, they are also required to oversee an inordinate amount of commissions for a medium-sized city at a significant cost.

The City of Berkeley faces many challenges, including the COVID-19 pandemic and its resultant budget and staffing impacts. Prior to the onset of COVID-19, the City Council and staff spent significant Council time on items originating with the City's advisory commissions. As the Shelter in Place is gradually lifted, critical city staff will resume staffing these 37 commissions. As a result, too much valuable staff time will continue to be spent on supporting an excessive amount of commissions in Berkeley rather than addressing the basic needs of the City.

BACKGROUND

Review of Existing Plans, Programs, Policies, and Laws

The City of Berkeley has approximately thirty-seven commissions overseen by city administration, most of which have at least nine members and who are appointed by individual councilmembers. These commissions were intended to be a forum for public participation beyond what is feasible at the City Council, so that issues that come before the City Council can be adequately vetted.

Some commissions are required by charter or mandated by voter approval or state/federal mandate. Those commissions are the following:

1. Board of Library Trustees (charter)
2. Business Improvement Districts (state mandate)
3. Civic Arts Commission (charter)
4. Community Environmental Advisory Commission (state/federal mandate--CUPA)
5. Fair Campaign Practices Commission/Open Government (ballot measure)
6. Homeless Services Panel of Experts (ballot measure)
7. Housing Advisory Commission (state/federal mandate)
8. Human Welfare and Community Action (state/federal mandate)
9. Measure O Bond Oversight Committee (ballot measure)
10. Mental Health Commission (state/federal mandate)
11. Personnel (charter)

- 12. Police Review Commission (ballot measure)
- 13. Sugar-Sweetened Beverages (ballot measure)

Berkeley must have its own mental health commission because of its independent Mental Health Division. In order to receive services, the City needs to have to have an advisory board. Additionally, Berkeley’s Community Environmental Advisory Commission is a required commission in order to oversee Certified Unified Program Agency (CUPA) under California’s Environmental Protection Agency. Additionally, some commissions serve other purposes beyond policy advisories. The Children, Youth and Recreation Commission, Housing Advisory Commission, and the Human Welfare and Community Action Commission advise Council on community agency funding. However, some of the aforementioned quasi-judicial and state/federal mandated commissions do not need to stand independently and can be combined to meet mandated goals.

In comparison to neighboring jurisdictions of similar size, Berkeley has significantly more commissions. The median number of commissions for these cities is 12 and the average is 15.

Comparable Bay Area City	Population (est.)	Number of Commissions	Links
Berkeley	121,000	37	https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3 - Commissions/External%20Roster.pdf
Antioch	112,000	6	https://www.antiochca.gov/government/boards-commissions/
Concord	130,000	14	https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm
Daly City	107,000	7	http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm
Fairfield	117,000	7	https://www.fairfield.ca.gov/gov/comms/default.asp
Fremont	238,000	15	https://www.fremont.gov/76/Boards-Commissions-Committees
Hayward	160,000	12	https://www.hayward-ca.gov/your-government/boards-commissions
Richmond	110,000	29	https://www.ci.richmond.ca.us/256/Boards-and-Commissions
San Mateo	105,000	7	https://www.cityofsanmateo.org/60/Commissions-Boards

Sunnyvale	153,000	10	https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804
Vallejo	122,000	17	http://www.ci.vallejo.ca.us/cms/one.aspx?pageId=22192

Consultation and Outreach

To understand the impact on various departments and staffing capacity, the following table shows which departments are responsible for overseeing various commissions.

Commission Name	Overseeing Department (Total Commissions in Department)
Animal Care Commission	City Manager (7)
Civic Arts Commission	City Manager (7)
Commission on the Status of Women	City Manager (7)
Elmwood BID Advisory Board	City Manager (7)
Loan Administration Board	City Manager (7)
Peace and Justice Commission	City Manager (7)
Solano Ave BID Advisory Board	City Manager (7)
Cannabis Commission	Planning (8)
Community Environmental Advisory Commission	Planning (8)
Design Review Committee	Planning (8)
Energy Commission	Planning (8)
Joint Subcommittee on the Implementation of State Housing Laws	Planning (8)
Landmarks Preservation Commission	Planning (8)
Planning Commission	Planning (8)
Zoning Adjustments Board	Planning (8)
Children, Youth, and Recreation Commission	Parks (3)
Parks and Waterfront Commission	Parks (3)
Youth Commission	Parks (3)
Commission on Aging	Health, Housing, and Community Services (HHCS) (10)
Commission on Labor	HHCS (10)
Community Health Commission	HHCS (10)

Homeless Commission	HHCS (10)
Homeless Services Panel of Experts	HHCS(10)
Housing Advisory Commission	HHCS (10)
Human Welfare & Community Action Commission	HHCS (10)
Measure O Bond Oversight Committee	HHCS (10)
Mental Health Commission	HHCS (10)
Sugar-Sweetened Beverage Product Panel of Experts	HHCS (10)
Disaster and Fire Safety Commission	Fire (1)
Commission on Disability	Public Works (5)
Public Works Commission	Public Works (5)
Traffic Circle Task Force	Public Works (5)
Transportation Commission	Public Works (5)
Zero Waste Commission	Public Works (5)
Fair Campaign Practices Commission/Open Government Commission	City Attorney (1)
Personnel Board	Human Resources (1)
Police Review Commission	Police (1)
Board of Library Trustees	Library (1)

Gray=charter
 Red=state/federal mandate
 Yellow=quasi-judicial
 Blue=ballot initiative
 Orange=state/federal mandate and quasi-judicial
 Green=quasi-judicial and ballot initiative

The departments that staff more than five commissions are Health, Housing, and Community Services (10 commissions), Planning (8 commissions), and the City Manager’s department (7 commissions). At the same time, some smaller departments (e.g. the City Attorney’s office) may be impacted just as meaningfully if they have fewer staff and larger individual commission workloads.

