



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

**MONDAY, JULY 13, 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/81731606866>. 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: **817 3160 6866**. 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 29, 2020**
- 2. Review and Approve Draft Agendas:**
 - a. 7/28/20 – 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**

Referred Items for Review

9a. **Compiling Commission Recommendations in a Reference Manual**

From: Homeless Commission

Referred: June 29, 2020

Due: December 14, 2020

Recommendation: The Homeless Commission recommends that Council refer to staff to develop a procedure for staff secretaries to all City of Berkeley commissions to compile all commission recommendations, whether in report or letter form, in a binder. Such binder shall also track the outcomes of all commission recommendations including action taken by Council and subsequent implementation of Council action. One copy of the binder shall remain with the staff secretary; another copy of the binder shall be available as a resource in the City Clerk's office. The City Clerk shall index all subject matters of commission proposals so that there is cross-referencing of all subjects that commissions have addressed. This reference manual shall be available for use by commissions to share information, the Mayor and Council, staff and members of the public. The City Clerk shall also provide this information online.

Financial Implications: See report

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

9b. **Companion Report: Compiling Commission Recommendations in a Reference Manual**

From: City Manager

Referred: June 29, 2020

Due: December 14, 2020

Recommendation: Refer the commission recommendation to the City Manager to 1) consider the impacts on staffing levels, approved Strategic Plan projects, and existing baseline services in the context of the projected budget shortfall for FY 2021 and the hiring freeze currently in effect; and 2) work within existing resources to facilitate information sharing among commissions on items referred from the City Council.

Financial Implications: See report

Contact: Mark Numainville, City Clerk, (510) 981-6900; Brittany Carnegie, Commission Secretary, (510) 981-5400

Referred Items for Review

10. **Amending Council Rules of Procedures such that items submitted by the Mayor or Councilmembers be placed directly on the City Council Agenda to allow the whole City Council to review and take action on the submitted item to ensure equity in the process**
From: Councilmember Davila (Author)
Referred: June 29, 2020
Due: December 14, 2020
Recommendation: Adopt a Resolution to amend Council Rules of Procedures Section C-1 and G-1 such that items submitted by the Mayor or Councilmembers be placed directly on the City Council agenda rather than beginning with submission to commissions or Council Policy Committees to ensure equity in the process.
Financial Implications: None
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

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.

11. **Resolution to Incorporate the Practice of 1 Minute and 46 seconds of Mindfulness into City Council Meetings**
Referred: June 15, 2020
Due: November 30, 2020
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

Unscheduled Items

12. **Commission Reorganization for Post-COVID19 Budget Recovery**
From: Councilmember Droste (Author), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)

Referred: June 15, 2020

Due: November 30, 2020

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

Items for Future Agendas

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

Adjournment – Next Meeting Monday, August 31, 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.

\* \* \*

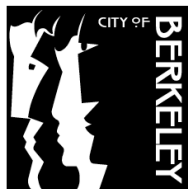
I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on July 9, 2020.

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 29, 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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**Roll Call:** 2:30 p.m. All present.

**Public Comment** – 13 speakers

## **Review of Agendas**

**1. Approval of Minutes: June 15, 2020**

**Action:** M/S/C (Wengraf/Hahn) to approve the Minutes of 6/15/20.

**Vote:** All Ayes.

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

a. 7/14/20 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Wengraf/Hahn) to approve the Agenda of the July 14, 2020 meeting with changes noted below.

- Item Added: Transforming Community Safety (Arreguin) – scheduled for July 14 Action Calendar
- Police Review Commission Referral on Use of Force Policy – scheduled for a special meeting to be held on either July 23 or July 30
- Item 15 Local Emergencies and Curfews (Hahn) – scheduled for a special meeting to be held on either July 23 or July 30
- Item 16 Renaming Shattuck Avenue East (City Manager) – referred to Facilities, Infrastructure, Transportation, Environment & Sustainability Committee
- Item 17a/b Compiling Commission Recommendations (Homeless Commission) – referred to Agenda & Rules Committee
- Item 18 Menstrual Products for Unhoused (Davila) – Councilmembers Hahn and Bartlett added as co-sponsors; referred to Health, Life Enrichment, Equity & Community Committee
- Item 19 Amending the Rules of Procedure (Davila) – referred to Agenda & Rules Committee
- Item 20 Juneteenth as City Holiday (Davila) – Councilmember Bartlett added as a co-sponsor; referred to Budget & Finance Committee
- Item 21 Redistribution of Resources (Davila) – scheduled for July 14 Action Calendar
- Item 22 Re-imagine Policing (Wengraf) – scheduled for July 14 Action Calendar
- Item 23 BerkDOT (Robinson) – scheduled for July 14 Action Calendar

**Vote:** All Ayes.

### Order of Items on the Action Calendar

Item 11 Local Housing

Item 12 Bond Financing

Item 13 ZAB Appeal

Item 14 Safety for All

Item 21 Redistribution of Resources (Davila)

Item 22 Re-imagine Policing (Wengraf)

Item Added: Transforming Community Safety (Arreguin)

Item 23 BerkDOT (Robinson)

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

- None selected

4. **Adjournments In Memory**
  - Public Works Employee

## Scheduling

5. **Council Worksessions Schedule**
  - Crime Report scheduled for September 22, 2020
6. **Council Referrals to Agenda Committee for Scheduling**

**Action:** M/S/C (Arreguin/Wengraf) to schedule the Navigable Cities item for September 22, 2020.

**Vote:** All Ayes.
7. **Land Use Calendar** – received and filed.

## Referred Items for Review

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

**Action:** No action taken.

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

**Action:** M/S/C (Hahn/Wengraf) to make a Positive Recommendation to the City Council that the item be referred to the Agenda & Rules Committee to be considered with other related referrals from the Fair Campaign Practices Commission. The item will be calendared for the Consent Calendar on the July 28, 2020 agenda.

**Vote:** All Ayes.

- 10. Resolution to Incorporate the Practice of 1 Minute and 46 seconds of Mindfulness into City Council Meetings**  
**Referred: June 15, 2020**  
**Due: December 1, 2020**  
**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:** Moved to the Unscheduled Calendar for the July 13 agenda.
- 11. Commission Reorganization for Post-COVID19 Budget Recovery**  
**From: Councilmember Droste (Author), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)**  
**Referred: June 15, 2020**  
**Due: December 1, 2020**  
**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 agendize 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  
**Action:** Moved to the Unscheduled Calendar for the July 13 agenda.

## 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.*

- None

## Items for Future Agendas

- None

## **Adjournment**

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

**Vote:** All Ayes.

Adjourned at 4:11 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on June 29, 2020.

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Mark Numainville  
City Clerk

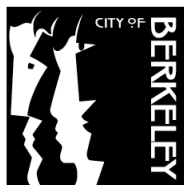
## **Communications**

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## DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, July 28, 2020  
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – RIGEL ROBINSON  
DISTRICT 8 – LORI DROSTE

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

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

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

## Preliminary Matters

### Roll Call:

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

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

**Public Comment on Non-Agenda Matters:** *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

## Consent Calendar

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

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

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

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

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

## Consent Calendar

- 1. Adoption of an Ordinance Amending Berkeley Municipal Code Chapter 16.10 (Excavations for Video and Telecommunications Systems)**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,726-N.S. amending Berkeley Municipal Code Chapter 16.10 (Excavations for Video and Telecommunications Systems).  
**First Reading Vote:** Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 2. Resolution Reviewing and Ratifying the Proclamation of Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020 and June 16, 2020.  
**Financial Implications:** To be determined  
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 3. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the council meetings of June 2, 2020 (special closed and regular), June 9, 2020 (special and special), June 16, 2020 (special, special, and regular), June 22, 2020 (special closed), June 23, 2020 (special), June 24, 2020 (special closed) and June 30, 2020 (special closed and regular).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 4. Establish 2021 City Council Meeting Schedule**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution establishing the City Council regular meeting schedule for 2021, with starting times of 6:00 p.m.  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900

## Consent Calendar

- 5. Grant to Animal Services from the Avast Foundation**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a grant for Animal Services from the Avast Foundation in the amount of \$10,000.  
**Financial Implications:** Animal Services Donation Fund - \$10,000 (grant)  
Contact: Erin Steffen, City Manager's Office, (510) 981-7000
- 6. Grant from the California Arts Council**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a \$10,500 grant from the California Arts Council for the Berkeley Civic Arts Program to partner with the Berkeley Unified School District (BUSD) and four community arts providers to provide arts programming for BUSD summer sessions.  
**Financial Implications:** See report  
Contact: Jordan Klein, Economic Development, (510) 981-7530
- 7. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on July 28, 2020**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.  
**Financial Implications:** Various Funds - \$8,645,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 8. Contract No. 32000094 Amendment: Youth Spirit Artworks to Provide Transition Age Youth (TAY) Case Management and Linkage Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with vendor Youth Spirit Artworks (YSA) to provide Transition Age Youth (TAY) case management and linkage services through June 30, 2021 in an amount not to exceed \$317,000. This will extend the existing contract by one year and add in \$100,000.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

## Consent Calendar

**9. Revenue Grant Agreement: Federal COVID19 Funding Support from the Centers for Disease Control and Prevention for the Epidemiology and Laboratory Capacity CARES Grant**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to submit grant agreements to Heluna Health, to accept this COVID19 response grant, and to execute any resultant revenue agreements and amendments; which enables us to conduct and implement mitigation strategies in response to COVID19 for the following revenue agreement: Public Health Emergency Preparedness's COVID-19 Response Program in the projected allocation of \$196,965 for FY 2021.

**Financial Implications:** See report

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

**10. Operating Funding for Community Housing Development Organizations**

**From: City Manager**

**Recommendation:** Adopt a Resolution: 1. Approving a multiyear operating funding contract for Resources for Community Development (RCD) and Satellite Affordable Housing Associates (SAHA), starting FY21 and ending FY25; 2. Approving funding in the amount of \$50,000 to RCD and \$50,000 to SAHA for FY21; 3. Authorizing City Manager or her designee to determine the amount of funding to be awarded to each organization in subsequent years, FY22 to FY25, based on the amount of the City's annual allocation of Community Housing Development Organization (CHDO) HOME funds and availability of General Fund match; and 4. Authorizing the City Manager to execute all original or amended documents or agreements to effectuate this action.

**Financial Implications:** See report

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

**11. California Mental Health Services Authority (CalMHSA) Participation Agreement for the Mental Health Services Act, Innovations, Help@Hand Project**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an agreement with the California Mental Health Services Authority (CalMHSA) to enable the City of Berkeley to participate in the Mental Health Services Act (MHSA) Innovations (INN) Help@Hand multi-county collaborative project, and to extend the project through June 30, 2024.

**Financial Implications:** See report.

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

## Consent Calendar

- 12. Contract Amendments: Contract No. 42000079 with Community Services Block Grant (CSBG) for Calendar Year 2020-21 and Contract No. 32000238 with Downtown Berkeley Association (DBA) for Double Helping Hand Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to:
1. Execute an amendment to Contract No. 42000079 with the State of California's Department of Community Services and Development (CSD) for Community Services Block Grant (CSBG) Contract Number 20F-3001 to increase the amount to \$304,355 and extend the contract period to May 31, 2021, and to execute any resultant agreements and amendments to provide services to low-income people for the period January 1, 2020 to May 31, 2021; and
  2. Execute an amendment to Contract No. 32000238 with the Downtown Berkeley Association (DBA) for the Double Helping Hand program for meals for the unhoused population by providing an additional \$37,492 in CSBG funding for a total amount not to exceed \$87,492.
- Financial Implications:** See report  
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400
- 13. Contract No. 7167J Amendment: Superior, LLC for Upgrade and Support Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 7167J with Superior, LLC for development of functionalities, installation and preparation for the software upgrade of the City's FUND\$ system on the AS400 platform, increasing the contract amount by \$90,000 for a total not-to-exceed amount of \$3,565,765 from July 1, 2006 through June 30, 2021.  
**Financial Implications:** Various Funds - \$90,000  
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 14. Contract No. 319001221-1 Amendment: Rolling Orange, Inc. for Website Redesign, Web Content Management System (CMS), and Support**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 319001221-1 with Rolling Orange, Inc. for the additional web application development, for an amount not-to-exceed \$72,000 and a total contract value not-to-exceed \$559,300 from March 1, 2019 to June 30, 2022.  
**Financial Implications:** IT Cost Allocation Fund -\$72,000  
Contact: Savita Chaudhary, Information Technology, (510) 981-6500

## Consent Calendar

15. **Contract No. 10549A Amendment: Tyler Technologies Enterprise Resource Planning System for software licensing, implementation and maintenance services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment with Tyler Technologies for software licensing, enhanced implementation services and maintenance services for the online Enterprise Resource Planning (ERP) system for the amount not to exceed \$650,000 and a total contract value not to exceed \$3,952,663 from April 1, 2017 to June 30, 2023.

**Financial Implications:** FUND\$ Replacement Fund - \$650,000

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

16. **Contract No. 10515A Amendment: Tyler Technologies, Inc. for New World Public Safety Computer Aided Dispatch (CAD 911) Software**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10515A with Tyler Technologies, Inc. for New World's Computer Aided Dispatch (CAD) for Police and Fire, Mobile messaging and field reporting modules, for license renewal, software support and maintenance services, increasing the amount by \$367,500, for a total not to exceed \$1,555,230 for the period March 30, 2017 to June 30, 2021.

**Financial Implications:** General Fund - \$367,500

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

17. **Contract: ePlus for Cohesity Backup Solution and Hosted Cloud Storage**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a Contract with ePlus for the Cohesity backup solution and hosted cloud storage, for a total contract amount not to exceed \$608,400 for the term September 1, 2020 through August 31, 2025.

**Financial Implications:** IT Cost Allocation Fund - \$608,400

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

18. **Contract: Digital Hands for Cybersecurity Event Monitoring and Security Information and Event Management (SIEM)**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a contract and subsequent amendments with Digital Hands, for Cybersecurity Event Monitoring and Security Information and Event Management (SIEM), for a total not to exceed amount of \$405,000, from September 1, 2020 to August 31, 2023.

**Financial Implications:** IT Cost Allocation Fund - \$405,000

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

## Consent Calendar

- 19. MOU with “A Safe Place” Domestic Violence Shelter**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Memorandum of Understanding (MOU) entitled “Memorandum of Understanding with A Safe Place, a domestic violence shelter provider, and authorize the Chief of Police to enter into this agreement and any amendments.  
**Financial Implications:** See report  
Contact: Andrew Greenwood, Police, (510) 981-5900
- 20. MOU with California Department of Justice to Accept Grant for Submission and Testing of Sexual Assault Evidence**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Memorandum of Understanding (MOU) entitled “Memorandum of Understanding with the California Department of Justice.” The Berkeley Police Department has been selected to receive a \$312,284 grant for testing untested Sexual Assault Evidence. Approving this MOU will allow reimbursement of testing expenses and related costs covered by the grant. Authorize the Chief of Police to enter into this agreement and any amendments.  
**Financial Implications:** See report  
Contact: Andrew Greenwood, Police, (510) 981-5900
- 21. Lease Agreement: 1001 University Avenue with The Berkeley Food Network**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance authorizing the City Manager to execute a retroactive lease agreement with The Berkeley Food Network (BFN) to use the City property at 1001 University Avenue for a three-year lease term with an option to extend for two additional one-year terms.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 22. Grant Applications: Highway Safety Improvement Program Cycle 10**  
**From: City Manager**  
**Recommendation:** Adopt Resolutions authorizing the City Manager to submit grant applications to the California Highway Safety Improvement Program (HSIP) Cycle 10 for the following projects: Protected Left-Turn Signals at multiple signalized intersections for up to \$4 million and Sacramento Street Pedestrian Crossings for up to \$250,000.  
**Financial Implications:** See Report  
Contact: Liam Garland, Public Works, (510) 981-6300



## Consent Calendar

- 23. Contract 9274A Amendment: Ascentis Corporation 9274A for Biometric Time Card Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9730A with Ascentis Corporation for biometric time card services to extend the contract term by one year to June 30, 2022, and increase the contract amount by \$25,000 for a total contract amount not to exceed \$75,000.  
**Financial Implications:** Various Funds - \$25,000  
Contact: Liam Garland, Public Works, (510) 981-6300
- 24. Contract: McNabb Construction Inc. for the Codornices Creek Restoration at Kains Avenue Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Codornices Creek Restoration Kains Avenue Project, Specification No. 20-11368-C; accepting the bid of McNabb Construction Inc. as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$550,127.  
**Financial Implications:** Various Funds - \$550,127  
Contact: Liam Garland, Public Works, (510) 981-6300
- 25. Referral Response: An Action Plan for Greening the City of Berkeley Fleet of Vehicles**  
**From: City Manager**  
**Recommendation:** Receive the City of Berkeley Municipal Fleet Electrification Assessment, a plan to accelerate Berkeley's municipal fleet electrification by 2030, and refer to the City Manager to pursue grant and rebate opportunities through East Bay Community Energy and other entities to support its recommendations for transitioning fleet vehicles away from fossil fuels to electric vehicles, including charging infrastructure and associated distributed energy resource options.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

26. **Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12** *(Reviewed by the Agenda & Rules Committee) (Item contains supplemental material)*

**From: Fair Campaign Practices Commission**

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

*(On June 29, 2020, the Agenda and Rules Committee made a Positive Recommendation to the City Council that the item be referred to the Agenda & Rules Committee to be considered with other related referrals from the Fair Campaign Practices Commission.)*

**Financial Implications:** None

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

## Council Consent Items

27. **Support Berkeley Humane Society's Nonprofit Bark (& Meow) for the Around the Block Adoption Event and Family Street Fair in West Berkeley on August 29, 2020, organized by Berkeley Humane Society: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**

**From: Councilmember Davila (Author)**

**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Councilmember Cheryl Davila, to Berkeley Humane Society's Nonprofit Bark (& Meow) for the Around the Block Adoption Event and Family Street Fair in West Berkeley on August 29, 2020, organized by Berkeley Humane Society, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute. (COVID-19 Update: If it is not safe to hold the one-day event a month-long virtual adopt-a-thon will be held instead to find homes for over 100 shelter pets).

**Financial Implications:** See report

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

28. **Oppose AB 2167 & SB 292**

**From: Councilmember Wengraf (Author)**

**Recommendation:** Approve a letter opposing AB 2167 (Daly & Cooley) Insurance Action Market Plan and SB 292 (Rubio & Jones) Wildfire Risk Modeling and Mitigation, and send to Assembly Members Tom Daly and Ken Cooley and Senators Susan Rubio and Brian Jones, with copies to Senator Nancy Skinner, Assemblymember Buffy Wicks, and Governor Gavin Newsom

**Financial Implications:** None

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

## Council Consent Calendar

- 29. Support for SB 288: Sustainable Transportation COVID-19 Recovery Act**  
**From: Councilmember Robinson (Author)**  
**Recommendation:** Send a letter to Senator Scott Wiener, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Senate Bill 288, which would exempt specified transportation projects from environmental review under CEQA, including bus rapid transit projects, pedestrian and bicycle facilities, and zero-emission charging stations  
**Financial Implications:** None  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
- 30. Support for SB 902: Authorizing Cities to Rezone for Density**  
**From: Councilmember Robinson (Author)**  
**Recommendation:** Send a letter to Senator Scott Wiener, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Senate Bill 902, which would authorize local governments to upzone urban infill sites and parcels in transit- or jobs-rich areas for up to 10 units of residential density.  
**Financial Implications:** None  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
- 31. Support for AB 2542: The California Racial Justice Act**  
**From: Councilmember Robinson (Author)**  
**Recommendation:** Send a letter to Assemblymember Ash Kalra, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Assembly Bill 2542, which would prohibit the state from seeking or obtaining a criminal conviction, or from imposing a sentence, based on race, ethnicity, or national origin.  
**Financial Implications:** None  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
- 32. Support for AB 2345 (CA Density Bonus)**  
**From: Councilmember Droste (Author)**  
**Recommendation:** That the Berkeley City Council send a letter supporting AB 2345, authored by Assemblymember Lorena Gonzalez and Assemblymember David Chiu which will help address California's housing crisis by expanding the state density bonus for housing developers who commit to building additional affordable units.  
**Financial Implications:** None  
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

## 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 minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.*

## Action Calendar

*The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*

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

## Action Calendar – Public Hearings

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

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

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

**33. General Plan Redesignation and Rezone of The Rose Garden Inn at 2740 Telegraph Avenue (APN 054-1716-002-00), 2744 Telegraph Avenue (APN 054-1716-003-00), and 2348 Ward Street (APN 054-1716-031-00)**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion:

1. Adopt a Resolution amending the General Plan land use designations of portions of parcels that comprise The Rose Garden Inn from Low Medium Density Residential to Avenue Commercial;
2. Adopt first reading of an Ordinance amending the Zoning Map for the portion of parcels that comprise the Rose Garden Inn from Restricted Two-Family Residential District (R-2) to General Commercial District (C-1); and
3. Certify that the reclassification of General Plan land use designations and rezoning are categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Classes 1, 3, 5, and 31.

**Financial Implications:** See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Action Calendar – New Business

**34. Placing a Measure on the November 3, 2020 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)**

**From: Rent Stabilization Board**

**Recommendation:**

1. Adopt a Resolution placing the proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance on the ballot of the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

**Financial Implications:** See report

Contact: Matt Brown, Rent Stabilization Board, (510) 981-7368

## Action Calendar – Policy Committee Track Items

**35. Improving Hate Crimes Reporting and Response**

**From: Mayor Arreguin (Author)**

**Recommendation:** Refer to the City Manager to review the following proposals and implement new systems for reporting and response to hate incidents and crimes: - Develop easy, transparent reporting systems for victims and/or their support networks, including a hate crimes reporting hotline (SF implemented) and/or an online reporting tool; -Privacy policies and procedures that will provide support for victims and encourage reporting; -Culturally appropriate personnel structures to respond to incidents that will encourage reporting, reduce fear and provide support; - Establishing supportive community based networks that provide clear, decisive response to hate crimes and hate incidents -The creation of accessible and multilingual reporting procedures and resources that deliver the clear message that hate has no place in Berkeley; -Engaging youth and BUSD to make it clear that bullying, racial slurs and vandalism are hate-fueled incidents; -Develop a public facing mapping tool that indicates patterns of hate incidents and crimes to help with outreach and prevention; -Other emerging policies and activities that support an inclusive and safe community.

**Financial Implications:** See report

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

**36. Opposition to Nuclear Warfare**

**From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution marking the 75th anniversary of the atomic bombings of Hiroshima and Nagasaki with a call to prevent nuclear war.

**Financial Implications:** None

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

## Action Calendar – Policy Committee Track Items

- 37. Urgency Ordinance: Updates to the COVID-19 Emergency Response Ordinance; Resolution: Request UC Berkeley Voluntarily Comply with Local Ordinances Restricting Evictions, Delaying Rent Payments, and Empowering Tenants to Terminate their Leases Without Penalty**

**From: Councilmember Davila (Author)**

**Recommendation:**

1. Adopt an urgency ordinance amending Berkeley Municipal Code 13.110, Title 13, “The COVID-19 Emergency Response Ordinance,” to enhance emergency tenant protections consistent with recently adopted Alameda County laws, action in other jurisdictions, and consultation with community stakeholders.

2. Adopt a Resolution Requesting University of California at Berkeley voluntarily comply with local eviction moratoriums and rent suspension ordinances.

**Financial Implications:** See report

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

- 38. Initiate a Citywide, Regional and International Just Transition to a Regenerative Economy to Address the Climate Emergency**

**From: Councilmember Davila (Author)**

**Recommendation:** Adopt a resolution to initiate a Citywide, Regional and International Just Transition to a Regenerative Economy to Address the Climate Emergency, and taking the following actions: 1. The City of Berkeley recognizes that attempting to be sustainable is not enough to protect residents from cumulative impacts of centuries of environmental and social degradation and instead will reorient its city planning, policy, and resource allocation to be socially and environmentally positive and will invest in a regenerative whole city infrastructure, policy, development and design process. 2. The City of Berkeley embraces doughnut economics, which, by definition, recognizes the necessity of meeting the needs of residents within the carrying capacity of our planet Earth and the greater Bay area bioregion. 3. The City of Berkeley will accelerate the transition to a zero-waste cradle to cradle circular economy. 4. All City of Berkeley commissions shall propose city policies, procedures and programs to enact a just transition that is socially, economically and ecologically regenerative by securing racial justice, bioregional restoration and sustainability, maximally reduces greenhouse gas emissions, increases public health, increases disaster preparedness and community resilience and reverses inequality and wealth extraction of Berkeley and Bay Area residents. 5. The City of Berkeley will create a city commission responsible for planning and implementing a just transition to a regenerative economy that is anti-racist, provides reparations and transformative support for those who are black, Indigenous, people of color, low income, and those struggling with mental health challenges, is community-driven and democratically-funded, environmentally-regenerative, and prioritizes local and independent businesses. 6. The City of Berkeley commits to suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, social inequality, public health risks, and global warming. 7. The City of Berkeley calls for a regional collaborative effort to begin as soon as possible and formally requests all regional agencies, cities, and counties to a shared table to devise and execute a just

## Action Calendar – Policy Committee Track Items

transition plan to the regenerative economy here in the Greater Bay Area through a regional green new deal. 8. The City of Berkeley urges all neighboring governmental agencies (including local, state and federal) to suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, public health risks, and global warming. 9. The City of Berkeley calls on governments who have declared a climate emergency and who broadly recognize the immense challenge facing humanity to join together in collaborative exchange and begin a shared transitional peace effort in moving their immediate societies and economies toward ethical and regenerative trajectories. 10. The City of Berkeley identifies our current economy with its focus on near-term perpetual growth requiring resource extraction and wealth enclosure as defunct and incompatible with the needs of sustainability, human thriving, and dignity, and calls for a new economic system which in its design meets human needs within planetary and local environmental and social boundaries, focuses on human and ecological flourishing, furthers a regenerative human presence on earth, achieves equitable distribution of resources throughout the planet, and achieves sustainable transition to avert climate catastrophe in the near and long term. 11. The City of Berkeley endorses the intention and vision behind a global Green New Deal that reverses centuries of colonization, and post-colonial imbalances of power, health, wealth, sovereignty, addresses the climate emergency at the speed and scale necessary, and protects the world from impending climate impacts. 12. The City of Berkeley recognizes the importance of Indigenous leadership in designing and implementing a regenerative economy in Berkeley, the Greater Bay Area, and the World, and shall invite delegates from Indigenous communities to all stages of the planning and implementation process.

**Financial Implications:** See report

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

### 39. Resolution in Support of 1921 Walnut Street

**From: Councilmember Harrison (Author)**

**Recommendation:** Adopt A Resolution In Support of The Preservation of 1921 Walnut Street, Currently Under The Threat of Being Purchased and Demolished by the University of California at Berkeley.

**Financial Implications:** None

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

### 40. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals

**From: Councilmember Harrison (Author)**

**Recommendation:** Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.

**Financial Implications:** See report

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

## Action Calendar – Policy Committee Track Items

- 41. Adopt a Resolution Implementing Core Police Accountability Board and Director of Police Accountability functions by July 1, 2021**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** 1. Adopt a Resolution, contingent upon voter approval of the Charter Amendment contained in Resolution No. 69,363-N.S., implementing the following core Police Accountability Board and Director of Police Accountability functions and policy changes by July 1, 2021: a. Establish and convene the Police Accountability Board with all investigatory, policy and other authorities, and; b. Pending confirmation of a Director of Police Accountability, appoint the existing Police Review Commission Officer as interim Director.  
**Financial Implications:** Staff time  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 42. Adopt an Ordinance Adding Chapter 2.64.170 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment**  
**From: Councilmember Harrison (Author)**  
**Recommendation:**  
1. Refer draft Ordinance to the Police Review Commission for further consideration and policy development and submit recommendations to the Public Safety Committee and author within 60 days; and  
2. Adopt an Ordinance Adding Chapter 2.64.170 to the Berkeley Municipal Code to Regulate Police Acquisition and Use of Controlled Equipment.  
**Financial Implications:** Staff time  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Information Reports

- 43. Voluntary Time Off Program For FY 2021**  
**From: City Manager**  
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000
- 44. Annual Housing Pipeline Report**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 45. LPC NOD: 1120 Second Street/#LMSAP2019-0007**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 46. LPC NOD: 1120 Second Street/#LMSAP2019-0008**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 47. LPC NOD: 41 San Diego Road/#LMSAP2020-0002**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400



# Public Comment – Items Not Listed on the Agenda

## Adjournment

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

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

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

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

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

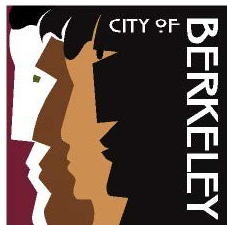
### COMMUNICATION ACCESS INFORMATION:

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



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

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[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.

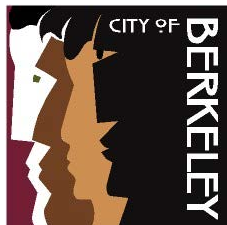
Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system,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

FCPC COMMISSIONERS
December 9, 1991
Page 2

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

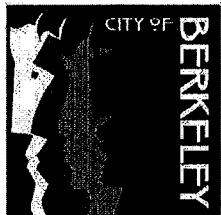
Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election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

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

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

Attachment

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



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

MEMORANDUM

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

The purpose of this memo is to provide you with forms for, links to, and general guidance on Council expense and reimbursement policies. In some cases, the restrictions on expenses for Council Members are more restrictive and more complex than those for City employees, because of state law. You must contact my office prior to incurring expenses for attendance at a conference, seminar, or training, or making travel arrangements. The purchase of routine office supplies should be made using the City's standard procurement procedures and vendors, using a purchase order, but on those occasions when you must pay for something personally and then request reimbursement, you will also need to submit the request to my office. For information regarding the City's procurement procedures, see Administrative Regulation 3.4¹. Once your City email is active, we'll send this memo to you via email, so you can click on the links to the City's intranet. Please feel free to contact me if you or your staff have questions.

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

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

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

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

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

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

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

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

1. FN-024 payment voucher: available in Administration Regulation 3.14⁴, on the City's intranet⁵, or by contacting Accounts Payable at (510) 981-7310. All three sources provide guidance for completing this form.
2. Statement of municipal purpose form: available in City Auditor's Groupware section or by contacting the City Auditor's Office at (510) 981-6750 or auditor@cityofberkeley.info.
3. Supporting documentation: Council member original receipts, proof of payment, official per diem rates, etc.

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

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

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

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

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

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

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

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

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

RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

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

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

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

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

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

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

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

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

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

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

II. Reimbursement of Actual and Necessary Expense of Office

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

A. Authorized Activities.

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

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

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

B. Unauthorized Expenses

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

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

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

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

C. Particular Types of Authorized Expenditures Defined

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

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

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

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

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

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

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

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

E. Expense Report Content and Submission Deadline

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

F. Audits of Expense Reports

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

G. Reports

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

H. Compliance with Laws

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

I. Violation of This Policy

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

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

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


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

Noes: None.

Absent: None.



Tom Bates, Mayor

Attest: 

Mark Numainville, CMC, City Clerk

Councilmember Office Budget Relinquishment and Grant Policy

Introduction – Limitations on the Expenditure of Public Funds

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

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

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

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

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

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

Criteria for Grants of City Funds from Councilmember Office Budgets

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

Table 1.

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

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

**CITY OF BERKELEY
ADMINISTRATIVE REGULATIONS**

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

SUBJECT: Purchasing Policy & Purchasing Manual

PURPOSE

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

POLICY

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

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

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

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

PROCEDURE

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

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

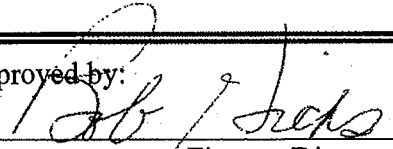
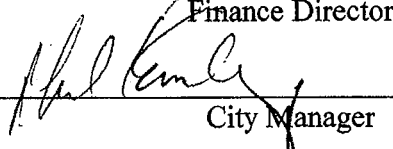
DEFINITIONS

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

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

Attachments:

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

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

ORDINANCE NO. 6,875-N.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT 2

ORDINANCE NO: 7,035-N.S.

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

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

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

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

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

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

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

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

Noes: Spring and Worthington.

Absent: None.

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

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

Noes: Spring and Worthington.

Absent: None.

ATTEST: Deanna Despain
Deanna Despain, Deputy City Clerk

Tom Bates
Tom Bates, Mayor

Date signed: 9 May 08

A.R. NUMBER: 3.9
ORIGINAL DATE: 07/94
POSTING DATE: 11/3/16
PAGE 1 of 9 PAGES

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).

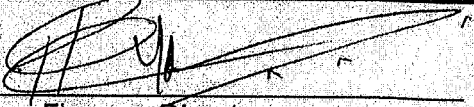
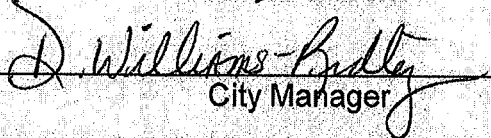
Payment Documentation: Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original receipts, 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: 
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:

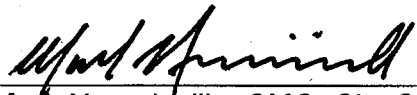
Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

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.



-
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

CONSENT CALENDAR

July 28, 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](#)).

POLICY COMMITTEE RECOMMENDATION

On June 29, 2020, the Agenda and Rules Committee adopted the following action: M/S/C (Hahn/Wengraf) to make a Positive Recommendation to the City Council that the item be referred to the Agenda & Rules Committee to be considered with other related referrals from the Fair Campaign Practices Commission. The item will be calendared for the Consent Calendar on the July 28, 2020 agenda. Vote: All Ayes.

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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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

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

PAUSERSUBEL2\offhldr.mem.doc

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

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

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



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
July 28, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Support Berkeley Humane Society's Nonprofit Bark (& Meow) for the Around the Block Adoption Event and Family Street Fair in West Berkeley on August 29, 2020, organized by Berkeley Humane Society: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

#### RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Councilmember Cheryl Davila, to Berkeley Humane Society's Nonprofit Bark (& Meow) for the Around the Block Adoption Event and Family Street Fair in West Berkeley on August 29, 2020, organized by Berkeley Humane Society, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute. *(COVID-19 Update: If it is not safe to hold the one-day event a month-long virtual adopt-a-thon will be held instead to find homes for over 100 shelter pets).*

#### BACKGROUND

The eighth annual Bark (& Meow) Around the Block Adoption Event and Family Street Fair will take place on Saturday, August 29, 2020, in West Berkeley. This annual pet adoption event, free to the public, is a large community based, family-friendly street fair and adopt-a-thon complete with great food, live entertainment, vendors (pet and non-pet), and fun activities for all ages.

Last year, Bark (& Meow) Around the Block stretched over two long city blocks, attracted at least 2,500 attendees, over 40 diverse vendors, and 20 local partner animal rescue organizations. Over 165 shelter and rescue animals were placed into loving homes in just a few hours.

The festival will draw a significant number of families, potential pet adopters, and the general public including current pet guardians out to engage with a pet-friendly event that includes local food trucks, live music, and a variety of vendors.

Additionally, the COVID19 caused more animals in the shelters that need opportunities to find loving homes. This event will go a long way in helping to connect new families with pets who need a second chance.

The Bark (& Meow) Around the Block Adoption Event and Family Street Fair will also have media impact and will:

- (1) Focus on Berkeley by the entire Bay Area, thanks to promotions by NBC Bay Area and Telemundo live broadcast, radio coverage, social media, and more.
- (2) Very low cost for the city relative to the benefits because the vast majority of costs are borne by the nonprofit organization

For 125 years, Berkeley Humane has served animals and our community by providing life-saving programs for cats and dogs, cultivating compassion, and strengthening the human-animal bond. Berkeley Humane continues to expand and adapt the services of the organization to meet the ongoing needs of the community's animals and their human guardians. Berkeley Humane's work would not be possible without its strong partnerships with local animal welfare groups and the support from animal-loving friends who share the Society's vision. Today, Berkeley Humane has thousands of supporters and volunteers and remains steadfast in its practices to curb pet overpopulation in the East Bay and give pet guardians the tools they need to ensure that their pets remain happy and healthy in their homes for the rest of their lives.

#### FINANCIAL IMPLICATIONS

No General Fund impact. \$250 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (011-11-102-000-0000-000-411).

#### ENVIRONMENTAL SUSTAINABILITY

Protecting our pets is itself an act of environmental sustainability.

#### CONTACT PERSON

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

#### ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY SUPPORTING BERKELEY HUMANE SOCIETY'S NONPROFIT BARK (& MEOW) FOR THE AROUND THE BLOCK ADOPTION EVENT AND FAMILY STREET FAIR IN WEST BERKELEY ON AUGUST 29, 2020, ORGANIZED BY BERKELEY HUMANE SOCIETY: RELINQUISHMENT OF COUNCIL OFFICE BUDGET FUNDS TO GENERAL FUND AND GRANT OF SUCH FUNDS

WHEREAS, The eighth annual Bark (& Meow) Around the Block Adoption Event and Family Street Fair will take place on Saturday, August 29, 2020, in West Berkeley. This annual pet adoption event, free to the public, is a large community based, family-friendly street fair and adopt-a-thon complete with great food, live entertainment, vendors (pet and non-pet), and fun activities for all ages.

WHEREAS, Last year, Bark (& Meow) Around the Block stretched over two long city blocks, attracted at least 2,500 attendees, over 40 diverse vendors, and 20 local partner animal rescue organizations. Over 165 shelter and rescue animals were placed into loving homes in just a few hours.

WHEREAS, The festival will draw a significant number of families, potential pet adopters, and the general public including current pet guardians out to engage with a pet-friendly event that includes local food trucks, live music, and a variety of vendors.

WHEREAS, Additionally, the COVID19 caused more animals in the shelters that need opportunities to find loving homes. This event will go a long way in helping to connect new families with pets who need a second chance.

WHEREAS, The Bark (& Meow) Around the Block Adoption Event and Family Street Fair will also have media impact and will:

- (1) Focus on Berkeley by the entire Bay Area, thanks to promotions by NBC Bay Area and Telemundo live broadcast, radio coverage, social media and more.
- (2) Very low cost for the city relative to the benefits because the vast majority of costs are borne by the nonprofit organization

WHEREAS, For 125 years, Berkeley Humane has served animals and our community by providing life-saving programs for cats and dogs, cultivating compassion, and strengthening the human-animal bond. Berkeley Humane continues to expand and adapt the services of the organization to meet the ongoing needs of the community's animals and their human guardians. Berkeley Humane's work would not be possible without its strong partnerships with local animal welfare groups and the support from animal-loving friends who share the Society's vision. Today, Berkeley Humane has thousands of supporters and volunteers and remains steadfast in its practices to curb pet overpopulation in the East Bay and give pet guardians the tools they need to ensure that their pets remain happy and healthy in their homes for the rest of their lives.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley hereby approve the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Councilmember Cheryl Davila, to Berkeley Humane Society's Nonprofit Bark (& Meow) for the Around the Block Adoption Event and Family Street Fair in West Berkeley on August 29, 2020, organized by Berkeley Humane Society, with funds relinquished to the City's general fund for

this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute. *(COVID-19 Update: If it is not safe to hold the one-day event a month-long virtual adopt-a-thon will be held instead to find homes for over 100 shelter pets).*





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
July 28, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf  
Subject: Oppose AB 2167 & SB 292

RECOMMENDATION

Approve a letter opposing AB 2167 (Daly & Cooley) Insurance Action Market Plan and SB 292 (Rubio & Jones) Wildfire Risk Modeling and Mitigation, and send to Assembly Members Tom Daly and Ken Cooley and Senators Susan Rubio and Brian Jones, with copies to Senator Nancy Skinner, Assemblymember Buffy Wicks, and Governor Gavin Newsom

FINANCIAL IMPLICATIONS

None

BACKGROUND

Due to increasing numbers of wildfires, home insurance has become unaffordable or unavailable for many living in high fire hazard areas. Insurance companies are denying renewals of home insurance policies families have had for years. AB 2167 and SB 292 attempt to solve this issue but do so by taking away insurance price controls, allowing insurance companies to continue refusing to insure homeowners based on their location, and without including incentives for home hardening and other fire prevention strategies. The item should be amended to meet homeowners' needs.

ENVIRONMENTAL SUSTAINABILITY

None

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

- 1: Letter
- 2: [AB 2167](#)
- 3: [SB 292](#)

Oppose AB 2167 & SB 292

CONSENT CALENDAR  
July 28, 2020

July 28, 2020

The Honorable Tom Daly  
California State Assembly  
State Capitol, PO Box 942849  
Sacramento, CA 94249

The Honorable Susan Rubio  
California State Senate  
State Capitol, Room 4052  
Sacramento, CA 95814

**RE: Opposition from the Berkeley City Council RE: AB 2167 (Daly & Cooley) Insurance Action Market Plan, and SB 292 (Rubio and Jones) Wildfire Risk Modeling and Mitigation.**

Dear Assembly Members Daly and Cooley and Senators Rubio and Jones:

The City Council of the City of Berkeley officially registers our opposition to AB 2167 and SB 292. While the Council appreciates your initiative to solve for homeowners' inability to find home insurance if they live in high fire hazard zones, your bill, as currently designed, contains flaws that make it a win for insurance companies but not for homeowners.

AB 2167 and SB 292 lets insurance companies "cherry pick" who they want to offer insurance to – the bill does not mandate that insurers write in high risk areas, where a majority of insurance non-renewals are occurring in the state.

AB 2167 and SB 292 does not guarantee that policyholders will be able to find companies willing to write insurance they can afford.

AB 2167 and SB292 does not address the most important things that first responders and consumers have identified as necessary – namely home hardening and wildfire mitigation that will reduce the risk of devastating fire, bring down the cost of insurance, and make it widely available.

Essentially, Assembly Bill 2167 and Senate Bill 292 are an insurance industry "wish list" that weakens existing important consumer protections and does not further the purposes of Proposition 103, which voters approved more than three decades ago to protect consumers from excessive, inadequate, and unfairly discriminatory insurance rates. This bill would severely harm consumers by hitting homeowners and hard-working families with even higher insurance bills anywhere there is wildfire risk across California – at a time when they can least afford it.