With the recent addition of policy committees, proposed legislation is now vetted by councilmembers in these forums. Each policy committee is focused on a particular

content area aligned with the City of Berkeley's strategic plan and is staffed and an advisory policy body to certain city departments. Members of the public are able to provide input at these committees as well. The policy committees currently have the following department alignment:

Department and Policy Committee alignment

1. **Agenda and Rules**—all departments
2. **Budget and Finance**—City Manager, Clerk, Budget, and Finance
3. **Land Use and Economic Development**—Clerk, Planning, HHCS, City Attorney, and City Manager (OED)
4. **Public Safety**—Clerk, City Manager, Police, and Fire
5. **Facilities, Infrastructure, Transportation, Environment and Sustainability** (Clerk, City Manager, Planning, Public Works, and Parks)
6. **Health, Equity, Life Enrichment, and Community** (Clerk, City Manager, HHCS)

CRITERIA CONSIDERED

Effectiveness

How does this proposal maximize public interest? For this analysis, the effectiveness criterion includes analysis of the *benefits* to the entire community equitably with specific emphasis on public health, racial justice and safety.

Fiscal Impacts/Staffing Costs

What are the costs? The fiscal impact of the proposed recommendation and various alternatives considered includes direct costs of commissions.

Administrative Burden/Productivity Loss

What are the operational requirements or productivity gains or losses from this proposal?

The administrative burden criterion guides the analysis in considering operational considerations and productivity gains and losses. While operational considerations and tradeoffs are difficult to quantify in dollar amounts, productivity losses were considered in its absence.

Environmental Sustainability

The environmental sustainability criterion guides legislation in order to avoid depletion or degradation of the natural resources and allow for long-term environmental quality.

ALTERNATIVES

Alternative #1–The Current Situation

The current situation is the status quo. The City of Berkeley would retain all commissions and no changes would be made.

Alternative #2–Collaborative Approach with Quantity Parameters

This approach would specify a specific number (20) of commissions the City of Berkeley should manage and set parameters around individual department responsibilities. Furthermore, it requires a collaborative approach and outreach to address specific policy areas by referring it to the Council policy committees for further analysis and specific recommendations.

Alternative #3–Committee Alignment, Mandated and Quasi-Judicial Commissions

This alternative would consist of five commissions aligned directly with the policy committees in addition to quasi-judicial bodies and ones required by charter, ballot measure or law.

- *Budget and Finance Commission*
- *Facilities, Infrastructure, Transportation, Environment and Sustainability Commission (state/federal mandate--CUPA)*
- *Health, Equity, and Life Enrichment*
- *Land Use and Economic Development*
- *Public Safety*
- Board of Library Trustees (charter)
- Civic Arts Commission (charter)
- Community Environmental Advisory Commission (state/federal mandate--CUPA)
- Fair Campaign Practices Commission/Open Government (ballot measure)
- Homeless Services Panel of Experts (ballot measure)
- Housing Advisory Commission (state/federal mandate)
- Human Welfare and Community Action (state/federal mandate)
- Landmarks Commission (quasi-judicial)
- Measure O Bond Oversight Committee (ballot measure)
- Mental Health Commission (state/federal mandate)
- Planning (quasi-judicial)
- Personnel (charter)
- Police Review Commission (ballot measure)
- Sugar-Sweetened Beverages (ballot measure)
- Zoning Adjustments Board (quasi-judicial)

Alternative #4: Extreme Consolidation

This alternative represents a prescriptive approach with maximum consolidation in content area and mandated commissions, absent charter amendments.

- Board of Library Trustees (charter)
- Business Improvement District (state/federal mandate)
- Civic Arts Commission (charter)
- Community Environmental Advisory Commission/Energy/Zero Waste (state/federal--CUPA)
- Fair Campaign Practices Commission/Open Government (ballot measure)
- Homeless Services Panel of Experts (ballot measure)
- Human Welfare and Community Action (state/federal mandate)
- Measure O Bond Oversight Committee (ballot measure)/Housing Advisory Commission (state/federal mandate)
- Mental Health Commission (state/federal mandate)
- Personnel (charter)
- Planning Commission (quasi-judicial and appeals)
- Board of Appeals (land use appeals)
- Police Review Commission (ballot measure)
- Health and Sugar-Sweetened Beverages (ballot measure)

PROJECTED OUTCOMES (CRITERIA X ALTERNATIVES)

	Current Situation	Collaborative Approach	Policy Committee Alignment	Extreme Consolidation
Benefit/ Effectiveness	medium	high	medium	low
Cost	high	medium	low	low
Administrative Burden	high	low	low	medium
Relative Environmental Benefit	low	medium	medium	high

Current Situation and Its Effects (Alternative #1)

Effectiveness of the Current Situation

Commissions serve a vital role in the City of Berkeley’s rich process of resident engagement. An analysis of agendas over the past several years shows that the

commissions have created policy that have benefited the community in meaningful and important ways. In 2019, approximately two-thirds of commission items submitted to Council passed. From 2016-2019, an average of 39 items were submitted by commissions to Council for consideration. Every year roughly 15-18 (~40-45%) commissions do not submit any items for Council policy consideration in any given year. The reason for this varies. Some commissions don't submit policy recommendations (BIDs) and some commissions recommendations may not rise to Council level at all or come to Council as a staff recommendation (e.g. ZAB and DRC). Additionally, a few commissions struggle to reach monthly quorum as there are currently 64 vacancies on the various commissions, excluding alternative commissioners.