The Berkeley City Council urges you to amend AB 2167 and SB 292 with these considerations in mind.

Sincerely,

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



AMENDED IN ASSEMBLY MAY 4, 2020

california legislature—2019–20 regular session

**ASSEMBLY BILL No. 2167**

**Introduced by Assembly Members Daly and Cooley**

*(Principal coauthor: Senator Rubio)*

**(Coauthors: Assembly Members Chen, Megan Dahle,  
Kamlager, Mayes, Medina, and Waldron)**

*(Coauthors: Senators Dahle and Jones)*

February 11, 2020

An act to add Chapter 12 (commencing with Section 10109) to Part 1 of Division 2 of the Insurance Code, relating to insurance.

legislative counsel's digest

AB 2167, as amended, Daly. Insurance market action plan.

The Insurance Rate Reduction and Reform Act of 1988, an initiative measure enacted by Proposition 103, as approved by the voters at the November 8, 1988, statewide general election, prohibits specified insurance rates from being approved or remaining in effect that are excessive, inadequate, unfairly discriminatory, or otherwise in violation of the act. The act requires an insurer that wishes to change a rate to file a complete rate application with the Insurance Commissioner and deems the application approved 60 days after public notice of the application unless certain events occur, including that a consumer requests a hearing, or the commissioner determines to hold a hearing. The act requires hearings to be conducted pursuant to specified provisions of law governing administrative hearings. Existing law authorizes the provisions of Proposition 103 to be amended by a statute that furthers the

purposes of the act and is enacted by the Legislature with a  $\frac{2}{3}$  vote.

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## AB 2167 — 2 —

~~Under existing law, the California FAIR Plan Association is a joint reinsurance association in which all insurers licensed to write basic property insurance participate in administering a program for the equitable apportionment of basic property insurance for persons who are unable to obtain that coverage through normal channels.~~

~~This bill would establish the Insurance Market Action Plan (IMAP) program under which residential property insurance policies in a county may qualify for IMAP protection if residential property insurance policies issued by the FAIR Plan constitute 3% or more of all policies issued and in force in that county. The bill would authorize an insurer to submit an IMAP filing to the department and *the requirements of the program are met. The bill would require the an IMAP filing submitted to the Department of Insurance by an insurer to include include, among other things, a request for adequate rates, a plan for maintaining solvency of the insurer, and mitigation requirements. The bill would also require an insurer to commit in the IMAP to offer new and renewal residential property insurance policies in a set of IMAP counties until the insurer achieves a market penetration rate in those IMAP counties that is no lower than 85% of its statewide market penetration rate. The bill would require an insurer that submits an IMAP filing to receive an expedited review of its rate filing, not to exceed 120 days, if the insurer uses an actuarial assumption for trend and loss development that is at the midpoint or less of rate impacts, or files for a rate increase based solely on increased reinsurance costs, and does not otherwise change any other aspect of its rate filing from its previous department approved rate. The bill would require the Office of Planning and Research, on or before, January 1, 2023, to issue a report outlining the effectiveness of the IMAP program.*~~

By providing for an expedited review and approval of residential property insurance rates, the bill would amend Proposition 103 and thus require a  $\frac{2}{3}$  vote.

*The bill would provide that its provisions are not severable.*

*The bill would make its operation contingent on the enactment of SB 292 of the 2019–20 Regular Session.*

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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— 3 — AB 2167

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

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following

:

3 (a)

4 (1) Climate change has created a new reality in California.  
5 Fifteen of the 20 most destructive wildfires in the state's history  
6 have occurred since 2000 and 10 of the most destructive fires have  
7 occurred since 2015. *More people died from wildfires in 2017 and*  
8 *2018 than in the last 10 years combined.*

9 (A) *Igniting November 8, 2018, the Camp Fire burned for 17*  
10 *days, killed at least 85 people, and destroyed over 18,800*  
11 *structures. It is not only the most expensive wildfire in United*  
12 *States history, but was the most expensive natural disaster*  
13 *worldwide in 2018. Insured losses reached \$12.5 billion, while*  
14 *total losses were \$16.5 billion.*

15 (B) *Also igniting November 8, 2018, the Woolsey Fire burned*  
16 *for 14 days, killed three people, and destroyed over 1,600*  
17 *buildings. Insured losses are estimated at \$3 billion to \$5 billion*  
18 *of the \$6 billion in total property losses.*

19 (C) *Igniting July 23, 2018, the Carr Fire burned for 37 days,*  
20 *killed eight people, including three firefighters, and destroyed over*  
21 *1,600 structures. The fire caused over \$1.5 billion in property*  
22 *damage.*

23 (D) *Igniting December 4, 2017, the Thomas Fire burned for 39*  
24 *days, killed 23 people, including one firefighter and 21 people*  
25 *from a resulting mudslide, and destroyed over 1,000 structures.*  
26 *The fire caused over \$2.2 billion in damages.*

27 (E) *Igniting October 8, 2017, the Tubbs Fire burned for 12 days,*  
28 *killed 22 people, and destroyed over 5,600 structures. Insured*  
29 *losses are estimated to be between \$7.5 billion and \$9.5 billion.*

30 (F) *Igniting October 8, 2017, the Atlas Fire burned for 12 days,*  
31 *destroyed 25,000 acres, and destroyed over 700 buildings. Insured*  
32 *losses are estimated to be between \$2.5 billion and \$4.5 billion.*

33 (G) *Burning for over three months in 2018, a less costly seventh*

34 *fire, the Mendocino Complex Fire, became the largest recorded*  
 35 *fire in state history when it consumed over 459,000 acres, more*  
 36 *than the previous largest fire, the Thomas Fire, in 2017.*  
 37 ~~(b)~~

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**AB 2167 — 4 —**

1 (2) Fire season in California has changed. In the western United  
 2 States, the length of the fire season is over 80 days longer than it  
 3 was in the 1970s. According to research from the University of  
 4 California, Los Angeles, residents may no longer expect fire season  
 5 to end in September. Instead, the onset of seasonal rain can be  
 6 delayed into October or even November. These longer periods  
 7 without rain, combined with the well-known, heavy wind patterns  
 8 of autumn, have created increased likelihood of uncontrollable,  
 9 severe fires that endanger life and property. The Camp Fire in  
 10 Paradise is an example of a fire that started after the end of the  
 11 traditional fire season.

12 ~~(e)~~

13 (3) The impact of catastrophic fires is multifaceted. While the  
 14 governmental costs of fire response and suppression are significant,  
 15 research from Headwaters Economics indicates those costs are  
 16 less than 10 percent of the total costs. Combined with suppression  
 17 expenses, other short-term costs, including evacuation and aid  
 18 relief, road stabilization, and home and property loss only represent  
 19 35 percent of the total wildfire-related costs. Longer term costs,  
 20 including loss of property value, tax revenue, and business revenue,  
 21 as well as landscape rehabilitation, infrastructure repair, loss of  
 22 ecosystem services, and human casualties represent the remaining  
 23 65 percent.

24 (4) *According to a Department of Insurance 2018 report on*  
 25 *the availability and affordability of wildfire coverage, major*  
 26 *insurers are pulling back from writing new policies or renewing*  
 27 *policies in the wildland-urban interface (WUI) fire areas.*  
 28 *Additionally, premiums are increasing in the WUI, and most*  
 29 *insurers do not take into consideration wildfire mitigation*  
 30 *conducted by the homeowner or the community. This is in part*  
 31 *because no single insurer has loss experience in the WUI to*  
 32 *validate the rates and premiums charged for each wild fire risk*  
 33 *model score. The department's report further states that a credible*  
 34 *database for wildfire loss experience in the WUI is needed in order*  
 35 *for insurers to use rating plans that impact rates in the WUI and*  
 36 *suggests that the Legislature should create a framework within*  
 37 *which insurers offer a mitigation premium credit for property*  
 38 *owners that conduct proper mitigation.*

39 (5) *The National Institute of Building Sciences studied 23 years*  
40 *of federally funded mitigation grants provided by the Federal*

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## — 5 — AB 2167

1 *Emergency Management Agency (FEMA), the United States*  
2 *Economic Development Administration, and the United States*  
3 *Department of Housing and Urban Development, and found that*  
4 *hazard mitigation funding saves six dollars (\$6) in future disaster*  
5 *costs for every one dollar (\$1) invested. Further, the study found*  
6 *that designing buildings to meet the 2018 International Residential*  
7 *Code and 2018 International Building Code would provide a*  
8 *national benefit of eleven dollars (\$11) for every one dollar (\$1)*  
9 *of investment when compared to 1990-era building codes and*  
10 *National Flood Insurance Program requirements.*

11 (6) *Studying, developing, and incentivizing homeowners to*  
12 *actively participate in, actuarially sound wildfire mitigation*  
13 *measures is therefore a fiscally prudent policy with the potential*  
14 *to save lives and prevent billions of dollars in future losses from*  
15 *occurring. A regularly updated and secure central database of*  
16 *publicly held housing infrastructure information, deployed in*  
17 *support of a public catastrophic loss model, has the potential to*  
18 *significantly enhance statewide disaster planning and response*  
19 *efforts, as well as quantify the benefit of homeowners' mitigation*  
20 *efforts. In order to accomplish this goal, it is important for the*  
21 *state to partner with insurers, insurance research organizations,*  
22 *and local agencies to develop easily and uniformly enforced*  
23 *defensible space practices and measurable mitigation efforts for*  
24 *future study.*

25 (7) *Research shows that homeowners' risk reduction behaviors*  
26 *are influenced by the perceived effectiveness of the activities and*  
27 *their perceived ability to complete them. Public outreach,*  
28 *information sharing, and a communitywide collaborative process*  
29 *on wildfire protection planning have been found to build trust*  
30 *among residents and local fire agencies. It is the intent of the*  
31 *Legislature to partner with local agencies throughout California's*  
32 *diverse wildfire risk regions in support of collecting regionally*  
33 *specific housing infrastructure information in support of developing*  
34 *regionally specific loss modeling.*

35 ~~(d)~~

36 (8) *Residential property insurance provides essential financial*  
37 *security for California residents for both short-term and long-term*  
38 *costs. Insurance supports temporary needs for housing and*  
39 *transportation for fire victims, intermediate needs for debris and*  
40 *hazardous materials removal from fire-affected properties, and*

**AB 2167 — 6 —**

1 long-term rebuilding of structures and replacement of personal  
2 property. There is no governmental program that provides similar  
3 comprehensive assistance for California residents and it is,  
4 therefore, vital for the State of California to ensure the existence  
5 of a vibrant residential property insurance marketplace capable of  
6 serving all communities.

7 (e)

8 (9) Strains in the residential property insurance system are  
9 becoming evident. As the Senate Committee on Insurance noted  
10 in its 2019 informational hearing on homeowners' insurance  
11 availability and affordability, California policyholders have  
12 "enjoyed a long spell of low insurance rates" but "climate change,  
13 drought, population movement, and other factors may be changing  
14 the fundamental nature of the homeowners' insurance market."  
15 Analysis of countrywide data from the National Association of  
16 Insurance Commissioners indicates that average homeowners'  
17 insurance rates in California rank 32nd in the country and, when  
18 adjusted for differences in regional costs, rank 49th in the country,  
19 at less than one-half the cost for insurance in states exposed to  
20 other natural disasters, including hurricanes.

21 (f)

22 (10) As part of a similar 2019 investigation of the homeowners'  
23 insurance market, the Assembly Committee on Insurance noted  
24 the acceleration of losses in this environment of relatively low  
25 rates, finding that a "study of the homeowners' insurance market  
26 released in 2018 as part of California's Fourth Climate Change  
27 Assessment found that insured losses through 2017 wiped out the  
28 entire underwriting profit insurers earned since 2000. The 2018  
29 fires continued with another round of enormous losses." The  
30 committee cautioned against a legislative response that "increases  
31 the likelihood of any policy change to generate unintended  
32 consequences" and guarding against the great risk that regulating  
33 some, but not all, of the important aspects of insurance could  
34 "significantly disrupt a homeowners' insurance market that is  
35 effectively serving a great majority of California homeowners."

36 (g)

37 (11) The final report of the Governor's Commission on  
38 Catastrophic Wildfire Cost and Recovery attempted to reconcile  
39 the various competing interests associated with insurance  
40 availability, risk selection, and pricing. The commission noted that

## — 7 — AB 2167

1 “while insurance is still largely available, it will become  
2 increasingly unavailable and/or unaffordable for many in the  
3 wildland urban interface in California.” In attempting to harmonize  
4 the various competing interests for California, the commission  
5 recommended preserving risk-based insurance pricing, while  
6 avoiding cross-subsidies of high-risk areas by low-risk areas, as  
7 well as developing incentives for parcel and community level loss  
8 mitigation  
9 efforts.

9 (h)

10 (b) Based upon this extensive investigation in both the legislative  
11 and executive branches, the Legislature ~~has determined~~ *determines*  
12 that a state policy response is required to solve several issues  
13 simultaneously, ~~including~~, *including* all of the following:

14 (1) Ensuring insurance rates are adequate to avoid insurer  
15 insolvencies and to permit insurers to operate in the state’s highest  
16 risk areas, while imposing restrictions on rates above actuarially  
17 justified levels.

18 (2) Reducing the number of residents that are required to rely  
19 upon the California FAIR Plan, which the State of California  
20 created to provide a market of last resort but which is a catastrophic  
21 insurance pool at rate levels far higher than the regular insurance  
22 market.

23 (3) Incentivizing insurers to seek cost-based rates in exchange  
24 for assurances that they will serve high-risk communities at levels  
25 similar to their statewide presence.

26 (4) Developing systems of accountability for individual and  
27 community-based loss mitigation efforts.

28 (c) *Recent wildfires have contributed to a surge of residential  
29 property insurance policies being issued by the FAIR Plan in  
30 numbers approaching that seen after the Northridge earthquake.  
31 In order to monitor surges in new FAIR Plan policies and to create  
32 a standard threshold to indicate when admitted market residential  
33 property insurance availability in specified areas of the state has  
34 declined, the Legislature determines that it is necessary to do all  
35 of the following:*

36 (1) *Create a standard threshold for residential property  
37 insurance policies to qualify for the Insurance Market Action Plan  
38 (IMAP), established by this act, based on monitoring surges in  
39 FAIR Plan new business that indicate a contracting insurance  
40 market.*

**AB 2167 — 8 —**

1 (2) Incentivize insurers to seek cost-based rates in exchange  
2 for assurances that they will maintain an adequate presence in  
3 specified high-risk areas of the state, and evaluate the effectiveness  
4 of these methods at reducing reliance on the FAIR Plan in eligible  
5 areas, thereby maintaining an adequate supply of admitted market  
6 insurance at a price more affordable to most consumers than that  
7 offered by the FAIR Plan.

8 (3) Establish a scientifically advanced probabilistic wildfire  
9 loss model for the purpose of providing property and casualty  
10 insurers access to a state of the art public tool that is accessible  
11 for comparison, evaluation, and analysis of modeled risk  
12 assumptions used in support of IMAP rate filings. In this regard,  
13 it is the intent of the Legislature to convene an advisory committee  
14 of public and private stakeholders to design standards for the use  
15 of probabilistic wildfire loss models in residential property  
16 insurance rate development, and to establish a database and  
17 computer model for that purpose.

18 (A) The Legislature finds these measures are necessary to limit  
19 the number of insurer-initiated nonrenewals that occur in response  
20 to changes in the understanding of wildfire risk and to limit  
21 homeowners' reliance on the California FAIR Plan.

22 (B) The Legislature finds that such a model is an objective public  
23 tool that will promote precision in loss projection, and that  
24 decreasing the uncertainty of future losses in this state is necessary  
25 to stabilize large price swings in the residential property insurance  
26 market.

27 (C) The Legislature further intends that such a model be  
28 available to assist state and local governments incorporate a  
29 modeled understanding of the costs of wildfire risk in their planning  
30 processes.

31 (†)

32 (d) To the extent that a court may find that this legislation  
33 amends the Insurance Rate Reduction and Reform Act of 1988,  
34 an initiative measure, enacted by Proposition 103, as approved by  
35 the voters at the November 8, 1988, statewide general election,  
36 the Legislature has determined that this act furthers the purpose  
37 of Proposition 103 because the primary goal of this act is to  
38 increase statewide availability of insurance using risk-based pricing  
39 subject to the prior approval of the Insurance Commissioner, and



1 seeks to prevent unfair discrimination in pricing or unjustified  
2 regional subsidies in high fire-risk areas.

3 SEC. 2. Chapter 12 (commencing with Section 10109) is added  
4 to Part 1 of Division 2 of the Insurance Code, to  
read: 5

6 Chapter 12. ~~Insurance Market Action Plan~~ *Wildfire*  
7 *Risk Modeling and Mitigation*

8  
9 *Article 1. Insurance Market Action Plan*

10

11 ~~10109. (a) The Insurance Market Action Plan (IMAP) program~~  
12 ~~is hereby established.~~

13 ~~(b) (1) Residential property insurance policies in a county may~~  
14 ~~qualify for insurance market action plan (IMAP) protection if~~  
15 ~~residential property insurance policies issued by the California~~  
16 ~~FAIR Plan constitute 3 percent or more of all policies issued and~~  
17 ~~in force in the county, as annually calculated by the department~~  
18 ~~and the Department of Finance.~~

19 ~~(2) A county that meets the requirements of paragraph (1) shall~~  
20 ~~be designated by the department as an IMAP county.~~

21 ~~(c) If the IMAP process implemented by this chapter results in~~  
22 ~~eliminating the eligibility of all counties from being qualified under~~  
23 ~~subdivision (b), an insurer may continue to make IMAP filings~~  
24 ~~pursuant to this chapter.~~

25 *10109. (a) The Insurance Market Action Plan (IMAP) program*  
26 *is hereby established.*

27 *(b) Residential property insurance policies in a county may*  
28 *qualify for insurance market action plan (IMAP) protection if the*  
29 *requirements of this article are met.*

30 ~~10109.1 (a) An insurer may submit an IMAP filing submitted~~  
31 ~~to the department, which department by an insurer shall include~~  
32 ~~all of the following:~~

33 (1) A request for adequate rates, as described in Section 10109.3.

34 (2) A plan for maintaining the insurer's solvency as policy count  
35 grows in IMAP counties, taking into account, among other things,  
36 risks related to overconcentration in high-risk communities.

37 (3) Parcel-level and community-based mitigation and  
38 verification requirements, as described in Section 10109.2.

39 (4) *A list of the areas within an IMAP eligible county in which*  
40 *the insurer proposes to issue residential property insurance*

1 pursuant to its IMAP filing, and a list of the areas within that  
2 county in which the insurer shall not issue residential property  
3 insurance pursuant to its IMAP filing.

4 (b) (1) An insurer shall commit in the IMAP to offer new and  
5 renewal residential property insurance policies in a set of IMAP  
6 counties until the insurer achieves a market penetration rate in  
7 those IMAP counties that is no lower than 85 percent of its  
8 statewide market penetration rate. The IMAP commitment shall  
9 be calculated based on the insurer's residential property insurance  
10 policy count across the entire designated set of IMAP counties,  
11 but need not be met in each county individually.

12 (2) Notwithstanding paragraph (1), an insurer shall monitor and  
13 avoid overconcentration in any one particular area within an IMAP  
14 county or across a particular IMAP county in order to prevent a  
15 catastrophic loss that could impair its solvency.

16 ~~10109.2. An IMAP filing shall set forth the mitigation standards  
17 required in order for counties to qualify for IMAP protection,  
18 including all of the following:~~

19 ~~(a) Objective standards for parcel-level mitigation, along with  
20 procedures for verifying that the mitigation actually occurred,  
21 including any required governmental or third-party certifications.~~

22 ~~(b) Requirements for community certifications, if any, including  
23 designation as a Firewise USA site by the National Fire Protection  
24 Association.~~

25 10109.3. (a) A rate proposed as part of an IMAP filing shall  
26 not be excessive, inadequate, or unfairly discriminatory, and shall  
27 be actuarially sound so that premiums are adequate to cover  
28 expected losses, expenses, and taxes, and shall reflect investment  
29 income of the insurer.

30 (b) A rate requested as part of an IMAP filing shall be subject  
31 to the prior approval of the commissioner.

32 ~~10109.4. A rate requested as part of an IMAP filing may be  
33 based on a complex catastrophe model, as follows:~~

34 ~~(a) The complex catastrophe model shall be based on the best  
35 available scientific information for assessing the risk of catastrophic  
36 wildfire frequency, severity, and loss.~~

37 ~~(b) The projected losses derived from the catastrophe model  
38 shall meet all applicable statutory standards.~~

39 ~~(c) The complex catastrophe model shall consider both  
40 parcel-level mitigation and regional mitigation.~~

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— 11 — AB 2167

1 10109.5. (a) An insurer that submits an IMAP filing pursuant  
2 to this chapter shall receive an expedited review of its rate filing  
3 if either of the following conditions are met:

4 (1) The insurer uses an actuarial assumption for trend and loss  
5 development that is at the midpoint or less of rate impacts, and  
6 does not otherwise change any other aspect of its rate filing from  
7 its previous department approved rate.

8 (2) The insurer files for a rate increase based solely on increased  
9 reinsurance costs, subject to the requirements of Section 10109.6,  
10 and does not otherwise change any other aspect of its rate filing  
11 from its previous department approved rate.