It is also important to consider equitable outcomes and the beneficiaries as well. For example, the City's Health, Housing and Community Development department serves an important role in addressing COVID-19, racial disparities, inequitable health outcomes, affordable housing, and other important community programs. Additionally, Health, Housing, and Community Development also staffs ten commissions, more than many cities of Berkeley's size. Council needs to wrestle with these tradeoffs to ensure that we seek the maximum benefit for *all* of the Berkeley community, particularly our most vulnerable.

Staffing Costs

Based upon preliminary calculations of staff titles and salary classifications, the average staff secretary makes roughly \$60-\$65/hour. Based upon recent interviews with secretaries and department heads, individual commission secretaries work anywhere from 8-80 hours a month staffing and preparing for commission meetings. To illustrate this example, a few examples are listed below.

Commission	Step 5 Rate of Pay	Reported Hours a Month	Total Direct Cost of Commission per Month
Animal Care	\$70.90	8	\$567.20
Landmarks Preservation Commission	\$57.96	80	\$4,636.80
Design Review Commission	\$52.76	60	\$3,165.60
Peace and Justice	\$60.82	32	\$1946.24

It is extremely challenging to estimate a specific cost of commissions in the aggregate because of the varying workload but a safe estimate of salary costs dedicated to commissions would be in the six-figure range.

Many commissions--particularly quasi-judicial and land use commissions-- require more than one staff member to be present and prepare reports for commissions. For example, Zoning Adjustment Board meetings often last five hours or more and multiple staff members spend hours preparing for hearings. The Planning Department indicates that *in addition* to direct hours, additional commission-related staff time adds an extra 33% staff time. Using the previous examples, this means that the Landmarks Preservation Commission would cost the city over \$6,000 in productivity while the Design Review Commission would cost the City over \$4,000 a month.

Productivity Losses and Administrative Burden

Current productivity losses are stark because of the sheer amount of hours of staffing time dedicated to commissions. As an example, in 2019 one of the City of Berkeley's main homeless outreach workers staffed a commission within the City Manager's department. She spent approximately 32 hours a month working directly on commission work. While this is not a commentary on a particular commission, this work directly impacted her ability to conduct homeless outreach. The Joint Subcommittee on the Interpretation of State Housing Laws is another example. Planners dedicate 50 hours a month to that commission. Meanwhile, this commission has limited ability in affecting state law and the City Attorney's office is responsible for interpreting state law. While this commission does important work on other issues, there is little nexus in interpreting state housing laws and could be disbanded and consolidated with an existing commission. If this commission were disbanded, the current planner could dedicate significant hours to Council's top priorities in Planning. This year's top Council priority is the displacement of Berkeley's residents of color and African Americans (Davila).

Environmental Sustainability

The current commission structure doesn't have a large impact on the environment but, in relative terms, is the most burdensome because of the potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs associated with a large number of commissions.

ALTERNATIVES CONSIDERED

Effectiveness

Alternative #2--Collaborative approach

While the outcome is unknown, a collaborative approach with a specified target quantity of commissions and departmental responsibility would likely yield significant benefit to the community. Due to the projected budget cuts, city staff will need to have more bandwidth to deliver baseline services and priority projects. Civic engagement will still be retained due to a myriad of ways to provide public input but more importantly, current commissioners and civic partners are invited to provide feedback to the policy committees for consideration. Additionally, this approach is a less prescriptive approach which allows Council to acknowledge that the current number of commissions is unsustainable and impacts baseline services. Instead of recommending specific commission cuts at this moment, this approach simply allows Council to state an appropriate number of commissions (20) and acknowledge the severe staffing impacts of the current configuration. Furthermore, twenty commissions is a reasonable starting point, especially when considering that most area cities that are approximately Berkeley's size have seven commissions.

Alternative 3--Policy Committee Alignment

This approach would yield some benefit in that commissions would reflect current policy committees and would directly advise those bodies. This is beneficial because commissions directly aligned with policy committees would be an independent civic replica of the appointed policy committee bodies. It further retains mandated commissions. However, this prescriptive approach doesn't allow for flexibility in retaining historically important commissions and it does not address the benefit of potentially consolidating two commissions that address the same policy content area. For instance, it may be possible to combine the sugar-sweetened beverage oversight panel with the Health, Life, and Equity commission or the CEAC with the Facilities, Infrastructure, Transportation, Environment and Sustainability.

Alternative 4--Extreme Consolidation--

This approach is the most drastic alternative and the overall effectiveness is likely low, mainly due to potential community backlash due to Berkeley's long history of civic engagement. Furthermore, the Planning Commission would likely become overburdened and less effective because land use appeals would have to be routed through the Planning Commission.

Costs/Fiscal Impact

Alternative 2--Collaborative Approach

The fiscal impact of the Collaborative Approach is unknown at this time because this recommendation does not prescribe specific commission consolidations or cuts. However, if commissions are reorganized such that Berkeley will have 20 instead of 38, there will be significant direct cost savings. One can reasonably assume that the direct financial cost could reduce to almost half the current amount.

Alternative 3--Policy Committee Alignment

The fiscal impact of Policy Committee Alignment would yield significant savings due to commission consolidation. One can reasonably assume that the direct financial cost could reduce to more than half the current amount.

Alternative 4--Extreme Consolidation

Extreme Consolidation would yield the most savings due to commission consolidation. One can reasonably assume that the direct financial cost would reduce to 25%-30% of the current amount spent on commission work.

Productivity

Alternative 2--Collaborative Approach

The most glaring impact on the current commission structure is administrative impacts and productivity. Whether City Council consolidates commissions or not, attributable salary costs will still exist. The primary benefit of pursuing the Collaborative Approach would center on productivity. The City of Berkeley is likely to garner significant productivity gains by specifying a target number of commissions overall and within departments. Using the Peace and Justice and Joint Subcommittee on the Interpretation of State Housing Laws examples above, more staff will be able to focus on core services and priority programs. Thousands of hours may be regained by dedicated staff to tackle the tough issues our community faces, especially in light of COVID-19 and concerns around racial equity.