12 (b) The time period for the expedited rate review shall not  
13 exceed 120 days, and the department shall not request that the  
14 insurer waive the 120-day requirement.

15 (c) If the department does not approve the filing within the 120  
16 days, the IMAP filing is automatically withdrawn and the insurer  
17 may continue with its previously approved rate and the insurer  
18 retains the ability to select risks without meeting the requirements  
19 of subdivision (b) of Section 10109.1.

20 (d) Notwithstanding subdivision (c), if an insurer submits an  
21 IMAP filing to amend a rate level approved in a previous IMAP  
22 filing, and the department does not approve the filing within the  
23 120 days, the insurer's IMAP commitments, including the  
24 ~~commitments~~ *commitment* required by subdivision (b) of Section  
25 10109.1, shall be suspended until the department and the insurer  
26 reach agreement on the filing.

27 10109.6. If a rate requested as part of an IMAP filing includes  
28 the net costs of reinsurance, including internal or external  
29 reinsurance, the reinsurance agreement shall be entered into in  
30 good faith in an arm's length transaction and at fair market value  
31 for the coverage provided. The reinsurance shall meet the  
32 department's statement credit requirements.

33 10109.7. If an insurer submits an IMAP filing pursuant to this  
34 chapter and the department or an intervener objects to an issue  
35 other than the rate calculation, then the expedited IMAP rate filing  
36 shall be processed separately from the contested issue so that the  
37 contested issue does not delay the expedited rate filing. If, based  
38 on the contested issue, the department orders a nonconsensual  
39 change to the IMAP, the insurer's IMAP requirements shall be

1 suspended until the department and the insurer agree upon revised  
2 terms for the IMAP.

3 ~~10109.8. On or before January 1, 2023, the Office of Planning  
4 and Research shall issue a report outlining the effectiveness of the  
5 IMAP program that includes, but is not limited to, all of the  
6 following:~~

7 ~~(a) An analysis of whether the IMAP program achieved average  
8 admitted market rates lower than the California FAIR Plan plus  
9 difference in condition policies.~~

10 ~~(b) An analysis of the overall progress of the IMAP program  
11 towards achieving market penetration goals in IMAP counties.  
12 This data shall be reported in aggregate.~~

13 ~~(c) Recommendations for continued improvements to the IMAP  
14 program.~~

15 *SEC. 3. The provisions of this act are not severable. If any  
16 provision of this act or its application is held invalid, all other  
17 provisions of this act shall also be held invalid.*

18 *SEC. 4. This act shall become operative only if Senate Bill 292  
19 of the 2019–20 Regular Session is enacted and becomes effective  
20 on or before January 1, 2021.*

○

AMENDED IN ASSEMBLY MAY 4, 2020

AMENDED IN ASSEMBLY JUNE 17, 2019

**SENATE BILL No. 292**

**Introduced by Senator Rubio**

*(Principal coauthor: Assembly Member Daly)*

***(Coauthor: Senator Jones)***

*(Coauthors: Assembly Members Cooley, Mayes, and Medina)*

February 14, 2019

An act to add ~~Division 6 (commencing with Section 17000) to the Insurance Code, relating to disaster mitigation, and making an appropriation therefor. Sections 10109.05, 10109.07, 10109.2, 10109.4, and 10109.8 to, and to add Article 2 (commencing with Section 10109.10) to Chapter 12 of Part 1 of Division 2 of, the Insurance Code, relating to insurance.~~

legislative counsel's digest

SB 292, as amended, Rubio. ~~Prepared California Disaster Mitigation Fund. Wildfire risk modeling and mitigation.~~

*The Insurance Rate Reduction and Reform Act of 1988, an initiative measure enacted by Proposition 103, as approved by the voters at the November 8, 1988, statewide general election, prohibits specified insurance rates from being approved or remaining in effect that are excessive, inadequate, unfairly discriminatory, or otherwise in violation of the act. The act requires an insurer that wishes to change a rate to file a complete rate application with the Insurance Commissioner and deems the application approved 60 days after public notice of the application unless certain events occur, including that a consumer requests a hearing, or the commissioner determines to hold a hearing.*

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*The act requires hearings to be conducted pursuant to specified provisions of law governing administrative hearings.*

*Under existing law, the California FAIR Plan Association is a joint reinsurance association in which all insurers licensed to write basic property insurance participate in administering a program for the equitable apportionment of basic property insurance for persons who are unable to obtain that coverage through normal channels.*

*This bill would require the association, on or before January 31 and July 31 of each year, to submit a report to the commissioner that lists certain counties, according to specified population thresholds, in which the number of new residential property insurance policies issued by the FAIR Plan during the prior 6 months equals a certain percentage of the number of single family residences in that county. The bill would require a county listed on the report to be designated*

by the department as an insurance market protection (IMAP) eligible county under the IMAP program that would be established if AB 2167 of the 2019–20 Regular Session is enacted. The bill would authorize an insurer to submit an IMAP filing to the department for residential property insurance policies issued in an IMAP eligible county and would require the IMAP filing to set forth specified mitigation standards. The bill would require the Office of Planning and Research, on or before, January 1, 2023, to issue a report outlining the effectiveness of the IMAP program.

This bill would state the intent of the Legislature to establish a commission in state government consisting of the Insurance Commissioner, the State Fire Marshall, the Executive Director of the California Building Standards, and the Director of Emergency Services to, among other things, convene stakeholders to develop regionally specific community hardening standards that have the propensity for reducing loss due to wildfires. The bill would create the Catastrophic Modeling Advisory Committee to be chaired jointly by the Insurance Commissioner and the Director of Emergency Services, or their designees. The bill would prescribe the membership of the advisory committee and would require the advisory committee to, among other things, deliver to the Office of Emergency Services, on or before July 1, 2024, a comprehensive report detailing a plan for the Office of Emergency Services to, upon appropriation by the Legislature, establish and operate a public catastrophic loss model.

The bill would provide that its provisions are not severable.

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### — 3 — SB 292

The bill would make its operation contingent on the enactment of AB 2167 of the 2019–20 Regular Session.

~~Existing law establishes the Department of Insurance, headed by the Insurance Commissioner, which regulates insurers and insurance practices. Existing law establishes various classes of insurance, including, among others, fire and automobile insurance. Other existing law establishes various grant programs aimed at funding disaster mitigation activities, including a local assistance grant program for fire prevention administered by the Department of Forestry and Fire Protection, the Earthquake Brace and Bolt program administered by the California Residential Mitigation Program, a joint powers authority comprised of the California Earthquake Authority and the Office of Emergency Services, and specified flood prevention programs administered by the Department of Water Resources.~~

~~This bill would create the Prepared California Disaster Mitigation Board in state government comprised of specified state officers or their designees and appointed members of the public, as specified. The bill would also establish the Prepared California Disaster Mitigation Program to be administered by the board to award grants to homeowners for fire-related disaster mitigation activities, as specified.~~

~~The bill would create the Prepared California Disaster Mitigation Fund, as a continuously appropriated fund, for purposes of disaster mitigation. The bill would impose a \$12 annual assessment on all residential property insurance policies, a \$6 per vehicle annual assessment on all private passenger and commercial automobile insurance policies, and an annual assessment of 1% of the annual premium on all commercial insurance policies covering physical property damage or business interruption. The bill would require the assessments to be collected from policyholders by insurers and remitted to the department for deposit into the fund. By creating a continuously appropriated fund, the bill would make an appropriation.~~

~~The bill would require the board to annually distribute money from the fund, as it deems appropriate, based on the disaster mitigation needs of the state to specified state agencies, including at least 20% each to the Department of Forestry and Fire Protection for purposes of a local assistance grant program for fire protection activities, to the California Earthquake Authority for purposes of awarding grants pursuant to the Earthquake Brace and Bolt program, to the Department of Water Resources for purposes of specified flood control programs, and to the board to be awarded pursuant to the Prepared California Disaster~~

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~~Mitigation Program for purposes of grants to homeowners for fire-related disaster mitigation purposes. The bill would require the Department of Forestry and Fire Protection, the California Earthquake Authority, and the Department of Water Resources to report specified information to the board relating to the types of mitigation activities funded and information sufficient to allow the board to study mitigation effectiveness, as specified.~~

~~The bill would require the board to prepare a report to be submitted to the Legislature on or before January 1, 2021, and annually thereafter, that includes, among other things, a summary of the mitigation measures funded and an analysis of the effectiveness of those mitigation measures in preventing losses from wildfires, earthquakes, and floods, as specified. The bill would also require the board to prepare and submit a report to the Legislature on or before January 1, 2024, that contains recommendations for model homeowners insurance discounts based on the risk mitigation measures that the board has determined to reduce loss.~~

~~Vote:  $\frac{2}{3}$  majority. Appropriation: yes-no. Fiscal committee: yes.  
State-mandated local program: no.~~

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

- 3     SECTION 1. (a) *The Legislature finds and declares all of the*  
4     *following:*  
5     (1) *Climate change has created a new reality in California.*

6 *Fifteen of the 20 most destructive wildfires in the state's history*  
7 *have occurred since 2000 and 10 of the most destructive fires have*  
8 *occurred since 2015. More people died from wildfires in 2017 and*  
9 *2018 than in the last 10 years combined.*

10 (A) *Igniting November 8, 2018, the Camp Fire burned for 17*  
11 *days, killed at least 85 people, and destroyed over 18,800*  
12 *structures. It is not only the most expensive wildfire in United*  
13 *States history, but was the most expensive natural disaster*  
14 *worldwide in 2018. Insured losses reached \$12.5 billion, while*  
15 *total losses were \$16.5 billion.*

16 (B) *Also igniting November 8, 2018, the Woolsey Fire burned*  
17 *for 14 days, killed three people, and destroyed over 1,600*  
18 *buildings. Insured losses are estimated at \$3 billion to \$5 billion*  
19 *of the \$6 billion in total property losses.*

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37 (C) *Igniting July 23, 2018, the Carr Fire burned for 37 days,*  
38 *killed eight people, including three firefighters, and destroyed over*  
39 *1,600 structures. The fire caused over \$1.5 billion in property*  
40 *damage.*

41 (D) *Igniting December 4, 2017, the Thomas Fire burned for 39*  
42 *days, killed 23 people, including one firefighter and 21 people*  
43 *from a resulting mudslide, and destroyed over 1,000 structures.*  
44 *The fire caused over \$2.2 billion in damages.*

45 (E) *Igniting October 8, 2017, the Tubbs Fire burned for 12 days,*  
46 *killed 22 people, and destroyed over 5,600 structures. Insured*  
47 *losses are estimated to be between \$7.5 billion and \$9.5 billion.*

48 (F) *Igniting October 8, 2017, the Atlas Fire burned for 12 days,*  
49 *destroyed 25,000 acres, and destroyed over 700 buildings. Insured*  
50 *losses are estimated to be between \$2.5 billion and \$4.5 billion.*

51 (G) *Burning for over three months in 2018, a less costly seventh*  
52 *fire, the Mendocino Complex Fire, became the largest recorded*  
53 *fire in state history when it consumed over 459,000 acres, more*  
54 *than the previous largest fire, the Thomas Fire, in 2017.*

55 (2) *Fire season in California has changed. In the western United*  
56 *States, the length of the fire season is over 80 days longer than it*  
57 *was in the 1970s. According to research from the University of*  
58 *California, Los Angeles, residents may no longer expect fire season*  
59 *to end in September. Instead, the onset of seasonal rain can be*  
60 *delayed into October or even November. These longer periods*  
61 *without rain, combined with the well-known, heavy wind patterns*  
62 *of autumn, have created increased likelihood of uncontrollable,*  
63 *severe fires that endanger life and property. The Camp Fire in*  
64 *Paradise is an example of a fire that started after the end of the*  
65 *traditional fire season.*

66 (3) *The impact of catastrophic fires is multifaceted. While the*  
67 *governmental costs of fire response and suppression are*  
68 *significant, research from Headwaters Economics indicates those*  
69 *costs are less than 10 percent of the total costs. Combined with*



70 *suppression expenses, other short-term costs, including evacuation*  
 71 *and aid relief, road stabilization, and home and property loss only*  
 72 *represent 35 percent of the total wildfire-related costs. Longer*  
 73 *term costs, including loss of property value, tax revenue, and*  
 74 *business revenue, as well as landscape rehabilitation,*  
 75 *infrastructure repair, loss of ecosystem services, and human*  
 76 *casualties represent the remaining 65 percent.*

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12 (4) *According to a Department of Insurance 2018 report on the*  
 13 *availability and affordability of wildfire coverage, major insurers*  
 14 *are pulling back from writing new policies or renewing policies*  
 15 *in the wildland-urban interface (WUI) fire areas. Additionally,*  
 16 *premiums are increasing in the WUI, and most insurers do not*  
 17 *take into consideration wildfire mitigation conducted by the*  
 18 *homeowner or the community. This is in part because no single*  
 19 *insurer has loss experience in the WUI to validate the rates and*  
 20 *premiums charged for each wild fire risk model score. The*  
 21 *department's report further states that a credible database for*  
 22 *wildfire loss experience in the WUI is needed in order for insurers*  
 23 *to use rating plans that impact rates in the WUI and suggests that*  
 24 *the Legislature should create a framework within which insurers*  
 25 *offer a mitigation premium credit for property owners that conduct*  
 26 *proper mitigation.*

27 (5) *The National Institute of Building Sciences studied 23 years*  
 28 *of federally funded mitigation grants provided by the Federal*  
 29 *Emergency Management Agency (FEMA), the United States*  
 30 *Economic Development Administration, and the United States*  
 31 *Department of Housing and Urban Development, and found that*  
 32 *hazard mitigation funding saves \$6 in future disaster costs for*  
 33 *every \$1 invested. Further, the study found that designing buildings*  
 34 *to meet the 2018 International Residential Code and 2018*  
 35 *International Building Code would provide a national benefit of*  
 36 *\$11 for every \$1 of investment when compared to 1990-era building*  
 37 *codes and National Flood Insurance Program requirements.*

38 (6) *Studying, developing, and incentivizing homeowners to*  
 39 *actively participate in, actuarially sound wildfire mitigation*  
 40 *measures is therefore a fiscally prudent policy with the potential*  
 41 *to save lives and prevent billions of dollars in future losses from*  
 42 *occurring. A regularly updated and secure central database of*  
 43 *publicly held housing infrastructure information, deployed in*  
 44 *support of a public catastrophic loss model, has the potential to*  
 45 *significantly enhance statewide disaster planning and response*  
 46 *efforts, as well as quantify the benefit of homeowners' mitigation*  
 47 *efforts. In order to accomplish this goal, it is important for the*  
 48 *state to partner with insurers, insurance research organizations,*  
 49 *and local agencies to develop easily and uniformly enforced*  
 50 *defensible space practices and measurable mitigation efforts for*

51 *future study.*

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41 (7) *Research shows that homeowners' risk reduction behaviors*  
 42 *are influenced by the perceived effectiveness of the activities and*  
 43 *their perceived ability to complete them. Public outreach,*  
 44 *information sharing, and a communitywide collaborative process*  
 45 *on wildfire protection planning have been found to build trust*  
 46 *among residents and local fire agencies. It is the intent of the*  
 47 *Legislature to partner with local agencies throughout California's*  
 48 *diverse wildfire risk regions in support of collecting regionally*  
 49 *specific housing infrastructure information in support of developing*  
 50 *regionally specific loss modeling.*

51 (8) *Residential property insurance provides essential financial*  
 52 *security for California residents for both short-term and long-term*  
 53 *costs. Insurance supports temporary needs for housing and*  
 54 *transportation for fire victims, intermediate needs for debris and*  
 55 *hazardous materials removal from fire-affected properties, and*  
 56 *long-term rebuilding of structures and replacement of personal*  
 57 *property. There is no governmental program that provides similar*  
 58 *comprehensive assistance for California residents and it is,*  
 59 *therefore, vital for the State of California to ensure the existence*  
 60 *of a vibrant residential property insurance marketplace capable*  
 61 *of serving all communities.*

62 (9) *Strains in the residential property insurance system are*  
 63 *becoming evident. As the Senate Committee on Insurance noted*  
 64 *in its 2019 informational hearing on homeowners' insurance*  
 65 *availability and affordability, California policyholders have*  
 66 *"enjoyed a long spell of low insurance rates" but "climate change,*  
 67 *drought, population movement, and other factors may be changing*  
 68 *the fundamental nature of the homeowners' insurance market."*  
 69 *Analysis of countrywide data from the National Association of*  
 70 *Insurance Commissioners indicates that average homeowners'*  
 71 *insurance rates in California rank 32nd in the country and, when*  
 72 *adjusted for differences in regional costs, rank 49th in the country,*  
 73 *at less than one-half the cost for insurance in states exposed to*  
 74 *other natural disasters, including hurricanes.*

75 (10) *As part of a similar 2019 investigation of the homeowners'*  
 76 *insurance market, the Assembly Committee on Insurance noted*  
 77 *the acceleration of losses in this environment of relatively low*  
 78 *rates, finding that a "study of the homeowners' insurance market*  
 79 *released in 2018 as part of California's Fourth Climate Change*  
 80 *Assessment found that insured losses through 2017 wiped out the*

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35 *entire underwriting profit insurers earned since 2000. The 2018*  
 36 *fires continued with another round of enormous losses.” The*  
 37 *committee cautioned against a legislative response that “increases*  
 38 *the likelihood of any policy change to generate unintended*  
 39 *consequences” and guarding against the great risk that regulating*  
 40 *some, but not all, of the important aspects of insurance could*  
 41 *“significantly disrupt a homeowners’ insurance market that is*  
 42 *effectively serving a great majority of California homeowners.”*

43 *(11) The final report of the Governor’s Commission on*  
 44 *Catastrophic Wildfire Cost and Recovery attempted to reconcile*  
 45 *the various competing interests associated with insurance*  
 46 *availability, risk selection, and pricing. The commission noted that*  
 47 *“while insurance is still largely available, it will become*  
 48 *increasingly unavailable and/or unaffordable for many in the*  
 49 *wildland urban interface in California.” In attempting to*  
 50 *harmonize the various competing interests for California, the*  
 51 *commission recommended preserving risk-based insurance pricing,*  
 52 *while avoiding cross-subsidies of high-risk areas by low-risk areas,*  
 53 *as well as developing incentives for parcel and community level*  
 54 *loss mitigation efforts.*

55 *(b) Based upon this extensive investigation in both the legislative*  
 56 *and executive branches, the Legislature determines that a state*  
 57 *policy response is required to solve several issues simultaneously,*  
 58 *including all of the following:*

59 *(1) Ensuring insurance rates are adequate to avoid insurer*  
 60 *insolvencies and to permit insurers to operate in the state’s highest*  
 61 *risk areas, while imposing restrictions on rates above actuarially*  
 62 *justified levels.*

63 *(2) Reducing the number of residents that are required to rely*  
 64 *upon the California FAIR Plan, which the State of California*  
 65 *created to provide a market of last resort but which is a*  
 66 *catastrophic insurance pool at rate levels far higher than the*  
 67 *regular insurance market.*

68 *(3) Incentivizing insurers to seek cost-based rates in exchange*  
 69 *for assurances that they will serve high-risk communities at levels*  
 70 *similar to their statewide presence.*

71 *(4) Developing systems of accountability for individual and*  
 72 *community-based loss mitigation efforts.*

73 *(c) Recent wildfires have contributed to a surge of residential*  
 74 *property insurance policies being issued by the FAIR Plan in*

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41 *numbers approaching that seen after the Northridge earthquake.*  
 42 *In order to monitor the surges in new FAIR Plan policies and to*  
 43 *create a standard threshold to indicate when admitted market*  
 44 *residential property insurance availability in specified areas of*  
 45 *the state has declined, the Legislature determines that it is*  
 46 *necessary to do all of the following:*

47 (1) Create a standard threshold for residential property  
48 insurance policies to qualify for the Insurance Market Action Plan  
49 (IMAP), established by this act, based on monitoring surges in  
50 FAIR Plan new business that indicate a contracting insurance  
51 market.

52 (2) Incentivize insurers to seek cost-based rates in exchange  
53 for assurances that they will maintain an adequate presence in  
54 specified high-risk areas of the state, and evaluate the effectiveness  
55 of these methods at reducing reliance on the FAIR Plan in eligible  
56 areas, thereby maintaining an adequate supply of admitted market  
57 insurance at a price more affordable to most consumers than that  
58 offered by the FAIR Plan.

59 (3) Establish a scientifically advanced probabilistic wildfire  
60 loss model for the purpose of providing property and casualty  
61 insurers access to a state of the art public tool that is accessible  
62 for comparison, evaluation, and analysis of modeled risk  
63 assumptions used in support of IMAP rate filings. In this regard,  
64 it is the intent of the Legislature to convene an advisory committee  
65 of public and private stakeholders to design standards for the use  
66 of probabilistic wildfire loss models in residential property  
67 insurance rate development, and to establish a database and  
68 computer model for that purpose.

69 (4) The Legislature finds these measures are necessary to limit  
70 the number of insurer-initiated nonrenewals that occur in response  
71 to changes in the understanding of wildfire risk and to limit  
72 homeowners' reliance on the California FAIR Plan.