Alternative 3--Policy Committee Alignment

This alternative likely will yield the same productivity benefits as the collaborative approach, if not more. The City of Berkeley would likely garner significant productivity gains by specifying less than twenty commissions. Thousands of hours may be regained by dedicated staff to tackle the tough issues our community faces, especially in light of COVID-19 and concerns around racial equity.

Alternative 4–Extreme Consolidation

This alternative would likely provide the most productivity gains and lessen administrative burdens overall. However, there could be unintended consequences of productivity within the planning department absent additional policy changes. For example, the quasi-judicial Zoning Adjustments Board and Planning Commission agendas are packed year round. It is unclear whether eliminating one of these commissions would lessen the administrative burden and increase productivity in the Planning Department or whether those responsibilities would merely shift commissions. At the same time, the Planning Department could benefit from reducing commissions to increase productivity within the planning department.

Environmental Sustainability

Alternative 2–Collaborative approach

This alternative doesn't have a large impact on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs. However, these environmental impacts could be cut in half with commission reorganization.

Alternative 3--Policy Committee Alignment

This alternative doesn't have a large impact on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs. However, these environmental impacts could be cut in half with commission reorganization.

Alternative 4–Extreme Consolidation

This alternative would have negligible impacts on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs.

RATIONALE FOR RECOMMENDATION

The Collaborative Approach is the best path forward in order to pursue Berkeley's commitment to

- Create affordable housing and housing support services for our most vulnerable community members
- Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment
- Champion and demonstrate social and racial equity
- Provide an efficient and financially-healthy City government
- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities
- Foster a dynamic, sustainable, and locally-based economy
- Create a resilient, safe, connected, and prepared City

- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community
- Attract and retain a talented and diverse City government workforce

The status quo—37 commissions— is too costly and unproductive. At the same time, civic engagement and commission work absolutely deserve an important role in Berkeley. Consequently, this legislation retains commissions but centers on overall community benefit, staff productivity, and associated costs. This is imperative to address, especially in light of COVID-19 and community demands for reinvestment in important social services.

INFORMATION CALENDAR

June 30, 2020

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor

Subject: Dispatch Audit Report Wins National Recognition

INTRODUCTION

The 2019 Exemplary Knighton Award for best performance audit report in the Medium shop category has been awarded to the City of Berkeley Auditor's Office by the Association of Local Government Auditors (ALGA). The report, "911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale," was judged on several key elements, such as the potential for significant impact, the persuasiveness of conclusions, the focus on improving government efficiency and effectiveness, and its clarity and conciseness.

CURRENT SITUATION AND ITS EFFECTS

Each year, local government audit organizations from around the U.S. and Canada submit their best performance audit reports for judging. The judges from peer organizations determined that our audit of the City of Berkeley's 911 Communications Center was among the best of 2019.

BACKGROUND

We issued our audit report, "911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale," on April 25, 2019¹. The purpose of the audit was to determine:

1. To what extent does the Communications Center, which answers 911 calls, have sufficient staffing to handle workloads and service demands?
2. What contributes to overtime use?
3. How do working conditions affect morale?

We found that it is taking longer than previous years for call takers to answer 911 calls. The Communications Center staffing levels are not sufficient to meet current call demand and, with predicted population growth, the Center will soon need even more resources to maintain its emergency response service levels. We also found that, due to consistent understaffing, the Communications Center relies heavily on overtime to meet minimum staffing requirements, spending nearly \$1 million in 2017 on overtime. Finally, we found

¹ https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/Dispatch%20Workload_Fiscal%20Year%202018.pdf

that morale is low and dispatchers feel unsupported. While there are some resources available for staff to manage stress, the dispatchers often do not have time to access them.

We made 14 recommendations to reduce overtime and vacancies, and further support dispatcher needs. The Police Department has made significant progress towards implementing our recommendations with 9 recommendations implemented, 3 in progress, and 2 not implemented as of their last update to Council on April 14, 2020². The Department has developed a team of five staff dedicated to recruitment and retention of Police staff including a focus on recruiting dispatcher applicants.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

We will continue to follow up on the status of audit recommendation implementation to ensure the City mitigates the risks that could prevent the City from providing efficient, effective, and equitable service delivery.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

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

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

CONTACT PERSON

Jenny Wong, City Auditor, 510-981-6750

Attachment:

1. 2019 Knighton Award Letter from ALGA

² https://www.cityofberkeley.info/Clerk/City_Council/2020/04_Apr/Documents/2020-04-14_Item_47_Audit_Recommendation_Status.aspx



Association of Local Government Auditors

Jenny Wong
City Auditor
City of Berkeley
2180 Milvia Street, 3rd Floor
Berkeley, CA 94704

May 8, 2020

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Dear Jenny Wong:

The Association of Local Government Auditors (ALGA) Awards Program Committee is pleased to announce that the Berkeley City Auditor's report, *911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale*, won the 2019 Exemplary Knighton Award in the Medium Shop Category.

ALGA was founded in 1985 to serve auditors who specialize in working with local governments. ALGA members represent approximately 300 local government audit organizations. Unlike the majority of auditors who work within a single industry, local government auditors must work in an environment that encompasses a wide variety of industries. Local government auditors are committed to helping their governments improve service delivery to citizens while doing so more efficiently and effectively with the limited resources available. In making the award, the judges commented:

This audit clearly presented the impact of the audit findings and made a great case for why this audit is important. The audit did a great job of engaging the reader from the onset and effectively used visuals to highlight key points. Key information such as survey results were called out in the audit so the reader could easily digest the information. The conclusions and supporting data were strong and contributed to a convincing report.

To encourage increasing levels of excellence among local government auditors, ALGA created the Knighton Award in 1995 to recognize the best performance audit reports produced by local government audit shops in the previous year. Each year, local government audit organizations submit their best performance audit report to be evaluated against four criteria: (1) an audit scope that has the potential for significant impact, and is responsive to the needs and concerns of decision-makers and/or the public; (2) audit conclusions that are persuasive, logical, and firmly supported by the evidence, which was gathered using appropriate research methods and tools; (3) audit recommendations that are feasible, and will make government programs more effective and efficient; and (4) audit results that are communicated in a clear, concise way. Judges from peer organizations determined that the Berkeley City Auditor was among the best of 2019.

Congratulations receiving this award!

Sincerely,

Pam Weipert, President
ALGA

Kathie Harrison, Chair
ALGA Awards Program Committee

INFORMATION CALENDAR

June 30, 2020

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor

Subject: City Auditor Fiscal Year 2021 Audit Plan

INTRODUCTION

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

CURRENT SITUATION AND ITS EFFECTS

As required by the City Charter, we are notifying the Council of our annual audit plan. The following plan assumes being fully staffed to conduct these audits. Reductions in our budget will decrease capacity of audit services from our office.

Emerging COVID-19 risks are both unpredictable and unprecedented, making oversight and accountability functions, like auditing, even more important. The COVID-19 pandemic and decisions made during this time may have lasting economic, social, and public health consequences. There will be more federal and state funding allocated to cities in response to the crisis, which will need proper monitoring. With a host of new initiatives and the need to review existing functions and contracts in a tight budgetary environment, oversight is needed to ensure the City prevents the misuse of public funds.

Now, more than ever, we need to evaluate how the City can best respond to this ongoing crisis and keep residents and employees safe with minimal disruption to operations and services.

For Fiscal Year 2021, we have identified areas we hope to address in the upcoming year:

- Budget analysis
- COVID-19 and disaster response
- Financial conditions
- Follow-up on prior audit recommendations

- Short-term projects

We are currently finishing up the following audits: streets, fleet replacement fund, and library tax. We are deferring our audits of recycling and retention, initiated in fiscal year 2020, due to staffing shortages and the City's need to respond to the COVID-19 pandemic. We plan to pick these audits back up when staffing and resources are available.

BACKGROUND

The mission of the Berkeley City Auditor is to promote transparency and accountability in Berkeley government. This is achieved through independent evaluations of City programs and activities. The FY 2021 Audit Plan reflects Auditor Wong's steadfast commitment to continuous improvement by enhancing the value, products, staffing, communications, and overall impact of the Berkeley City Auditor's Office on behalf of Berkeley residents, businesses, and visitors.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

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

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

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

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

CONTACT PERSON

Jenny Wong, City Auditor, 510-981-6750

Attachment:

1. Audit Plan Fiscal Year 2021

Audit Plan Fiscal Year 2021

Inside

Letter from the Auditor

Planned Engagements

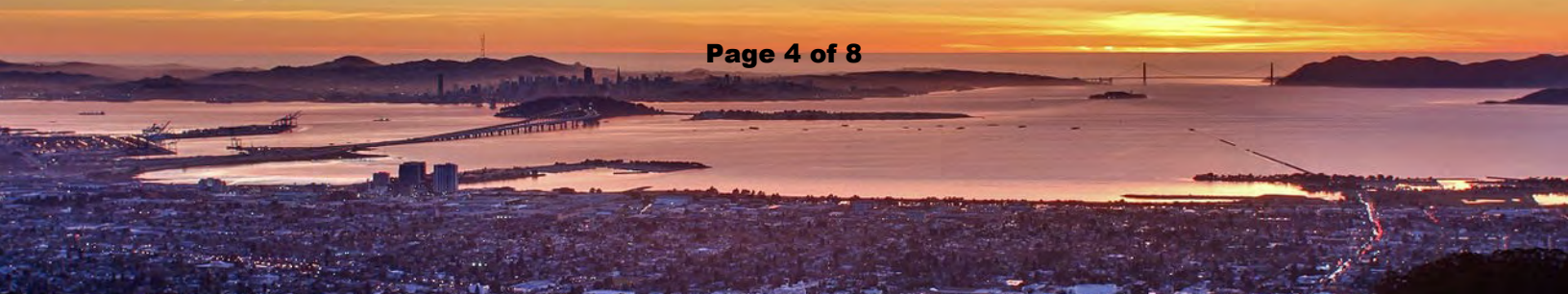
Plan Description

Audit Selection Process

Auditor's Authority



BERKELEY CITY AUDITOR



I am pleased to present the Berkeley City Auditor’s Fiscal Year 2021 Audit Plan.¹ Our office is responsible for conducting performance audits of City functions - deep dives into the workings of our various City programs with the goal of maximizing taxpayer dollars and delivering top-quality services. It is our goal to initiate all the engagements identified in the audit plan during the fiscal year. Our capacity to initiate and complete projects this fiscal year will be dependent on resource constraints, including those from staffing vacancies and budget cuts in response to COVID-19.

In drafting this plan, we considered how we can add the most value to the City while also taking into consideration resource constraints of the City and my department. Emerging COVID-19 risks are both unpredictable and unprecedented, making oversight and accountability bodies, like my office, even more important. The City is facing many changes to operations and services, with decreased revenues coming into the City. Decisions made during this time may have lasting economic and public health consequences.

Our office and the City face unique challenges, but we are also in a unique position to work collaboratively, provide expertise and guidance, and hold the City accountable during this time. Now, more than ever, we need to evaluate how the City can best respond to this ongoing crisis and keep residents and employees safe with minimal disruption to operations and services. By embracing ambiguity and flexibility, and looking at both the short-term and long-term impact of COVID-19 on the organization, our office can help the City emerge from this crisis stronger than ever.