73 (A) The Legislature finds that such a model is an objective public  
74 tool that will promote precision in loss projection, and that  
75 decreasing the uncertainty of future losses in this state is necessary  
76 to stabilize large price swings in the residential property insurance  
77 market.

78 (B) The Legislature further intends that such a model be  
79 available to assist state and local governments incorporate a

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7 modeled understanding of the costs of wildfire risk in their planning  
8 processes.

9 SEC. 2. Section 10109.05 is added to the Insurance Code, to  
10 read:

11 10109.05. (a) The California FAIR Plan Association shall, on  
12 a biannual basis, submit a report to the commissioner that lists  
13 the counties that meet the following criteria:

14 (1) The county has a population of 200,000 or fewer residents  
15 and the number of new residential property insurance policies  
16 issued by the FAIR Plan during the prior six months equals 1  
17 percent or more of the number of single family residences in that  
18 county.

19 (2) The county has a population of 200,001 to 400,000, inclusive,  
20 residents and the number of new residential property insurance

21 policies issued by the FAIR Plan during the prior six months equals  
22 0.75 percent or more of the number of single family residences in  
23 that county.

24 (3) The county has a population of 400,001 to 800,000, inclusive,  
25 residents and the number of new residential property insurance  
26 policies issued by the FAIR Plan during the prior six months equals  
27 0.35 percent or more of the number of single family residences in  
28 that county.

29 (4) The county has a population of more than 800,000 residents  
30 and the number of new residential property insurance policies  
31 issued by the FAIR Plan during the prior six months equals 0.15  
32 percent or more of the number of single family residences in that  
33 county.

34 (b) For purposes of this section, county population and single  
35 family residence counts shall be determined by the most recently  
36 available estimates published by the Department of Finance.

37 (c) (1) The biannual reports submitted by the California FAIR  
38 Plan Association pursuant to subdivision (a) shall be delivered to  
39 the commissioner on or before January 31 and July 31 of each  
40 year and shall be based on the sum of the new FAIR Plan  
41 residential property insurance policies issued between July 1 and  
42 December 31 of the prior year for the January 31 report and on  
43 the sum of the new FAIR Plan residential insurance policies issued  
44 between January 1 and June 30, inclusive, of that same year for  
45 the July 31 report.

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21 (2) Notwithstanding subdivision (a) and paragraph (1), the  
22 initial report due on or before January 31, 2021, shall include the  
23 information required by subdivision (a) for the calendar years  
24 2019 and 2020, organized in the same six-month time periods  
25 described in paragraph (1), and using the information published  
26 by the Department of Finance for those years.

27 SEC. 3. Section 10109.07 is added to the Insurance Code, to  
28 read:

29 10109.07. (a) A county that is listed on a report submitted to  
30 the commissioner pursuant to Section 10109.05 shall be designated  
31 by the department as an IMAP eligible county. The department's  
32 first designation shall include all the counties listed on the initial  
33 report required pursuant to paragraph (2) of subdivision (c) of  
14 Section 10109.05.

36 (b) An insurer may submit an IMAP filing to the department for  
37 residential property insurance policies issued in an IMAP eligible  
38 county.

39 (c) (1) If a county is originally designated as an IMAP eligible  
40 county at the time an insurer submits and receives approval for  
41 an IMAP filing in that county, but the county is subsequently not  
42 designated as an IMAP eligible county, the insurer may continue  
43 to issue new residential property insurance policies under the

44 *IMAP rate in that county until the insurer files for a new rate in*  
 45 *that county or until two years after the date the county is no longer*  
 46 *designated by the department as an IMAP county, whichever occurs*  
 47 *first.*

48 *(2) Notwithstanding paragraph (1), if a county for which an*  
 49 *insurer has submitted an IMAP filing is no longer designated as*  
 50 *an IMAP eligible county, the insurer may continue to renew*  
 51 *policies with existing insureds in that county at the IMAP rate.*

52 *SEC. 4. Section 10109.2 is added to the Insurance Code, to*  
 53 *read:*

54 *10109.2. (a) An IMAP filing shall set forth community and*  
 55 *parcel-level mitigation standards, along with any necessary*  
 56 *procedures for verifying mitigation activities, including any*  
 57 *required governmental or third-party certifications.*

58 *(b) The commissioner may periodically connect IMAP eligible*  
 59 *county representatives with representatives from IMAP*  
 60 *participating insurers and third-party fire protection or*  
 61 *certification associations to promote collaboration between local*

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41 *governments and industry on local policies for IMAP filings made*  
 42 *pursuant to this article.*

43 *SEC. 5. Section 10109.4 is added to the Insurance Code, to*  
 44 *read:*

45 *10109.4. A rate requested as part of an IMAP filing may be*  
 46 *based on a complex catastrophe model, as follows:*

47 *(a) The complex catastrophe model shall be based on the best*  
 48 *available scientific information for assessing the risk of*  
 49 *catastrophic wildfire frequency, severity, and loss.*

50 *(b) The projected losses derived from the catastrophe model*  
 51 *shall meet all applicable statutory standards.*

52 *(c) The complex catastrophe model shall consider both*  
 53 *parcel-level mitigation and regional mitigation.*

54 *SEC. 6. Section 10109.8 is added to the Insurance Code, to*  
 55 *read:*

56 *10109.8. On or before January 1, 2023, the Office of Planning*  
 57 *and Research shall issue a report outlining the effectiveness of the*  
 58 *IMAP program that includes, but is not limited to, all of the*  
 59 *following:*

60 *(a) An analysis of whether the IMAP program achieved average*  
 61 *admitted market rates lower than the California FAIR Plan plus*  
 62 *difference in condition policies.*

63 *(b) An analysis of the overall progress of the IMAP program*  
 64 *towards achieving market penetration goals in IMAP counties and*  
 65 *the impact on FAIR Plan enrollments. This data shall be reported*  
 66 *in aggregate.*

67 *(c) Recommendations for continued improvements to the IMAP*  
 68 *program.*

69 SEC. 7. Article 2 (commencing with Section 10109.10) is added  
70 to Chapter 12 of Part 1 of Division 2 of the Insurance Code, to  
71 read:

32  
33 Article 2. Catastrophic Loss Modeling

34  
9 10109.10 (a) It is the intent of the Legislature to establish in  
10 state government a commission that shall consist of the following  
11 members, or their designees:

- 12 (1) The Insurance Commissioner.
- 13 (2) The State Fire Marshall.

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41 (3) The Executive Director of the California Building Standards  
42 Commission.

43 (4) The Director of Emergency Services.

44 (b) The commission shall annually elect from its membership,  
45 a chairperson and a vice chairperson.

46 10109.11. It is the intent of the Legislature that the commission  
47 established pursuant to Section 10109.10 be created for the  
48 following purposes:

49 (a) To convene stakeholders from fire protection districts, the  
50 insurance industry, the building trades industry, planning  
51 associations, cities, and counties to develop regionally specific  
52 community hardening standards that have the propensity for  
53 reducing loss due to wildfires.

54 (b) To develop fire prevention standards for individual home  
55 hardening activities specific to wildfire risks that differentiate  
56 between, at a minimum, ember flow resistance and radiant heat  
57 resistance.

58 (c) To establish a central database on housing infrastructure  
59 data specific to wildfire risk for use by a public catastrophic loss  
60 model.

61 (d) Develop a standard for the uniform collection and secure  
62 storage of housing infrastructure data relevant to insurable risks  
63 and necessary to run a sophisticated loss model.

64 10109.12. (a) The Catastrophic Modeling Advisory Committee  
65 is hereby created, to be chaired jointly by the Insurance  
66 Commissioner and the Director of Emergency Services, or their  
67 designees. If the commission described in Section 10109.10 is  
68 created, the advisory committee shall be under the direction of the  
69 commission.

70 (b) In addition to the Insurance Commissioner and the Director  
71 of Emergency Services, the advisory committee shall consist of the  
72 following members:

73 (1) Four members appointed by the Governor, as follows:

74 (A) An actuary from the insurance industry.

75 (B) A representative from an insurance research organization  
76 with expertise in wildfire risk modeling.

- 77 (C) Two full-time faculty members from a California public  
78 university with expertise in the following fields:  
79 (i) Statistics.  
80 (ii) Computer system design.

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- 31 (2) Two full-time faculty members from the University of  
32 California, to be appointed by the Senate Committee on Rules from  
33 a list provided by the Regents of the University of California, with  
34 expertise in the following fields:  
35 (A) Wildfire modeling.  
36 (B) Regional modeling.  
37 (3) Two full-time faculty members from the University of  
38 California, to be appointed by the Speaker of the Assembly from  
39 a list provided by the Regents of the University of California, with  
40 expertise in the following fields:  
41 (A) Fire weather studies.  
42 (B) Wind modeling.  
43 (c) (1) The initial appointments for the members described in  
44 paragraphs (1) to (3), inclusive, of subdivision (b) shall be made  
45 on or before July 1, 2021.  
46 (2) The terms for the members appointed pursuant to paragraph  
47 (1) of subdivision (b) shall be for a period of three years.  
48 (3) The terms for the members appointed pursuant to paragraphs  
49 (2) and (3) of subdivision (b) shall terminate on the date the report  
50 is issued pursuant to Section 10109.14.  
51 10109.13. The advisory committee shall meet at least quarterly  
52 and shall do all of the following:  
53 (a) Gather existing sources of publicly available housing  
54 infrastructure data relevant to wildfire loss projection and deposit  
55 data in a central database.  
56 (b) Compile for study the existing wildfire modeling efforts and  
57 capabilities of the University of California, and other public and  
58 private universities and research organizations.  
59 (c) Develop a comprehensive plan for the establishment of a  
60 public catastrophic wildfire loss model pursuant to Section  
31 10109.14.  
40 10109.14. (a) On or before July 1, 2024, the advisory  
41 committee shall deliver to the Office of Emergency Services, a  
42 comprehensive report detailing a plan for the Office of Emergency  
43 Services to, upon appropriation by the Legislature, establish and  
44 operate a public catastrophic loss model.  
45 (b) The comprehensive report shall do all of the following:  
46 (1) Adopt the best scientifically available actuarial methods,  
47 principles, standards, models, and output ranges that have the

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5 potential for improving the accuracy, precision, or reliability of  
6 wildfire loss projections used by insurers.

7 (2) Review available public housing infrastructure data, and  
8 identify other data necessary to operate a public wildfire loss  
9 model.

10 (3) Recommend a standard for the uniform collection and secure  
11 storage of housing infrastructure data relevant to insurable risks.

12 (4) Develop standards for model inputs, outputs, operation, and  
13 review of wildfire loss models.

14 (5) Recommend additional public research needed in wildfire  
15 loss modeling methodologies to improve loss projection precision  
16 or that are necessary to complete a public catastrophic loss model.

17 (6) Identify the housing infrastructure data needed to create  
18 actuarially sound methodologies for incorporating public and  
19 privately collected data on defensible space and home hardening  
20 methods into a public catastrophic loss model.

21 (7) Discuss potential interfaces for residential property insurers  
22 to access the public model for comparison of assumptions, factors,  
23 and detailed loss results, and for other analytical purposes and  
24 review sufficient to evaluate the modeling used in support of rate  
25 filings.

26 (A) This discussion shall consider strategies for public model  
27 review of third-party models used in rate filings and shall consider  
28 that access to the public model is intended to support the use of  
29 probabilistic loss modeling in IMAP rate filings made pursuant  
30 to Article 1 (commencing with Section 10109).

31 (B) A proposed public model review shall include a process to  
32 determine whether insurer assumptions meet or fail the public  
33 catastrophic wildfire loss model standards. Public model review  
34 is intended to ensure that to the greatest extent possible, an  
35 insurer's findings, data, actuarial methods, principles, standards,  
36 models, or output ranges relied upon to project losses are based  
37 on the best available science.

38 (C) It is the intent of the Legislature to protect from public  
39 disclosure proprietary third-party or in-house modeling data  
40 submitted by an insurer for evaluation by or comparison with the  
41 public model.

42 (8) Consider strategies for using the public model to help  
43 insurers control concentration risk in a wildland urban interface  
44 area. The strategies shall include a monitored evaluation process

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8 for the assumptions used by an insurer given different modeled  
9 predictions for the insurer's expected average annual loss,  
10 probable maximum loss, maximum possible loss, and other metrics.

11 10109.15. The members of the advisory committee shall not

12 receive compensation, but shall receive per diem pursuant to  
13 Section 11564.5 of the Government Code, and reimbursement for  
14 actual and necessary expenses incurred in the performance of  
15 membership duties.

16 SEC. 8. The provisions of this act are not severable. If any  
17 provision of this act or its application is held invalid, all other  
18 provisions of this act shall also be held invalid.

19 SEC. 9. This act shall become operative only if Assembly Bill  
20 2167 of the 2019–20 Regular Session is enacted and becomes  
21 effective on or before January 1, 2021.

22 SECTION 1. (a) The Legislature finds and declares all of the  
23 following:

24 (1) California has over \$1 trillion in economic loss risk exposure  
25 from future catastrophic earthquakes, floods, and wildfires.

26 (2) Two thirds of the earthquake risk in the United States resides  
27 in California, and California has a long history of damaging and  
28 lethal earthquakes.

29 (A) In 1994, the magnitude 6.7 Northridge earthquake killed  
30 60 people, injured 9,000 more people, and displaced 125,000  
31 people. The Northridge earthquake caused \$49 billion in economic  
32 damage and \$25 billion in property damage to over 80,000  
33 buildings. At the time, it was the costliest natural disaster in United  
34 States history, but only \$15.3 billion of the damaged was insured.

35 (B) In 1989, the magnitude 6.9 Loma Prieta earthquake killed  
36 63 people, injured more than 3,700 people, displaced 3,000 people,  
37 damaged or destroyed 12,000 homes, and caused more than \$6  
38 billion in property damage.

39 (C) In 1971, the magnitude 6.6 Sierra Madre earthquake killed  
40 58 people, damaged 30,000 homes, and brought down parts of the  
41 Interstate 5 and Interstate 210 freeways.

42 (D) In 1906, the magnitude 7.9 San Francisco earthquake killed  
43 3,000 people, left 250,000 people homeless, and started a fire that  
44 destroyed 28,000 buildings over 500 city blocks.

45 (E) According to the latest Uniform California Earthquake  
46 Rupture Forecast, there is a 99 percent chance that an earthquake  
47 of a magnitude 6.7 or greater will occur in California in the next

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41 30 years, as well as a 90 percent chance of a magnitude 7.0 or  
42 greater earthquake and a 46 percent chance of a magnitude 7.5 or  
43 greater earthquake occurring in the same period. According to the  
44 United States Geological Survey, a magnitude 7.0 earthquake on  
45 the Hayward Fault could displace 400,000 people and a similar  
46 earthquake on the San Andreas Fault could displace 250,000  
47 people. A 7.8 magnitude earthquake could cause as much as \$213  
48 billion in economic damages to the state.

49 (F) Prior to the 1994 Northridge earthquake, the insurance  
50 industry dramatically underestimated the potential damage from  
51 such moderate earthquakes. After experiencing a record 1,192

52 percent loss ratio on earthquake lines due to the Northridge  
53 earthquake, many insurers considered leaving California. The  
54 Legislature created the California Earthquake Authority (CEA) to  
55 offer earthquake insurance in California and stabilize the  
56 homeowners insurance market. Over 1,000,000 Californians now  
57 hold a CEA policy, representing over 80 percent of the California  
58 earthquake insurance market, but only 12 percent of the state's  
59 homeowners. Making CEA policies more affordable and attainable  
60 to all Californians residing in high earthquake risk areas of the  
61 state is critical to the state's earthquake preparedness.

62 (3) Flooding occurs in all parts of California. About 90 percent  
63 of floods are riverine. The state has over 7 million inhabitants and  
64 over \$580 billion in assets situated within 500-year flood plains.  
65 Nearly one-half of the people living in California are concentrated  
66 in the south coast region. Over the life of a 30-year mortgage, the  
67 true risk of living in a 500-year flood plain amounts to a 6 percent  
68 chance of flooding.

69 (A) Approximately 35 percent of agricultural land in the state  
70 is located in flood plains, with \$7 billion in crop value located in  
71 500-year flood plain zones.

72 (B) Continuation or acceleration of sea level rise, in combination  
73 with climate change driven precipitation changes, will likely result  
74 in an increase in flood events, especially in the central valley.

75 (C) In 1997, 48 counties were declared disaster areas due to a  
76 series of Pineapple Express storms overwhelming levees in the  
77 Sacramento and San Joaquin River basins. The major flood event  
78 inundated 300 square miles. Over 23,000 structures were damaged,  
79 nine people were killed, and 120,000 people were evacuated.  
80 Damages amounted to \$2 billion.

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41 (D) In 1995, a major flood event affected nearly every part of  
42 the state. Twenty-eight people were killed and the flood caused  
43 \$1.8 billion in damages.

44 (E) In 1986, a major flood event occurred when a nine-day  
45 rainstorm caused several levee breaks, resulting in the inundation  
46 of four Delta islands. The Sierra Nevada recorded 1,000-year  
47 rainfalls, 50,000 people were evacuated, and 13 people were killed.  
48 The flood caused \$400 million in property damage.

49 (F) In 1955, a statewide disaster was declared when a storm  
50 caused a flood that killed 74 people and caused \$200 million in  
51 economic losses.

52 (G) In 1909, a 12,000-year rain event over the Feather River  
53 basin resulted in La Porte receiving 57.41 inches of rain over 20  
54 days. The flood resulted in an overhaul of planned statewide flood  
55 control designs.

56 (H) In 1862, a storm dumped 10 feet of rainfall in California  
57 over 43 days, causing immense flooding. Known as the "Great  
58 Flood of 1862," the flood washed away bridges and inundated

59 over 5,000 square miles of the Central Valley with up to 30 feet  
60 of water. The Great Flood of 1862 was a 1,000-year flood event.  
61 Models that project the impact of such a storm today, also known  
62 as an ARkStorm, suggest up to 1.5 million people could be  
63 displaced and the state could suffer \$725 billion in economic losses.

64 (I) The federal National Flood Insurance Program is \$25 billion  
65 in debt, and is heavily subsidized. Private market flood insurance  
66 exists, but accurate flood risk data is unavailable. According to a  
67 2017 United States Department of Homeland Security Office of  
68 Inspector General report, only 42 percent of the Federal Emergency  
69 Management Agency's (FEMA's) flood maps adequately identify  
70 the level of flood risk. These out-of-date maps interfere with price  
71 signals for insurance premiums and home prices, and do not  
72 adequately communicate the flood risk to would-be homebuyers  
73 or insurers.

74 (4) Over 2 million homes, or approximately 15 percent of  
75 California's housing stock, is at high or extreme risk from wildfires.  
76 California's total housing risk exposure to wildfire damage is \$249  
77 billion.

78 (A) The top 10 costliest wildfires in United States history have  
79 all occurred in California, and 6 of those occurred in 2017 and  
80 2018. More people died from wildfires in 2017 and 2018 than in

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40 the last 10 years combined. The 2017 and 2018 fires caused a  
41 combined \$24.8 billion in insurance claims, including \$21.6 billion  
42 in residential personal property claims, \$2.5 billion in commercial  
43 property claims, and approximately \$500,000 in auto claims.

44 (B) Igniting November 8, 2018, the Camp Fire burned for 17  
45 days, killed at least 85 people, and destroyed over 18,800  
46 structures. It is not only the most expensive wildfire in United  
47 States history, but was the most expensive natural disaster  
48 worldwide in 2018. Insured losses reached \$12.5 billion, while  
49 total losses were \$16.5 billion.

50 (C) Also igniting November 8, 2018, the Woolsey Fire burned  
51 for 14 days, killed three people, and destroyed over 1,600 buildings.  
52 Insured losses are estimated at \$3 billion to \$5 billion of the \$6  
53 billion in total property losses.

54 (D) Igniting July 23, 2018, the Carr Fire burned for 37 days,  
55 killed eight people, including three firefighters, and destroyed over  
56 1,600 structures. The fire caused over \$1.5 billion in property  
57 damage.

58 (E) Igniting December 4, 2017, the Thomas Fire burned for 39  
59 days, killed 23 people, including one firefighter and 21 people  
60 from a resulting mudslide, and destroyed over 1,000 structures.  
61 The fire caused over \$2.2 billion in damages.

62 (F) Igniting October 8, 2017, the Tubbs Fire burned for 12 days,  
63 killed 22 people, and destroyed over 5,600 structures. Insured  
64 losses are estimated to be between \$7.5 billion and \$9.5 billion.

65 (G) Igniting October 8, 2017, the Atlas Fire burned for 12 days,  
66 destroyed 25,000 acres, and destroyed over 700 buildings. Insured  
67 losses are estimated to be between \$2.5 billion and \$4.5 billion.

68 (H) Burning for over three months in 2018, a less costly seventh  
69 fire, the Mendocino Complex Fire, became the largest recorded  
70 fire in state history when it consumed over 459,000 acres, more  
71 than the previous largest fire, the Thomas Fire, in 2017.