We will continue working to complete the streets, fleet replacement, and library tax audits. My office will analyze the impacts of COVID-19 on our open audits, including considering the fiscal and budgetary impacts. We will ensure that our findings and conclusions take into account the changing situation, and our recommendations are feasible.

We plan to start engagements in the areas of budgeting, COVID-19 and disaster response, and financial conditions. We will continue with our audit follow-ups to ensure that the City is implementing adopted recommendations. Along with producing these reports, we will also be conducting short-term projects in topic areas that will provide timely information to key decision makers on issues that are important to the public and the mission of our office.

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

Respectfully,

JENNY WONG
City Auditor

¹ We emailed this audit plan to City Council on June 8, 2020 as required by the Berkeley Municipal Code.

Planned Engagements FY 2021

Budget analysis

With decreased revenues to the City, there will be an increased need for objective and independent analysis of how limited funds are allocated throughout the City.

COVID-19 and disaster response

In the wake of COVID-19, Berkeley has faced increased risk to the fiscal and public health of the entire city. Berkeley continues to face risks from wildland-urban fires. As a city, we have the responsibility to mitigate risks to the City through appropriate policies and emergency response plans.

Financial conditions

The Auditor’s office will examine the City’s financial well-being by calculating financial ratios, analyzing trends, and comparing the results to other similar cities.

Follow-up

The Auditor’s office will continue to track and follow-up on all audit recommendations to determine if they are properly implemented.

Short-term projects

In order to be responsive to the needs of the City and the Public, we will be engaging in more short-term projects to provide timely and relevant information and analysis to the City during this unprecedented time.

Ongoing engagements

- Streets
- Fleet replacement fund
- Library tax

Deferred FY 2020 engagements due to COVID-19 impacts

- Recycling
 - Recruitment and retention
-

Plan Description

The mission of the Berkeley City Auditor is to promote transparency and accountability in Berkeley government. This is achieved through independent evaluations of City programs and activities. The Fiscal Year 2021 Audit Plan reflects Auditor Wong's steadfast commitment to continuous improvement by enhancing the value, products, staffing, communications, and overall impact of the Berkeley City Auditor's Office on behalf of Berkeley residents, businesses, and visitors.

Auditing Under the City Charter

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

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

The FY 2021 Audit Plan ensures broad audit coverage throughout the City while also addressing specific performance, financial, contractual, and system risks. Audit resources are limited, thus prohibiting one hundred percent coverage each year. This significant limiting factor is inherent in the concept of using risk assessment to help prioritize audits. According to the City Charter, the ultimate decision to perform any audit shall be at the sole discretion of the Auditor. Our approach to scheduling audits is flexible and subject to change throughout the year based on newly identified risks.

Audit Follow-up Program

Audit follow-up activities are conducted for every audit to assess whether City personnel implemented the agreed-upon audit recommendations. The Auditor's Office issues follow-up audit reports to City Council on the status of our recommendations. Our office measures the audit recommendation implementation rate as an indicator of the degree to which the City is using information provided by our audit reports to mitigate identified risks and to enhance efficiency, effectiveness, and economy of operations. Our expectation is that audit recommendations should take two years for the City to implement.

Focus on Integrity, Independence, Impact, and Inclusion

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

Audit Selection Process

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

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

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

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

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

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

Auditor's Authority

The Berkeley City Auditor's Office provides independent oversight of City operations. Audits, conducted by the Office, provide the City Manager, City Council, and the public with objective, timely, and accurate information about City program performance. By providing this information and making recommendations for improvement, the Office helps to hold government accountable in its stewardship of public resources. Berkeley City Charter, Section 61, establishes this independence and provides for the Auditor's general authority and duties. The Charter also establishes the duty to present a planned audit schedule to City Council at the beginning of each fiscal year.

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

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

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

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

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

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



BERKELEY CITY AUDITOR

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

510-981-6750

www.cityofberkeley.info/auditor

Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
June 23	HOLD – Special Meeting on City Budget
July 21	<ol style="list-style-type: none"> 1. Crime Report 2. Climate Action Plan/Resiliency Update
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 & Rules 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>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>
3.	<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>
4.	<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</i>) (<i>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>

5.	<p>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p>From: City Manager</p> <p>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.</p> <p>Financial Implications: None</p> <p>Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000</p> <p><i>Note: Referred to Agenda & Rules for future scheduling.</i></p>
6.	<p>1. Adoption of an Ordinance Amending Berkeley Municipal Code Chapter 16.10 (Installation of Video and Telecommunications Systems) and Revised Guidelines for Issuance of Public Right-of-Way Permits <i>(Item contains supplemental material.) (Referred from the May 19, 2020 agenda.)</i></p> <p>From: City Manager</p> <p>Recommendation: Adopt first reading of an ordinance amending Berkeley Municipal Code Chapter 16.10 (Installation of Video and Telecommunications Systems), and adopt revised administrative guidelines for the issuance of Public Right-of-Way Permits.</p> <p>Financial Implications: See report</p> <p>Contact: Phillip Harrington, Public Works, (510) 981-6300</p> <p>2. Updating Berkeley Telecom Ordinances and BMC Codes <i>(Reviewed by the Agenda & Rules Committee. Item contains revised material.) (Referred from the May 19, 2020 agenda.)</i></p> <p>From: Councilmember Davila (Author)</p> <p>Recommendation: Adopt a resolution directing the City Manager to include the attached sample language and contained hyperlinked references to update the City's Telecom Ordinances and BMC codes.</p> <p>Financial Implications: See report</p> <p>Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120</p> <p><i>Note: Referred to Agenda & Rules for future scheduling with Item 2 as an informational supplement to Item 1.</i></p>