72 (I) According to a Department of Insurance 2018 report on the  
73 availability and affordability of wildfire coverage, major insurers  
74 are pulling back from writing new policies or renewing policies  
75 in the wildland-urban interface (WUI) fire areas. Additionally,  
76 premiums are increasing in the WUI, and most insurers do not take  
77 into consideration wildfire mitigation conducted by the homeowner  
78 or the community. This is in part because no single insurer has  
79 loss experience in the WUI to validate the rates and premiums

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21 charged for each wild fire risk model score. The department's  
22 report further states that a credible database for wildfire loss  
23 experience in the WUI is needed in order for insurers to use rating  
24 plans that impact rates in the WUI and suggests that the Legislature  
25 should create a framework within which insurers offer a mitigation  
26 premium credit for property owners that conduct proper mitigation.

27 (5) Incentivizing homeowners to actively participate in  
28 mitigation measures is critical to statewide preparedness. Research  
29 shows that homeowners' risk reduction behaviors are influenced  
30 by the perceived effectiveness of the activities and their perceived  
31 ability to complete them. Public outreach, information sharing,  
32 and a communitywide collaborative process on wildfire protection  
33 planning have been found to build trust among residents and local  
34 fire agencies.

35 (6) The National Institute of Building Sciences studied 23 years  
36 of federally funded mitigation grants provided by FEMA, the  
37 United States Economic Development Administration, and the  
38 United States Department of Housing and Urban Development,  
39 and found that hazard mitigation funding saves \$6 in future disaster  
40 costs for every \$1 invested. Further, the study found that designing  
41 buildings to meet the 2018 International Residential Code and  
42 2018 International Building Code would provide a national benefit  
43 of \$11 for every \$1 of investment when compared to 1990-era  
44 building codes and National Flood Insurance Program  
45 requirements.

46 (b) It is, therefore, the intent of the Legislature to do all of the  
47 following:

48 (1) Establish an ongoing catastrophic risk mitigation fund to  
49 prepare California's local governments, homeowners, and small  
50 businesses for our top natural disaster risks: earthquakes, wildfires,  
51 and floods.

52 (2) Increase investment in the Department of Forestry and Fire

53 Protection’s (CAL FIRE’s) local assistance grant program for fire  
 54 protection, so that local governments may invest in equipment,  
 55 build fire lines, and launch community preparedness efforts.  
 56 (3) Increase investment in the California Earthquake Authority’s  
 57 Earthquake Brace and Bolt program, as well as design additional  
 58 retrofit programs, so that homeowners may affordably retrofit their  
 59 homes and prepare for the next earthquake.

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1 (4) Increase investment in the Department of Water Resources  
 2 flood control grant programs, so that local governments have the  
 3 resources to save their residents’ homes from floods.

4 (5) Increase investment in homeowners and small businesses  
 5 that perform mitigation on their property, by offering grants and  
 6 rebates for specific mitigation efforts, so that others may be  
 7 incentivized to follow their lead.

8 (6) Study the effectiveness of mitigation measures for the benefit  
 9 of homeowners and insurers by giving insurers a data driven tool  
 10 for the development of insurance premium credits and discounts  
 11 for specific mitigation measures.

12 SEC. 2. Division 6 (commencing with Section 17000) is added  
 13 to the Insurance Code, to read:

14  
 15 DIVISION 6. DISASTER MITIGATION 16

17 Chapter 1. Definitions 18

19 17000. For purposes of this division, “board” means the  
 20 Prepared California Disaster Mitigation Board.

21  
 22 Chapter 2. Prepared California Disaster Mitigation  
 23 Fund

24  
 25 17001. There is hereby created the Prepared California Disaster  
 26 Mitigation Fund within the State Treasury. Notwithstanding Section  
 27 13340 of the Government Code, moneys in the fund are  
 28 continuously appropriated without regard to fiscal year to the board  
 29 for the purposes specified in this division.

30 17002. (a) An annual assessment is hereby imposed on the  
 31 following insurance policies:

32 (1) A twelve-dollar (\$12) annual assessment on all residential  
 33 property insurance policies, including homeowner’s insurance,  
 34 fire insurance, earthquake insurance, and policies covering  
 35 condominiums and mobilehomes.

36 (2) A six-dollar (\$6) per vehicle annual assessment on all private  
 37 passenger and commercial automobile insurance policies.

38 (3) An annual assessment of 1 percent of the annual premium  
 39 on all commercial insurance policies covering physical property  
 40 damage or business interruption.

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1 ~~(b) The assessments shall be collected from policyholders by~~  
2 ~~insurers and remitted to the Department of Insurance for deposit~~  
3 ~~into the Prepared California Disaster Mitigation Fund.~~

4 ~~(e) (1) Assessments collected pursuant to this section are not~~  
5 ~~part of an insurer's rates or rating plan, are not premiums for any~~  
6 ~~purpose, and are not subject to premium taxes, fees, or~~  
7 ~~commissions.~~

8 ~~(2) The amount of the assessment shall be separately stated on~~  
9 ~~either a billing or policy declaration sent to an insured.~~

10  
11 ~~Chapter 3. Prepared Disaster Mitigation Program~~

12  
13 ~~17010. There is hereby created the Prepared California Disaster~~  
14 ~~Mitigation Board in state government.~~

15 ~~17011. (a) The board shall be comprised of the following~~  
16 ~~members:~~

17 ~~(1) The Insurance Commissioner or their designee.~~

18 ~~(2) The Director of Emergency Services or their designee.~~

19 ~~(3) The Director of Forestry and Fire Protection or their~~  
20 ~~designee.~~

21 ~~(4) The Director of Water Resources or their designee.~~

22 ~~(5) The Senate Committee on Rules shall appoint two members~~  
23 ~~to serve three year terms as follows:~~

24 ~~(A) One member of the public with experience in the insurance~~  
25 ~~industry.~~

26 ~~(B) One member of the public with experience in the risk~~  
27 ~~analytics industry.~~

28 ~~(6) The Speaker of the Assembly shall appoint two members~~  
29 ~~to serve three year terms as follows:~~

30 ~~(A) One member of the public with experience in the insurance~~  
31 ~~industry.~~

32 ~~(B) One member of the public with experience in fire science.~~

33 ~~(7) The Governor shall appoint four members to serve at the~~  
34 ~~pleasure of the Governor as follows:~~

35 ~~(A) One member of the public with experience in the insurance~~  
36 ~~industry.~~

37 ~~(B) One member of the public to represent insurance consumers.~~

38 ~~(C) One member of the public with expertise in earthquake~~  
39 ~~engineering.~~

40 ~~(D) One member of the public.~~

97

1 (b) The Governor shall appoint the chair of the board.

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2 ~~(e) The members of the board shall serve without compensation,~~  
 3 ~~but each of the public members shall be reimbursed for the~~  
 4 ~~member's actual and necessary expenses incurred in the~~  
 5 ~~performance of that member's duties.~~

6 ~~17012. (a) There is hereby established the Prepared California~~  
 7 ~~Disaster Mitigation Program to be administered by the board to~~  
 8 ~~award grants to homeowners for fire-related disaster mitigation~~  
 9 ~~activities.~~

10 ~~(b) The board shall develop, advertise, and offer to homeowners,~~  
 11 ~~mitigation grants and rebates designed to decrease risk of loss from~~  
 12 ~~wildfire or earthquake-caused fire, including any of the following:~~

13 ~~(1) Grants for installation or replacement of the following:~~

14 ~~(A) Fire-resistant roofing.~~

15 ~~(B) Fire-resistant siding.~~

16 ~~(C) Fire-resistant eaves or soffits.~~

17 ~~(D) Fire-resistant windows.~~

18 ~~(E) Exterior roof-mounted fire sprinklers.~~

19 ~~(2) Grants for the replacement of exterior deck wood with~~  
 20 ~~fire-retardant treated wood or other fire-safe materials.~~

21 ~~(3) Grants for the removal of hazardous trees within 30 feet of~~  
 22 ~~a home.~~

23 ~~(4) Rebates for the installation or replacement of the following:~~

24 ~~(A) Earthquake shutoff valves.~~

25 ~~(B) Exterior vent screens.~~

26 ~~(C) Weatherstripping or fire seal strips.~~

27 ~~(D) Trimming of hazardous trees within 100 feet of a home.~~

28 ~~(E) Rain gutter guards or rain gutters designed to prevent~~  
 29 ~~accumulation of debris.~~

30 ~~(5) Rebates for additional low-cost retrofits, as identified by the~~  
 31 ~~State Fire Marshal pursuant to subdivision (c) of Section 51189~~  
 32 ~~of the Government Code, that provide comprehensive site and~~  
 33 ~~structure fire risk reduction.~~

34 ~~(e) The board shall determine the amount of each grant or rebate~~  
 35 ~~to be offered as follows:~~

36 ~~(1) An amount up to 100 percent of the cost for mitigation~~  
 37 ~~projects estimated to cost one thousand dollars (\$1,000) or less.~~

38 ~~(2) An amount up to 50 percent of the cost of mitigation projects~~  
 39 ~~estimated to cost more than one thousand dollars (\$1,000), provided~~

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1 that no grant or rebate may be awarded for more than five  
 2 thousand dollars (\$5,000).

3 ~~(d) The board shall collect data from grant and rebate recipients~~  
 4 ~~on the types and locations of mitigation efforts undertaken in order~~  
 5 ~~to confirm completion of the mitigation projects, and may collect~~  
 6 ~~data relating to any other factors necessary to allow the board to~~  
 7 ~~conduct a longitudinal study of the effectiveness of the mitigation~~  
 8 ~~measures to prevent damage during catastrophes.~~

9 ~~(e) The board may develop and offer additional grants or rebates~~



10 pursuant to subdivision (c) that are designed to decrease risk of  
11 loss from wildfire or earthquake-related fire.

12  
13 ~~Chapter 4. Disaster Mitigation Funding~~

14  
15 ~~17020. The board shall annually distribute money from the~~  
16 ~~Prepared California Disaster Mitigation Fund to the state agencies~~  
17 ~~listed in this section, as it deems appropriate, based on the disaster~~  
18 ~~mitigation needs of the state. At a minimum, the board shall~~  
19 ~~annually distribute the following sums of money:~~

20 ~~(a) At least 20 percent to the Department of Forestry and Fire~~  
21 ~~Protection for purposes of the local assistance grant program for~~  
22 ~~fire protection activities pursuant to Section 4124.5 of the Public~~  
23 ~~Resources Code, provided that only local agencies shall be eligible~~  
24 ~~for grants made with these funds.~~

25 ~~(b) At least 20 percent to the California Earthquake Authority~~  
26 ~~for purposes of awarding grants pursuant to the Earthquake Brace~~  
27 ~~and Bolt program.~~

28 ~~(c) At least 20 percent to the Department of Water Resources~~  
29 ~~for purposes of the Delta Levees Special Flood Control Projects~~  
30 ~~Program, the Small Communities Flood Risk Reduction Program,~~  
31 ~~the Flood Emergency Response Projects Grant Program, and the~~  
32 ~~Local Levee Assistance Program.~~

33 ~~(d) At least 20 percent to the board to be awarded pursuant to~~  
34 ~~the Prepared California Disaster Mitigation Program for purposes~~  
35 ~~of grants to homeowners for fire-related disaster mitigation~~  
36 ~~purposes.~~

37 ~~(e) Up to 5 percent to the board for operating expenses, and to~~  
38 ~~administer the Prepared California Disaster Mitigation Program,~~  
39 ~~including advertising the availability of grants and rebates to~~  
40 ~~homeowners and fulfilling the board's mitigation study obligations.~~

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— 25 — SB 292

1 ~~17021. The Department of Forestry and Fire Protection and~~  
2 ~~the board shall do both of the following:~~

3 ~~(a) Prior to the annual distribution of funds pursuant to~~  
4 ~~subdivision (a) of Section 17020, agree on the wildfire mitigation~~  
5 ~~projects to be funded, with an emphasis on protecting vulnerable~~  
6 ~~populations. The Department of Forestry and Fire Protection shall~~  
7 ~~consider socioeconomic characteristics of the communities to be~~  
8 ~~protected, including data on poverty levels, residents with~~  
9 ~~disabilities, language barriers, residents over 65 years of age or~~  
10 ~~under 5 years of age, and households without a car.~~

11 ~~(b) Develop a periodic reporting agreement for the grant funds~~  
12 ~~awarded pursuant to subdivision (a) of Section 17020 that requires~~  
13 ~~the Department of Forestry and Fire Protection to report~~  
14 ~~information sufficient to allow the board to study wildfire~~  
15 ~~mitigation effectiveness, including all of the following:~~

16 ~~(1) Information on the types and locations of wildfire mitigation~~

17 projects.

18 ~~(2) Information on the damage caused by wildfires in areas~~  
 19 ~~where mitigation efforts have occurred.~~

20 ~~(3) Other information the board finds necessary to study wildfire~~  
 21 ~~mitigation effectiveness.~~

22 ~~17022. The California Earthquake Authority and the board~~  
 23 ~~shall do all of the following:~~

24 ~~(a) Prior to the annual distribution of funds pursuant to~~  
 25 ~~subdivision (b) of Section 17020, agree on the earthquake~~  
 26 ~~mitigation projects to be funded, with an emphasis on protecting~~  
 27 ~~vulnerable populations. The authority shall consider socioeconomic~~  
 28 ~~characteristics of the communities to be protected, including data~~  
 29 ~~on poverty levels, residents with disabilities, language barriers,~~  
 30 ~~residents over 65 years of age or under 5 years of age, and~~  
 31 ~~households without a car.~~

32 ~~(b) Develop a periodic reporting agreement for the grant funds~~  
 33 ~~awarded pursuant to subdivision (b) of Section 17020 that requires~~  
 34 ~~the authority to report information sufficient to allow the board to~~  
 35 ~~study earthquake mitigation effectiveness, including all of the~~  
 36 ~~following:~~

37 ~~(1) Information on the types and locations of earthquake~~  
 38 ~~mitigation projects.~~

39 ~~(2) Information on the damage caused by earthquakes in areas~~  
 40 ~~where mitigation efforts have occurred.~~

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**SB 292 — 26 —**

1 ~~(3) Other information the board finds necessary to study~~  
 2 ~~earthquake mitigation effectiveness.~~

3 ~~(e) Develop and propose to the Legislature additional~~  
 4 ~~cost-effective earthquake retrofit grant or low-cost loan programs~~  
 5 ~~for homeowners requiring seismic retrofit but who do not qualify~~  
 6 ~~for the Earthquake Brace and Bolt program, including owners of~~  
 7 ~~mobilehomes and condominiums, and for small businesses, as~~  
 8 ~~defined in subparagraph (A) of paragraph (1) of subdivision (d)~~  
 9 ~~of Section 14837 of the Government Code, that own real property.~~

10 ~~17023. The Department of Water Resources and the board shall~~  
 11 ~~do both of the following:~~

12 ~~(a) Prior to the annual distribution of funds pursuant to~~  
 13 ~~subdivision (c) of Section 17020, agree on the flood mitigation~~  
 14 ~~projects to be funded, with an emphasis on protecting vulnerable~~  
 15 ~~populations. The Department of Water Resources shall consider~~  
 16 ~~socioeconomic characteristics of the communities to be protected,~~  
 17 ~~including data on poverty levels, residents with disabilities,~~  
 18 ~~language barriers, residents over 65 years of age or under 5 years~~  
 19 ~~of age, and households without a car.~~

20 ~~(b) Develop a periodic reporting agreement for the grant funds~~  
 21 ~~awarded pursuant to subdivision (c) of Section 17020 that requires~~  
 22 ~~the Department of Water Resources to report information sufficient~~  
 23 ~~to allow the board to study flood mitigation effectiveness, including~~

24 all of the following:  
 25 (1) Information on the types and locations of flood mitigation  
 26 projects.  
 27 (2) Information on the damage caused by flooding in areas  
 28 where mitigation efforts have occurred.  
 29 (3) Other information the board finds necessary to study flood  
 30 mitigation  
 effectiveness. 31  
 32 Chapter 5. Reporting 33  
 34 17030. The Department of Insurance shall collect data regarding  
 35 the availability of insurance in high risk fire areas and report that  
 36 data to the board on a periodic basis.  
 37 17031. The board shall prepare a report to be submitted to the  
 38 Legislature on or before January 1, 2021, and annually thereafter,  
 39 that includes at least all of the following:

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— 27 — SB 292

1 (a) A summary of the amounts of the grants and rebates awarded  
 2 pursuant to the Prepared California Disaster Mitigation Program  
 3 and a summary of the mitigation measures implemented with those  
 4 grants and rebates. The summary shall also include a discussion  
 5 of any new grants or rebates under development.  
 6 (b) A summary of the mitigation measures funded pursuant to  
 7 Section 17020, and an analysis of the effectiveness of those  
 8 mitigation measures in preventing losses from wildfires,  
 9 earthquakes, and floods, if applicable, given the types and locations  
 10 of natural disasters.  
 11 (c) A summary of known existing mitigation discounts offered  
 12 by residential property insurers.  
 13 (d) Recommendations for additional earthquake retrofit grant  
 14 program proposals pursuant to subdivision (c) of Section 17022  
 15 to augment the Earthquake Brace and Bolt program.  
 16 17032. On or after January 1, 2022, the board shall contract  
 17 with the California State Auditor's Office to conduct an audit of  
 18 the Prepared California Disaster Mitigation Board's operations  
 19 from inception to December 31, 2021, inclusive. The audit shall  
 20 provide an independent assessment of the performance and  
 21 management of the board and of the Prepared California Disaster  
 22 Mitigation Program. The board shall fund the audit out of its  
 23 operating expense budget pursuant to subdivision (e) of Section  
 24 17020. A copy of the audit shall be submitted to the board and to  
 25 the Legislature, on or before January 1, 2023.  
 26 17033. (a) The Department of Insurance and the board shall  
 27 develop an information sharing agreement to allow the board to  
 28 collect data on losses caused by fire, earthquake, and flood in order  
 29 to study mitigation efforts and insurer loss experience.  
 30 (b) The board shall continuously study the data compiled under  
 31 this section and the data compiled by the Department of Forestry  
 32 and Fire Protection pursuant to Section 17021, the data compiled

33 ~~by the California Earthquake Authority pursuant to Section 17022,~~  
34 ~~the data compiled by the Department of Water Resources pursuant~~  
35 ~~to Section 17023, and the data compiled by the board pursuant to~~  
36 ~~subdivision (d) of Section 17012, including the longitudinal~~  
37 ~~analyses of the effectiveness of mitigation measures to prevent~~  
38 ~~loss.~~  
39 (e) ~~The board shall prepare and submit a report to the Legislature~~  
40 ~~on or before January 1, 2024, that contains recommendations for~~

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1 ~~model homeowners insurance discounts based on the risk~~  
2 ~~mitigation measures that the board has determined reduce loss~~  
3 ~~based on its studies conducted pursuant to this division.~~

4 (d) ~~The board shall publish or maintain the data supporting the~~  
5 ~~recommendations made pursuant to subdivision (c) in such a way~~  
6 ~~as to be easily accessible to insurers for the purpose of ratemaking~~  
7 ~~and mitigation discount development. All data made available~~  
8 ~~shall comply with the privacy requirements of the Insurance~~  
9 ~~Information and Privacy Protection Act (Article 6.6 (commencing~~  
10 ~~with Section 791) of Chapter 1 of Part 2 of Division 1).~~

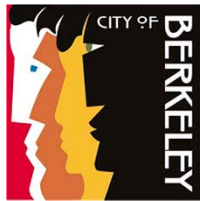
11 ~~17034. The board may contract with private firms and public~~  
12 ~~universities, as necessary, to study mitigation efforts and complete~~  
13 ~~the data analysis required by this division.~~

14 ~~17035. All reports required to be submitted to the Legislature~~  
15 ~~pursuant to this division shall be submitted in compliance with~~  
16 ~~Section 9795 of the Government Code.~~

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CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

**02a.29**

CONSENT CALENDAR  
 July 28, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson  
 Subject: Support for SB 288: Sustainable Transportation COVID-19 Recovery Act

RECOMMENDATION

Send a letter to Senator Scott Wiener, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Senate Bill 288, which would exempt specified transportation projects from environmental review under CEQA, including bus rapid transit projects, pedestrian and bicycle facilities, and zero-emission charging stations.

BACKGROUND

The California Environmental Quality Act requires agencies to assess the significant environmental impacts of proposed discretionary projects before approval. Current law exempts certain categories of projects from CEQA requirements, including increases to service on existing rail or highway rights-of-way.

SB 288, introduced by Senator Scott Wiener, would extend the following existing exemptions until 2030: 1) bicycle transportation plans for an urbanized area for restriping of streets and highways, 2) bicycle parking and storage, 3) signal timing to improve street and highway intersection operations, and 4) related signage for bicycles, pedestrians, and vehicles under certain conditions. Additionally, this bill would further exempt projects relating to updated and new transit stations, bus rapid transit lines, safer streets for biking and walking, zero-emission vehicle charging facilities, and repairs for bridge and transit storage facilities.

The environmental benefits of public transit, bicycle, and pedestrian infrastructure are already well-documented. The City of Berkeley Climate Action Plan states that to meet our greenhouse gas reduction goals, “transportation modes such as public transit, walking and bicycling must become the primary means of fulfilling our mobility needs, and remaining motor vehicle use must be far less carbon-intensive.”<sup>1</sup> Recommended actions to achieve this goal include:

- Increasing the safety, reliability, and frequency of public transit.
- Accelerating implementation of the City’s Bicycle and Pedestrian Plans and continuing efforts to make walking and cycling safe, healthy, and enjoyable alternatives to driving.