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				
920 Heinz Ave (Berkeley Bowl - sale of distilled spirits)	ZAB	6/16/2020		
1001 Dwight Way (change in use)	ZAB	6/16/2020		
1700 Seventh St (establish child care center)	ZAB	6/16/2020		
2129 Shattuck Ave (hotel - service of distilled spirits)	ZAB	6/16/2020		
2139 Oregon St (single-family dwellings)	ZAB	6/18/2020		
Public Hearings Scheduled				
2650 Telegraph Ave (construct new mixed-use building)	ZAB			6/16/2020
0 Euclid Ave - Berryman Reservoir (denial of 4G telecom facility)	ZAB			7/7/2020
1449 Grizzly Peak Blvd (single family dwelling)	ZAB			7/7/2020
1533 Beverly Place (single-family dwelling)	ZAB			7/14/2020
Remanded to ZAB or LPC				
Notes				

6/11/2020



Office of the City Manager

May 6, 2020

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Subject: **Resumption of certain Board and Commission meetings**

As you are aware, on March 12, 2020, I directed that most board and commission meetings be suspended for at least 60 days in order to help minimize the spread of COVID-19. Exceptions can be made if a board or commission has time-sensitive, legally mandated business to complete, subject to approval by the City Manager and Health Officer. On April 13, 2020, the City Council Agenda & Rules Committee recommended that this action remain in effect until it is determined by the City Manager, as the Director of Emergency Services, and the Health Officer that conditions are appropriate to resume meetings, while maintaining the health and safety of the community.

The purpose of this memo is to notify you that as of today, the Health Officer and I are authorizing certain board and commission meetings to resume with a virtual meeting format. In-person board/commission meetings are not authorized until further notice. Board/commission meetings will be held via Zoom, similar to the format being used by the City Council and City Council policy committees that have resumed meetings during the Shelter-in-Place Order.

Resuming certain board/commission meetings is necessary at this time to enable action on a range of time-sensitive issues. Examples include pending land use permit applications (some of which carry legal mandates for action within set time frames), land use policy efforts which are time-sensitive to address the acute housing crisis, and input required for pending tax decisions, such as to the Disaster and Fire Safety Commission regarding tax rates under Measure GG.

Board and commission meetings will be scheduled with enough lead time to allow agendas to be finalized, applicants and interested parties to be contacted, and public hearing notices to be posted. Staff are contacting board members/commissioners to let them know that certain boards/commissions are resuming. Members of the public may also reach out to commission secretaries (contact information is included on each commission webpage) to inquire about dates of future board/commission meetings.

Depending on the board/commission, initial virtual meetings will be scheduled in late May and June. Some commission meetings will take longer than others to schedule, as some of the same staff who are responsible for preparing commission meeting packets and notices are also serving as Disaster Service Workers. We appreciate everyone's patience as we move forward with next steps.

Boards/commissions that are authorized to resume meeting remotely are:

- Ashby and North Berkeley BART Station Zoning Standards Community Advisory Group
- Design Review Committee
- Disaster & Fire Safety Commission
- Fair Campaign Practices Commission
- Homeless Services Panel of Experts
- Housing Advisory Commission (limited to quasi-judicial activities)
- Joint Subcommittee on the Implementation of State Housing Laws
- Landmarks Preservation Commission
- Open Government Commission
- Personnel Board
- Planning Commission
- Police Review Commission
- Zoning Adjustments Board

I will consider authorizing additional boards/commissions to resume meeting on a case-by-case basis.

Web-based platforms allow board members/commissioners, staff, applicants, and members of the public to participate from their respective shelter-in-place locations. Commissioners who do not have access to a computer or internet will be provided with hard copies of all materials and can participate via phone.

Departments are organizing training on online meeting facilitation for staff and commission chairs, and we will hold practice runs to test out the technology.

Please contact me directly with any questions or concerns.

cc: Senior Leadership Team

RESOLUTION NO. 69,331-N.S.

RATIFYING THE RECOMMENDATIONS ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES AND THE PUBLIC HEALTH OFFICER REGARDING MEETINGS OF BERKELEY LEGISLATIVE BODIES IN RESPONSE TO THE COVID-19 (NOVEL CORONAVIRUS) PANDEMIC

WHEREAS, on March 3, 2020, pursuant to Berkeley Municipal Code section 2.88.040, the City Manager, serving as the Director of Emergency Services, proclaimed the existence of a local emergency; and

WHEREAS, the proclamation was warranted by virtue of the extreme peril to the safety of persons and property in the City caused by pandemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus ("COVID-19"), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, the proclamation of the Director of Emergency Services was ratified by the City Council on March 10, 2020; and

WHEREAS, the continued spread of COVID-19 and increase in community transmission cases in surrounding counties warrant further measures be taken by the City to protect the community; and

WHEREAS, the Public Health Officer has issued guidelines for limiting mass gatherings; and

WHEREAS, certain limitations on the meetings of legislative bodies in the City of Berkeley is warranted; and

WHEREAS, the continued essential functions of the City and certain legislative bodies must continue for time-sensitive, legally mandated actions; and

WHEREAS, the Director of Emergency Services presented recommendations to the Agenda & Rules Committee on March 12, 2020 regarding the meetings of legislative bodies; and

WHEREAS, the Agenda & Rules Committee recommended that said recommendations be forwarded to the City Council for acknowledgement and ratification.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following recommendations issued by the Director of Emergency Services and the Public Health Officer regarding limitations and practices for legislative bodies of the City of Berkeley are hereby acknowledged and ratified:

Section 1. Boards and Commissions

Commissions listed below may continue to meet only if they have time-sensitive, legally mandated business to complete, as determined by the Director of Emergency Services. The City may consider teleconferencing for these commissions, if feasible.