<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Berkeley%20Climate%20Action%20Plan.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Berkeley%20Climate%20Action%20Plan.pdf)

- Creating incentives for low-carbon vehicles such as electric vehicles and plug-in hybrids.

Several other countries, such as Canada and Germany, do not require full environmental impact reviews for sustainable transportation projects since they are presumed to have a positive impact on the environment.<sup>2</sup> Delays in such projects due to CEQA reviews and lawsuits can add years to project timelines, driving up costs and obstructing the rapid infrastructure investments we need to effectively combat climate change.

Accelerating sustainable transportation projects is especially important now, as unemployment skyrockets and transportation agencies and cities across California struggle with strained budgets due to the COVID-19 pandemic. According to the bill text, “investments in building public transit, complete streets, and bicycle lanes are proven job generators and can help California avoid an extreme and prolonged recession by growing and protecting jobs. Studies have shown that complete streets projects create an average of 10 jobs per one million dollars. Investments in public transportation result in an average of 13 jobs per one million dollars spent and have a 5 to 1 economic return.”<sup>3</sup>

SB 288 would put the City of Berkeley on the right track towards economic recovery and meeting our GHG reduction goals. The Council should support the passage of this legislation, and send the attached letter of support to Senator Scott Wiener, Senator Nancy Skinner, and Assemblymember Buffy Wicks.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

The transportation sector comprises 60 percent of Berkeley’s greenhouse gas emissions. Ensuring the acceleration of sustainable infrastructure investments, which promote walking, biking, and taking public transit, is aligned with the goals put forth in the City’s Climate Action Plan.<sup>4</sup>

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

#### Attachments:

1: Letter of support

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<sup>2</sup> <https://sf.streetsblog.org/2020/06/16/bill-would-streamline-transit-bike-and-ped-projects/>

<sup>3</sup> [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB288](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB288)

<sup>4</sup> <https://www.cityofberkeley.info/climate/>



2: Bill text

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB288](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB288)

July 28, 2020

The Honorable Scott Wiener  
California State Senate  
State Capitol, Room 5100  
Sacramento, CA 95814

**RE: City of Berkeley's Support for Senate Bill 288**

Dear Senator Wiener,

The Berkeley City Council would like to convey our full support for SB 288, regarding CEQA exemptions for sustainable transportation projects such as updated and new transit stations, bus rapid transit lines, pedestrian and bicycle projects, zero-emission vehicle charging facilities, and repairs for bridge and transit storage facilities.

As California sets out on a long road of economic recovery from the impacts of COVID-19, renewed investment in public transit, pedestrian, and bicycle infrastructure will create much-needed jobs. As the state slowly begins the process of re-opening safely, we must also ensure that polluting vehicle traffic does not bounce back to pre-COVID levels, which would prevent California from reaching its stated goal of reducing greenhouse gas emissions 40 percent below 1990 levels by 2030.

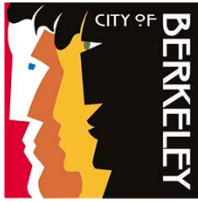
Environmental reviews for public transportation projects that are inherently pro-environment are often lengthy, expensive, and can cause years of delay. Especially at a time when public transit agencies and cities are suffering from reduced ridership and severe budget cuts, these additional costs and delays can render projects infeasible altogether.

California should be fast-tracking such projects, not delaying them. The Berkeley City Council supports SB 288 and thanks you for taking the lead on this important issue.

Sincerely,

The Berkeley City Council

CC: Senator Nancy Skinner  
Assemblymember Buffy Wicks



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 July 28, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson  
 Subject: Support for SB 902: Authorizing Cities to Rezone for Density

RECOMMENDATION

Send a letter to Senator Scott Wiener, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Senate Bill 902, which would authorize local governments to upzone urban infill sites and parcels in transit- or jobs-rich areas for up to 10 units of residential density.

BACKGROUND

SB 902, introduced by Senator Scott Wiener, would allow local governments to more easily increase the allowable unit density in any parcel located in a transit-rich area, a jobs-rich area, or an urban infill site to up to 10 units per parcel. The bill imposes no requirement or mandate that such increase in density be made, only reducing barriers for such an increase to occur. Many local governments across the state struggle to increase allowable density even when the political desire exists to do so because of onerous and lengthy review processes and the possibility of CEQA litigation on what, in this case, amounts to a very modest change.

While recent housing legislation has been met with concerns of preemption of local control, this bill would assist the City of Berkeley in more easily accommodating additional housing while allowing our community to identify the best way to do so. The Council would maintain the authority to identify areas at risk of gentrification and displacement and craft our density policies with those impacts in mind. Should this law pass, the City would be under no obligation to take any action; rather, the path would be clearer should we decide to do so.

Increasing allowable unit density in parts of the city less at risk to displacement and gentrification is an excellent tool to increase the housing supply while integrating the City. Many of the most exclusionary, wealthiest, and whitest neighborhoods in Berkeley have zoning laws that effectively prohibit apartments from being constructed. Increasing allowable unit density in these neighborhoods would allow for increased integration, pose minimal displacement risk, and increase our housing supply.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Letter of support

2: Bill text

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB902](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB902)

July 28, 2020

The Honorable Scott Wiener  
California State Senate  
State Capitol, Room 5100  
Sacramento, CA 95814

**RE: City of Berkeley's Support for Senate Bill 902**

Dear Senator Wiener,

The Berkeley City Council would like to convey our full support for Senate Bill 902, regarding enabling local governments to upzone urban infill sites and parcels in transit- or jobs-rich areas.

While modest in scope, we know that unnecessary and repetitive review steps for zoning amendments have built up in many jurisdictions, posing a barrier to increasing density even when the political desire exists at councils and county boards to do so. Frequently, frivolous lawsuits under CEQA are tossed up to slow down density, undermining the actual important work of that law. Your bill will effectively clear the way for jurisdictions to increase the supply of badly needed housing while maintaining local control.

This balanced bill is one part of the solution to our housing crisis, and we cannot see why it should garner any opposition.

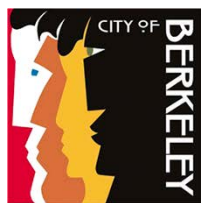
Thank you for this important piece of legislation.

Sincerely,

The Berkeley City Council

CC: Senator Nancy Skinner  
Assemblymember Buffy Wicks





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

**02a.31**

CONSENT CALENDAR  
 July 28, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson  
 Subject: Support for AB 2542: The California Racial Justice Act

RECOMMENDATION

Send a letter to Assemblymember Ash Kalra, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Assembly Bill 2542, which would prohibit the state from seeking or obtaining a criminal conviction, or from imposing a sentence, based on race, ethnicity, or national origin.

BACKGROUND

AB 2542, introduced by Assemblymember Ash Kalra, would enable a person charged or convicted of a crime to challenge racial bias in their case, as shown through evidence of 1) explicit racial bias by an attorney, judge, law enforcement officer, expert witness, or juror, 2) use of racially discriminatory language in court and during criminal proceedings, 3) racial bias in jury selection, 4) statistical disparities in charging and convictions of specific crimes, or 5) statistical disparities in sentencing.<sup>1</sup>

In 1987, the U.S. Supreme Court ruled in *McCleskey v. Kemp* that statistical evidence was insufficient to prove racial discrimination in court, instead requiring “exceptionally clear proof” -- a higher, and often impossible threshold to meet.<sup>2</sup>

This ruling has made it extremely difficult to confront racism in the American criminal justice system. Purposeful and blatant discrimination that can be clearly proved constitutes only a small portion of the racial bias that harms BIPOC defendants in court. All-white juries and clear patterns of Black and brown people being subjected to harsher sentences for the same crime are also pervasive forms of racism.

A 2012 Duke study found that all-white juries convict Black defendants 16 percent more often than they do white defendants.<sup>3</sup> Despite the court ruling in *Batson v. Kentucky* (1986) that lawyers cannot use peremptory challenges to exclude potential jurors on the basis of race, they continue to do so. Studies showed that in North Carolina,

<sup>1</sup> [https://twitter.com/Ash\\_Kalra/status/1280235432416997376/photo/4](https://twitter.com/Ash_Kalra/status/1280235432416997376/photo/4)

<sup>2</sup> <https://supreme.justia.com/cases/federal/us/481/279/>

<sup>3</sup> <https://today.duke.edu/2012/04/jurystudy>

prosecutors were 2.5 times more likely to dismiss Black jurors in death-row cases. In Caddo Parish, Louisiana, prosecutors were three times as likely to do so.<sup>4</sup>

In the *McCleskey* majority opinion, the Supreme Court observed that state legislatures retain the power to address this issue through state law. Kentucky has passed a version of the Racial Justice Act specifically regarding the death penalty,<sup>5</sup> and North Carolina did as well until it was overturned by a Republican majority. On June 5, 2020, North Carolina's Supreme Court issued an order restoring the full protections of the act for people who filed claims before its repeal in 2013.<sup>6</sup>

The State of California has laws prohibiting racial discrimination in employment, housing, and public accommodation, but no counterpart for discrimination in the criminal justice system.<sup>7</sup> By explicitly outlawing discrimination in criminal convictions and sentencing, this bill would provide recourse for victims of racial bias. The Berkeley City Council should support AB 2542 and send the attached letter of support to Assemblymember Ash Kalra, Senator Nancy Skinner, and Assemblymember Buffy Wicks.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

No impact.

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Letter of support

2: Bill text

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB2542](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2542)

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<sup>4</sup> <https://psmag.com/news/the-data-that-shows-american-juries-are-racially-biased>

<sup>5</sup> <https://nkaa.uky.edu/nkaa/items/show/728#:~:text=African%20Americans%20Database-,Kentucky%20Racial%20Justice%20Act%20of%201998,death%20penalty%20will%20be%20barred.>

<sup>6</sup> <https://www.aclu.org/press-releases/north-carolina-supreme-court-finds-repeal-racial-justice-act-unconstitutional>

<sup>7</sup> <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-ga/pages/californiafairemploymenthousingact.aspx>



July 28, 2020

The Honorable Ash Kalra  
California State Assembly  
State Capitol, Room 2196  
Sacramento, CA 95814

**RE: City of Berkeley's Support for Assembly Bill 2542**

Dear Assemblymember Kalra,

The Berkeley City Council would like to convey our full support for AB 2542, which would enable a person charged or convicted of a crime to challenge racial bias in their case.

The *McCleskey* decision is a stain on our court system that has allowed racism to go unchecked for far too long. Purposeful and blatant discrimination that can be clearly proved constitutes only a small portion of the racial bias that harms BIPOC defendants in court. All-white juries and clear patterns of Black and brown people being subjected to harsher sentences for the same crime are also pervasive forms of racism. Without an explicit law that prohibits discrimination, the courts will continue to perpetuate the mass incarceration of people of color, especially Black people.

The California Racial Justice Act builds on the precedent set by Kentucky's and North Carolina's efforts, and goes further to prohibit racial discrimination in all convictions and sentences. This is a crucial piece of legislation that takes another step towards eliminating racial bias in the American criminal justice system and providing victims of discrimination with legal recourse.

The Berkeley City Council supports AB 2542 and thanks you, the bill's sponsors, and principal co-authors Senator Steve Bradford, Senator Lena Gonzalez, and Senator Holly Mitchell for taking the lead on this important issue.

Sincerely,

The Berkeley City Council

CC: Senator Nancy Skinner  
Assemblymember Buffy Wicks





Lori Droste  
Berkeley City Councilmember, District 8

Consent Calendar

July 28, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Lori Droste  
Subject: Support for AB 2345 (CA Density Bonus)

**Recommendation:**

That the Berkeley City Council send a letter supporting AB 2345, authored by Assemblymember Lorena Gonzalez and Assemblymember David Chiu which will help address California's housing crisis by expanding the state density bonus for housing developers who commit to building additional affordable units.

**Financial Implications:**

None.

**Background:**

This bill will help ensure that more affordable housing is built in California by modifying the State's existing density bonus law. AB 2345 will increase the maximum density bonus a developer can receive in exchange for committing a higher number of affordable units. AB 2345 will also allow developers to access more incentives like reduced parking requirements, setback relief and modified design requirements, if they commit to a higher percentage of affordable units.

With more than 40 percent of all California households considered cost-burdened—meaning households spend more than 30 percent of their monthly income on housing costs—AB 2345 will provide developers the incentive to build the affordable units we urgently need in California.

**Environmental Sustainability:** No impact

**Contact Person:**

Councilmember Lori Droste Council District 8 510-981-7180

**Attachment 1: Draft Letter of Support**

**Attachment 2: Legislative Digest**

July 28, 2020

The Honorable Assemblymember Lorena Gonzalez  
California State Assembly  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249

RE: Assembly Bill 2345 - CA Density Bonus - SUPPORT

Dear Assemblymembers Gonzalez and Chiu,

Berkeley City Council is pleased to support AB 2345, which will help address California's housing crisis by expanding the state density bonus for housing developers who commit to building additional affordable units.

AB 2345 will increase the maximum density bonus a developer can receive in exchange for committing a higher number of affordable units. It will also allow developers to access more incentives like reduced parking requirements, setback relief and modified design requirements, if they commit to a higher percentage of affordable units.

With more than 40 percent of all California households considered cost-burdened—meaning households spend more than 30 percent of their monthly income on housing costs—AB 2345 will provide developers the incentive to build the affordable units we urgently need in California.

By including additional incentives to the state density bonus, this legislation will help add thousands of new units to California's housing stock. For these reasons and more, Berkeley City Council is proud to support AB 2345.

Sincerely,  
Berkeley City Council

CC: Assemblymember Buffy Wicks  
Senator Nancy Skinner

Introduced by Assembly Members Gonzalez and Chiu

February 18, 2020

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An act to amend ~~Section~~ *Sections 65400 and* 65915 of the Government Code, relating to housing.

## LEGISLATIVE COUNSEL'S DIGEST

AB 2345, as amended, Gonzalez. Planning and zoning: density bonuses: *annual report*: affordable housing.

### **Existing**

*(1) The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. That law requires the planning agency of a city or county to provide by April 1 of each year an annual report to, among other entities, the Department of Housing and Community Development that includes, among other specified information, the number of net new units of housing that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, as provided.*

*This bill would require that the annual report include specified information regarding density bonuses granted in accordance with specified law.*

*(2) Existing law, known as the Density Bonus Law, requires a ~~city or county~~ city, county, or city and county to provide a developer that proposes a housing development within the jurisdictional boundaries of that ~~city or county~~ city, county, or city and county with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents and meets other requirements. Existing law provides for the calculation of the amount of density bonus for each type of housing development that qualifies under these provisions. Existing law specifies the number of incentives or concessions that an*

applicant can receive. Existing law ~~specifies~~ *requires* that an applicant ~~shall~~ receive 3 incentives or concessions for projects that include at least 30% of the total units for lower income households, at least 15% for very low income households, or at least 30% for persons or families of moderate income in a common interest development. Existing law ~~specifies~~ *requires* that an applicant ~~shall~~ receive 4 incentives or concessions for projects in which 100% of the total units are for lower income households, as specified.

This bill, instead, would authorize an applicant to receive 3 incentives or concessions for projects that include at least 30% of the total units for lower income households, at least 12% of the total units for very low income households, or at least 30% for persons or families of moderate income in a common interest development. The bill would also authorize an applicant to receive 4 and 5 incentives or concessions, as applicable, for projects in which greater percentages of the total units are for lower income households, very low income households, or for persons or families of moderate income in a common interest development, as specified. The bill would also authorize an applicant to receive 6 incentives or concessions for projects in which 100% of the total units are for lower income households, as specified.

Existing law provides that a housing development that receives a waiver from any maximum controls on density, as specified, ~~shall not be~~ *is not* eligible for, and ~~shall not receive,~~ *prohibits such a development from receiving,* a waiver or reduction of development standards.

This bill, instead, would provide that a housing development that receives a waiver from any maximum controls on density, ~~shall only be~~ *is only* eligible for a specified waiver or reduction of development standards, unless the city, county, or city and county agrees to additional waivers or reductions of development standards.

Existing law specifies that the density bonus, or the amount of the density increase over the otherwise allowable gross residential density, to which an applicant is entitled varies according to the amount by which the percentage of affordable housing units in a development exceeds a specified base percentage for units for lower income households, very low income households, senior citizens, persons and families of moderate income, transitional foster youth, or lower income students, as specified. Existing law authorizes a maximum density bonus of 35% for a housing development in which 20% or more of the total units are for lower income households. Existing law authorizes a maximum density bonus of 35% for a housing development in which 11% or more of the total units are for very low income households. Existing law authorizes a maximum density bonus of 35% for housing developments in which 40% or more of the total units are for persons and families of moderate income.

This bill would include a maximum density bonus for a housing development in which 16% of the total units are for lower income households and would increase the maximum density bonus, to up to 50%, for construction of a housing development in which a greater percentage than that described above of total units are for lower income households, very low income households, and persons and families of moderate income, as specified.

By adding to the duties of local planning officials with respect to the award of density bonuses, this bill would impose a state-mandated local program.

~~Existing law specifies that,~~

*(3) Existing law prohibits,* except as provided, upon the request of a developer, a city, county, or city and county ~~shall not require~~ *from requiring* a vehicular parking ratio for a development that qualifies for a density bonus that exceeds specified amounts of onsite parking per bedroom. Existing law also specifies the parking ratios applicable to a development that include a maximum percentage of low-income or very low income units, that is located within  $\frac{1}{2}$  mile of a transit stop, and that provides unobstructed access to the transit stop from the development.

This bill would decrease the maximum ratio of vehicular parking for developments with 2 to 3 bedrooms, as specified. This bill would define the term “natural or constructed impediments” for purposes of determining whether a development has unobstructed access to a transit stop. The bill would ~~specify~~ *require* that the measurement of the distance of a development from a transit stop ~~shall~~ be measured from any point on the property of the proposed development to any point on the property where the transit stop is located. The bill would authorize a developer to request that a city, county, or city and county not impose vehicular parking standards if the development meets specified ~~requirements,~~ *affordability requirements and either (A) provides unobstructed access to a major transit stop, as defined, or (B) is a for-rent housing development for individuals who are 62 years of age or older, and older that* will have either paratransit service or unobstructed access to a fixed bus route, as specified.

*(4) Existing law requires a city, county, or city and county to adopt an ordinance that specifies how it will implement the Density Bonus Law, but provides that failure to adopt an ordinance does not relieve a city, county, or city and county from complying with that law. Existing law also authorizes a city, county, or city and county, if permitted by local ordinance, to grant a density bonus greater than what is described in the Density Bonus Law or to grant a proportionately lower density bonus than what is required by the Density Bonus Law for developments that do not meet the requirements of that law.*

*This bill, notwithstanding any other law, would provide that a city, county, or city and county that has adopted an ordinance pursuant to the Density Bonus Law that, as of the date immediately prior to the effective date of bill, provides for density bonuses that exceed the density bonuses required by the Density Bonus Law is not required to amend or otherwise update its ordinance to comply with the amendments made by this bill.*

*(5) By adding to the duties of local planning officials with respect to preparing and submitting the above-described annual report to the Department of Housing and Community Development and awarding density bonuses, this bill would impose a state-mandated local program.*

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

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





Rent Stabilization Board  
Office of the Executive Director

ACTION CALENDAR  
July 28, 2020

TO: Honorable Mayor and Members of the City Council

FROM: Berkeley Rent Stabilization Board

SUBMITTED BY: Matt Brown, Acting Executive Director, Rent Stabilization Board

SUBJECT: Placing a Measure on the November 3, 2020 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)

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RECOMMENDATION

1. Adopt a Resolution placing the proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance on the ballot of the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

SUMMARY

The Rent Stabilization Board has recommended a set of amendments to the Rent Stabilization and Eviction for Good Cause Ordinance. These amendments set forth the following changes:

1. Adopt a secondary Registration fee for three types of partially-exempt units (single-family homes, condominiums, and newly constructed units);
2. Amend the Rent Stabilization and Eviction for Good Cause Ordinance to limit the substantive basis for eviction for nonpayment of rent so that it does not apply to rent payments that come due during a state or local state of emergency when triggered by applicable federal, state, or local emergency legislation;

3. Repeal the “golden duplex” exemption for owner-occupied duplexes that were owner-occupied on December 31, 1979, so tenants in eligible owner-occupied duplexes will have rent control and/or eviction protections;
4. Repeal the Accessory Dwelling Unit exemption for rental units in a residential property containing a single, lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence and the tenancy was created after November 7, 2018, so tenants in eligible Accessory Dwelling Units will have rent control and/or eviction protections.

### FISCAL IMPACTS OF RECOMMENDATION

There will be a small financial cost to the City limited to the costs associated with placing the measure on the ballot. Each additional measure added to the ballot increases the costs to the city.

If a secondary Registration fee for single-family homes, condominiums, and newly constructed units is adopted, the Registration fees currently mandated by B.M.C. 13.76.080 for fully covered rental units may decrease as a result of economies of scale to provide services to partially-covered units that Rent Board staff already provide to fully-covered units.