Design Review Committee
Fair Campaign Practices Commission
Housing Advisory Commission (limited to quasi-judicial activities)
Joint Subcommittee on the Implementation of State Housing Laws
Landmarks Preservation Commission
Open Government Commission
Personnel Board
Planning Commission
Police Review Commission
Zoning Adjustments Board

Commissions in Category B shall not meet for a period of 60 days. This will be re-evaluated at the Agenda & Rules Committee meeting on April 13, 2020. A Commission in Category B may convene a meeting if it has time-sensitive, legally-mandated business to complete, as determined by the Director of Emergency Services.

Category B

Animal Care Commission
Cannabis Commission
Civic Arts Commission
Children, Youth, and Recreation Commission
Commission on Aging
Commission on Disability
Commission on Labor
Commission on the Status of Women
Community Environmental Advisory Commission
Community Health Commission
Disaster and Fire Safety Commission
Elmwood Business Improvement District Advisory Board
Energy Commission
Homeless Commission
Homeless Services Panel of Experts
Housing Advisory Commission
Human Welfare and Community Action Commission
Measure O Bond Oversight Committee
Mental Health Commission
Parks and Waterfront Commission
Peace and Justice Commission
Public Works Commission
Solano Avenue Business Improvement District Advisory Board
Sugar-Sweetened Beverage Product Panel of Experts

Transportation Commission
Youth Commission
Zero Waste Commission
Loan Administration Board

Section 2. City Council Policy Committees

The Agenda & Rules Committee and the Budget & Finance Committee may continue to meet to fulfill their legislative and advisory responsibilities. All other Policy Committees (Facilities, Infrastructure, Transportation, Environment & Sustainability, Public Safety, Land Use, Housing & Economic Development, and Health, Life Enrichment Equity & Community) are suspended indefinitely. The 120-day deadline to consider an item will be tolled during the suspension of business.

Section 3. City Council


For City Council meetings, the City will continue to advise and implement social distancing by limiting the capacity of the Council Chambers, providing an overflow room, attempting to limit the duration of the meeting, only conducting essential business, and limiting or suspending ceremonial items. The City will adhere to and implement the provisions of the Governor's Executive Order #N-25-20 related to the Brown Act and the utilization of technology to facilitate participation.

The foregoing Resolution was adopted by the Berkeley City Council on March 17, 2020 by the following vote:

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

Noes: None.

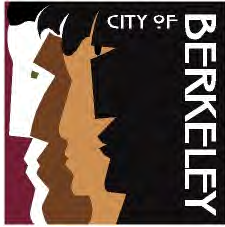
Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk



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

SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 4, 2020

Item Number: 2

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

Submitted by: Councilmember Hahn

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

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



SOPHIE HAHN

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

ACTION CALENDAR

February 4, 2020

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

RECOMMENDATION

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

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

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

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

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

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

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

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

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

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

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

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

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.

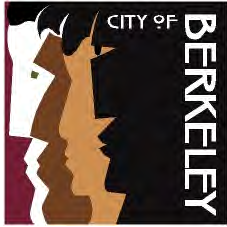
Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, 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.)

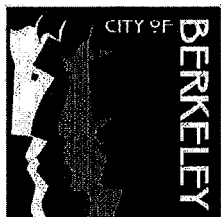
Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election 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.

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- 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

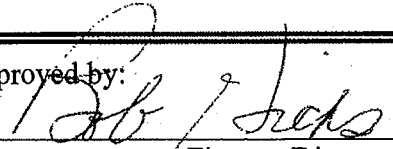
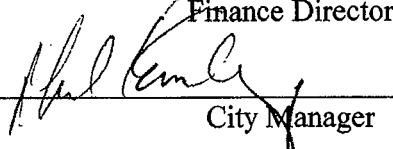
DEFINITIONS

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).

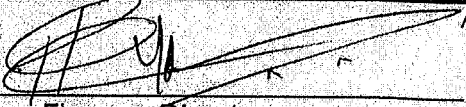
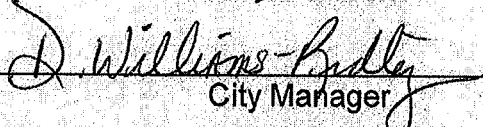
Payment Documentation: Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original receipts, 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:

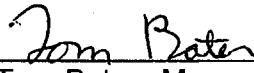
1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for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

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

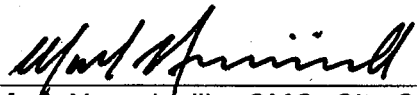
Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

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.

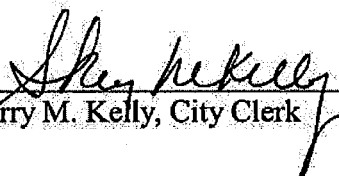
The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2006 by the following vote:

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

Other Designated Payments (see list under Policy on 1st page)

A. Vendor Information

FIRST – For all FN-024 Payments: follow instructions for the initial procedure, above. Then:

1. VENDOR NAME: enter the payee name as it appears in FUND\$ GMBA Master Inquiry.
2. VENDOR NO.: enter the vendor # as it appears in FUND\$ GMBA Master Inquiry.
3. ADDRESS: when correct information is confirmed or corrected in GMBA, this can be blank.

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

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

C. Invoice Information

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

Additional Instructions for all FN-024 Payment Vouchers

A. Account Codes & Project Code

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

B. Authorized Signatures

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

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


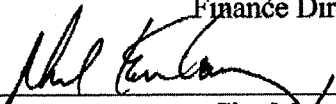
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2. **AUTHORIZED DEPT SIGNATURE:** must be signed by authorized personnel, as reflected by the Authorized Signatures Card currently on file with Accounts Payable. FN-024s signed by unauthorized personnel will be returned.
- C. Limitations & Justification 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