Limiting the substantive basis for eviction for nonpayment of rent so that it does not apply to rent payments that come due during a state or local state of emergency when triggered by applicable federal, state, or local emergency legislation will have no fiscal impact on the City. This amendment would ensure there is no conflict between the Rent Stabilization and Eviction for Good Cause Ordinance and the emergency legislation adopted by Council (BMC 13.110) in response to the current state of emergency associated with the COVID-19 pandemic. It would also potentially eliminate conflict with similar legislation in the event of a future state of emergency.

If the “golden duplex” and Accessory Dwelling Unit exemptions are repealed, the number of units protected by rent control and/or good cause for eviction will increase, and the Registration fees currently mandated by B.M.C. 13.76.080 for other fully covered rental units may decrease as a result of economies of scale to provide services to these newly-covered units. For Accessory Dwelling Units, in particular, many of these may be partially-exempt as newly constructed rental units, so they would only be required to register if covered by the secondary Registration fee proposal.

### CURRENT SITUATION AND ITS EFFECTS

Berkeley voters passed Measure D in June 1980, establishing the current Berkeley Rent Stabilization and Eviction for Good Cause Ordinance as codified in Berkeley Municipal Code Chapter 13.76. Berkeley City Council has, periodically, placed measures on the general ballot

for the voters to decide when the Board recommends amendments.

1. Secondary Registration Fee

The Rent Ordinance currently exempts single-family homes, condominiums, and newly constructed rental units from Registration. When owners and tenants of these rental units seek information from the Rent Board, staff is unable to provide them with substantive assistance since the agency is funded by Registration fees and thus only provides assistance to those that are fully covered by the Rent Ordinance.

2. Exclusion of Delayed Rent Payments During States of Emergency as a Substantive Basis for Eviction for Nonpayment of Rent

Many jurisdictions, including the City of Berkeley and Alameda County have passed ordinances to prohibit evictions for delayed payment of rent when the tenant has a covered reason related to COVID-19 for delayed payment of rent. BMC 13.110 permits a tenant to repay any accrued late rent payments within 12 months of the expiration of the state of emergency and makes clear that a tenant may not be evicted for failure to repay the rent. The Rent Ordinance, however, is silent on how states of emergency or emergency legislation impact the substantive basis for eviction for nonpayment of rent.

3. Repeal of the “Golden Duplex” Exemption

The Rent Ordinance fully exempts a subset of owner-occupied duplexes from the rent control and eviction protections of the Ordinance. These “golden duplexes” (up to 955) are ones that are currently owner-occupied as a principal residence and were owner-occupied (not necessarily by the same owner) on December 31, 1979. There are other owner-occupied duplexes (up to 1,078) that do not qualify as “golden” and thus, the rented unit is fully covered by rent control and eviction protections.

4. Repeal of the Accessory Dwelling Unit Exemption

The Rent Ordinance and corresponding regulations fully exempt rental units on properties with a permitted Accessory Dwelling Unit where one unit on the property is owner-occupied as a principal residence and the tenancy was created after November 7, 2018.

BACKGROUND

1. Secondary Registration Fee

If a secondary registration fee is adopted for rental units in single-family homes, condominiums, and new construction, Rent Board staff would be able to assist tenants and landlords of these

units. In addition, aggregated information about these types of units would allow policymakers to monitor the ongoing housing crisis and improve the efficacy of local regulatory efforts to mitigate the crisis. The Registration Fee for these units would cover only those additional expenses incurred by the Board as a result of counseling the owners and tenants of these partially-exempt units, as well as registration of those units, and would not cover the costs associated with petitions for individual rent adjustments and other services that are not provided to partially-exempt units.

The IRA-AGA-Registration Committee voted unanimously on May 8, 2020 and the Rent Board voted unanimously on May 29, 2020 to support this proposal. The approved language is set forth in Attachment A, in subsections 13.76.050, 13.76.060, and 13.76.080

2. Exclusion of Delayed Rent Payments During States of Emergency as a Substantive Basis for Eviction for Nonpayment of Rent

If the Rent Ordinance was amended to make clear that delayed rent payments during states of emergency could not be used as a substantive basis for eviction for nonpayment of rent, then it would ensure there is no conflict between the Ordinance and eviction moratoriums passed in response to the COVID-19 global pandemic, including the Berkeley COVID-19 Emergency Response Ordinance (B.M.C. 13.110).

The IRA-AGA-Registration Committee voted unanimously on May 8, 2020 and the Rent Board voted unanimously on May 29, 2020 to support this proposal. The approved language is set forth in Attachment A, in subsection 13.76.130.

3. Repeal of the “Golden Duplex” Exemption

If the “Golden Duplex” exemption was repealed from the Rent Ordinance, tenants in rental units in all duplexes would be protected by rent control and good cause for eviction protections unless they were exempt under a separate provision, such as new construction. Rent ceilings must be established for units that lose exemption. Thus, this proposal would set the rent ceilings at the amount of rent in effect on March 1, 2020, for tenants who occupied the unit continuously on or before March 1, 2020, through the date this amendment becomes effective. For tenancies that begin after March 1, 2020, the rent ceiling would be the lawfully established initial rent under the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et. seq.).

The IRA-AGA-Registration Committee voted unanimously on May 8, 2020 and the Rent Board voted 7-2-0-0 on May 29, 2020 to support this proposal. The approved language is set forth in Attachment A, in subsections 13.76.050 and 13.76.080.

4. Repeal of the Accessory Dwelling Unit Exemption

If the Accessory Dwelling Unit exemption was repealed from the Rent Ordinance, tenants in previously exempt rental units would be protected by rent control and good cause for eviction protections unless they were exempt under a separate provision, such as new construction. Rent ceilings must be established for units that lose exemption. Thus, this proposal would set the rent ceilings at the amount of rent in effect on March 1, 2020, for tenants who occupied the unit continuously on or before March 1, 2020, through the date this amendment becomes effective. For tenancies that begin after March 1, 2020, the rent ceiling would be the lawfully established initial rent under the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et. seq.).

The IRA-AGA-Registration Committee voted unanimously on May 8, 2020 and the Rent Board voted 5-2-2-0 on May 29, 2020 to support this proposal. The approved language is set forth in Attachment A, in subsections 13.76.050 and 13.76.080.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

This report and its recommendations are the result of direction from the Rent Stabilization Board, which voted on May 20, 2020 to recommend to the City Council to place the proposed amendments on the ballot for November 3, 2020.

#### ALTERNATIVE ACTIONS CONSIDERED

While no specific alternatives were proposed, some concern was expressed about the lack of comprehensive data regarding the proposals to eliminate the “golden duplex” and Accessory Dwelling Unit exemptions. The Rent Board does not collect comprehensive data on partially or fully exempt rental units, so the data that was provided is an approximation. The Board is currently unable to compel landlords or tenants to submit any information regarding tenancies as this information is only collected for controlled units – the Rent Ordinance connects the Registration Fee directly to rent-controlled units only. The elected Board has made a policy decision to propose removal of the full exemptions associated with “golden duplex” and Accessory Dwelling Units, but Board staff is unable to collect tenancy information for these units as they currently fall outside the Board’s regulatory umbrella. The Planning Department does not have data on the number of Accessory Dwelling Units that receive a final inspection and are completed. The Department has identified the number of permits approved each year (16 in 2016, 74 in 2017, 80 in 2018, and 70 in 2019), but construction could be completed in a different year or not completed (or started) at all.

Should the Council choose not to adopt the Rent Board’s recommendation to repeal the full exemption of Accessory Dwelling Unit units on the November 3, 2020 ballot, staff would like to offer an amendment to ensure that rental units that were never meant to be exempted will not be.

Beginning in January 2020, owners can create Accessory Dwelling Units on multi-family properties. If voters do not eliminate the ADU exemption as proposed by the Rent Board, they should amend the exemption as currently written in the Rent Ordinance. Otherwise, there would likely be unintended exemptions created, since rental units in multi-family properties would all become exempt if an owner occupied one of the units as their principal residence. As initially drafted, the existing exemption was only meant to apply narrowly to situations in which a single family dwelling shares a property with a single ADU. Staff has language available in the event Council chooses this option. It is not being included in this report, since the Board did not recommend this option.

CONTACT PERSON

Matt Brown, Acting Executive Director, Rent Stabilization Board, (510) 981-4905

Attachments:

1. Resolution

Exhibit A: Ordinance as Amended

2. May 29, 2020 Staff Report to Rent Board

Attachment 1

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

SUBMITTING TO THE BERKELEY ELECTORATE A MEASURE TO AMEND BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO ADOPT A SECONDARY REGISTRATION FEE FOR SINGLE-FAMILY HOMES, CONDOMINIUMS, AND NEWLY CONSTRUCTED UNITS; PROHIBIT EVICTION FOR NONPAYMENT OF RENT OF TENANTS WHO QUALIFY UNDER ADOPTED EMERGENCY LEGISLATION; AND APPLY RENT CONTROL AND/OR EVICTION FOR GOOD CAUSE PROTECTIONS TO OWNER-OCCUPIED DUPLEXES THAT WERE OWNER-OCCUPIED ON DECEMBER 31, 1979 AND ELIGIBLE LAWFULLY PERMITTED ACCESSORY DWELLING UNITS.

WHEREAS, the purposes of the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance are to regulate residential rent increases in the City of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the city with regard to low and fixed income persons, minorities, students, handicapped, and the aged; and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide services to landlords, owners, and tenants of single family homes, condominiums, and new construction with the imposition of a secondary Registration Fee; and

WHEREAS, protections against eviction established by the Berkeley City Council's COVID-19 Emergency Ordinance (B.M.C. Chapter 13.110) and similar future local emergency legislation will be codified in the Berkeley Rent Ordinance (B.M.C. 13.76.130); and

WHEREAS, the exemption established by B.M.C. 13.76.050F. will be eliminated, so that rental units in owner-occupied duplexes that were owner-occupied on December 31, 1979 may be covered by the registration, rent control, and/or good cause for eviction provisions of the chapter; and

WHEREAS, the exemption established by B.M.C. 13.76.050N. will be eliminated, so that rental units in properties that contain a lawfully permitted Accessory Dwelling Unit would not be fully exempt from the Berkeley Rent Ordinance and may be covered by the registration, rent control, and/or good cause for eviction provisions of the chapter; and

WHEREAS, these enumerated amendments to the Rent Stabilization and Eviction for Good Cause Ordinance will prevent displacement of tenants by extending additional protections and services to tenants who do not enjoy such protections under existing law; and

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a measure to amend Berkeley Municipal Code Chapter 13.76 to adopt a secondary registration fee for single-family homes, condominiums, and newly constructed units; prohibit eviction for nonpayment of rent of tenants who qualify under the terms of adopted emergency legislation; and apply rent control and/or eviction for good cause protections to owner-occupied duplexes that were owner-occupied on December 31, 1979 and eligible lawfully permitted accessory dwelling units; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 3, 2020; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.



BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

| CITY OF BERKELEY ORDINANCE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Shall the measure amending the Rent Stabilization and Eviction for Good Cause Ordinance to: adopt a registration fee for single-family homes, condominiums, and newly-constructed units to be set by the Rent Stabilization Board to cover reasonable registration and counseling costs for such units; prohibit eviction of qualifying tenants for nonpayment of rent during state or local emergencies; and apply rent control and/or eviction limitations to eligible owner-occupied duplexes and accessory dwelling units be adopted? | YES |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | NO  |

BE IT FURTHER RESOLVED that the text of the measure be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Measure

Exhibit A

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

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO ADOPT A SECONDARY REGISTRATION FEE FOR SINGLE-FAMILY HOMES, CONDOMINIUMS, AND NEWLY CONSTRUCTED UNITS; PROHIBIT EVICTION FOR NONPAYMENT OF RENT OF TENANTS WHO QUALIFY UNDER THE TERMS OF ADOPTED EMERGENCY LEGISLATION; APPLY RENT CONTROL AND EVICTION FOR GOOD CAUSE PROTECTIONS TO OWNER-OCCUPIED DUPLEXES THAT WERE OWNER-OCCUPIED ON DECEMBER 31, 1979; AND APPLY RENT CONTROL AND EVICTION FOR GOOD CAUSE PROTECTIONS TO LAWFULLY PERMITTED ACCESSORY DWELLING UNITS.

The people of the City of Berkeley do ordain as follows:

Section 1. Section 13.76.050 of the Berkeley Municipal Code is amended to read as follows:

**13.76.050 Applicability**

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

A. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this chapter shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

B. Rental units which are rented primarily to transient guests for use or occupancy less than fourteen consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen days or less shall not by itself exempt any unit from coverage by this chapter.

C. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.

D. Rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. 11403 et. seq.) or similar federally funded rent subsidy program. Except as may be preempted by state or federal law, the exemption of such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. However, the exemption from Sections 13.76.080, 13.76.110 and 13.76.120 shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental

assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Berkeley Housing Authority or successor agency. For units where the rent demanded exceeds the Payment Standard, the Payment Standard or an initial rent above the Payment Standard if approved by the Berkeley Housing Authority, as reported to the board by the Berkeley Housing Authority or successor agency, shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120.

E. Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for the aged.

~~F. Rental units in a residential property which is divided into a maximum of four units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.~~

G. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.

H. For the purposes of Subsections 13.76.050 F. and G., the term landlord shall be defined only as the owner of record holding at least 50% interest in the property.

I. Newly constructed rental units, as defined in Section 13.76.040. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of ~~Section 13.76.080, Rent Registration;~~ Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

J. A rental unit which is rented by a nonprofit, accredited institution of higher education to a tenant or tenants who are student(s), faculty, or staff of the institution or of a member school of the Graduate Theological Union, provided, however, that the institution owned the unit as of January 1, 1988.

K. A rental unit in a residential property owned by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that is rented to a low income tenant and subject to a regulatory agreement with a governmental agency that controls the unit's rent levels. However, the exemption for such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings of this chapter and shall apply only for so long as the regulatory agreement is in effect. This exemption shall not apply to rental units at the property that are not subject to a regulatory agreement with a governmental agency or that are rented

by a tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.

L. Rental units in a facility owned or leased by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that has the primary purpose of operating a treatment, recovery, therapy, sanctuary or shelter program for qualified clients, where such rental units are provided incident to the client's participation in the primary program and where the client has been informed in writing of the temporary or transitional nature of the housing at the inception of his or her participation in the program. However, except as may be preempted by the Transitional Housing Participant Misconduct Act (California Health and Safety Code Sections 50580 et. seq.) or other state or federal law, such rental units shall not be exempted from the terms of Section 13.76.130, Good Cause Required for Eviction. For purposes of Section 13.76.130.A.2, the client's continued eligibility for participation in the treatment, recovery, therapy, sanctuary or shelter program shall be deemed a material term of the client's rental agreement with the program's operator.

M. A rental unit or room which is rented by an active member of a fraternity or sorority recognized by the University of California Berkeley, or a rental unit or room which is rented by an active member of a fraternity or sorority identified by Rent Board Resolution. To qualify for the exemption, the rental unit must be owned by the fraternity or sorority or by an entity whose sole purpose is the maintenance and operation of the fraternity or sorority's rental units for the benefit of the members in order to provide housing to said members at cost.

~~N. A rental unit in a residential property containing a lawfully established and fully-permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection (13.76.050N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units-compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018.~~

N. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of such units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. The exemptions provided in this Section shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

Section 2. Section 13.76.060 of the Berkeley Municipal Code is amended to read as follows:

### **13.76.060 Rent Stabilization Board**

A. Composition. There shall be in the city of Berkeley an elected rent stabilization board; the board shall consist of nine commissioners. The board shall elect annually as chairperson one of its members to serve in that capacity.

B. Eligibility. Residents who are duly qualified electors of the city of Berkeley are eligible to serve as commissioners on the board.

C. Full disclosure of holdings. Candidates for the position of commissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2.

In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.

D. Election of commissioners. Commissioners shall be elected at the statewide general election held in November of even numbered years.

E. Terms of office. Commissioners' terms of office shall be as set forth in Article XVII of the Berkeley City Charter.

F. Powers and duties. The elected rent stabilization board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. The board shall have the following powers and duties:

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 13.76.080.
3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.
4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.
5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this chapter.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this chapter.

9. Request the City Council to remove rent controls under Section 13.76.060Q.
10. Administer oaths and affirmations and subpoena witnesses and relevant documents.
11. Establish rules and regulations for settling civil claims under Section 13.76.150.
12. Seek injunctive relief under Section 13.76.150.
13. Pursue civil remedies in courts of appropriate jurisdiction.
14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this chapter.
15. Hold public hearings.
16. Charge and collect registration fees, including penalties for late payments.
17. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.
18. Except as provided in Section 13.76.060N of this chapter, the board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the city of Berkeley.

G. Rules and Regulations: The board shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of this Chapter. The board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the city of Berkeley.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the board shall be kept in the board's office and shall be available to the public for inspection and copying.

The board shall publicize this Chapter so that all residents of Berkeley will have the opportunity to become informed about their legal rights and duties under this Chapter. The board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Chapter. The brochure shall be made available to the public.

H. Meetings: The board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the commissioners of the board. The board shall hold its initial meeting no later than July 15, 1980.

I. Quorum: Five commissioners shall constitute a quorum for the board.

J. Voting: The affirmative vote of five commissioners of the board is required for a decision, including all motions, rules, regulations, and orders of the board.

K. Compensation: The rent stabilization board shall be a working board. Commissioners shall be paid compensation and benefits in an amount set by the board in order to

compensate commissioners for their time and work performed as required by this chapter and the city charter.

L. Dockets: The board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.

M. Vacancies: If a vacancy shall occur on the board, a qualified person to fill such vacancy shall be selected in accordance with the procedures set forth in Article V of the City Charter.

N. Financing: The board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board. The registration fee for partially-exempt units shall reasonably approximate the cost of registration and counseling services for such units, and shall not include the cost of services from which such units are exempt. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the board. The board is also empowered to request and receive funding, when and if necessary, from the city of Berkeley and/or any other available source for its reasonable and necessary expenses, including expenses incurred at the request of the City.

O. Staff: The board shall be a working board and shall employ such staff as may be necessary to perform its functions efficiently and as provided by Berkeley Ordinance.

P. Registration: The board shall require the registration of all rental units covered by this chapter as provided for in Section 13.76.080. The board may also require landlords to provide current information supplementing their registration statements.

Q. Decontrol: If the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six month period, the city council is empowered, upon request by the board, at its discretion and in order to achieve the purposes of this chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. In determining the vacancy rate for the city of Berkeley the board and the city council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection Q coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection Q the board shall hold at least two public hearings.

R. Conflict of Interest: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

Section 3. Section 13.76.080 of the Berkeley Municipal Code is amended to read as follows:

**13.76.080 Rent registration**

A. The board shall require all landlords subject to the provisions of this chapter, including Section 13.76.130, to file with the board by September 1, 1980 a rent registration statement for each rental unit covered by this chapter. An owner who has resided in a single family dwelling for at least three hundred sixty five consecutive calendar days need not file a rent registration statement under the provisions of this chapter if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

B. Landlords shall provide in their initial rent registration statement the following information:

- (1) The address of each rental unit;
- (2) The name and address of the landlord(s) and the managing agent, if any;
- (3) The date on which the landlord received legal title to or equitable interest in the rental unit;
- (4) The housing services provided for the rental unit;
- (5) The rent in effect on June 6, 1978;
- (6) The rent in effect on December 30, 1979;
- (7) The base rent ceiling;
- (8) The lowest rent in effect between June 6, 1978, and the date of the adoption of this chapter;
- (9) The amount of any deposits or other monies in addition to periodic rent demanded or received by the landlord in connection with the use or occupancy of the rental unit;
- (10) Whether the rental unit was vacant or occupied on May 31, 1980;
- (11) Rent in effect on December 31, 1981.

C. All rent registration statements provided by landlords in accordance with this chapter shall include an affidavit signed by the landlord declaring under penalty of perjury that the information provided in the rent registration statement is true and correct.

D. The first annual registration fee of twelve dollars per unit shall be paid by the landlords to the board no later than September 1, 1980. Subsequent annual registration fees set in accordance with Section 13.76.060N of this chapter shall be paid no later than July 1 of each. Because fees charged in years prior to 1991 were due on



September 1, but paid for board expenses from each preceding July 1, the fee due 1991 shall be calculated to pay for twelve months of board expenses.

E. The board shall provide forms for the registration information required by this section and shall make other reasonable efforts to facilitate the fulfillment of the requirements set forth in this section.

F. Every annual registration fee required by this chapter which is not paid on or before July 1 is declared delinquent, and the board shall add to said registration fee and collect a penalty of one hundred percent of the fee so delinquent in addition to the fee. Every six months that the fee and penalty remain delinquent, the penalty shall be increased by one hundred percent of the original fee. The board may waive the penalty if payment is made within thirty days of the original due date.

A landlord may request the board to waive all or part of the penalty if he/she can show good cause for the delinquent payment.

G. The amount of any registration fee and penalty imposed by the provisions of this chapter shall be deemed a debt to the city.

H. Within thirty days after the filing of a rent registration statement, the board shall provide a true and correct copy of said statement to the occupant of the respective unit.

I. Landlords of formerly exempt units shall register within sixty days of coming under coverage of this chapter. Units with tenancies established on or before March 1, 2020, that were formerly exempt as owner-occupied duplexes (under repealed subsection 13.76.050.F) shall register the rent in effect on March 1, 2020, and the initial rent ceiling shall be established on the basis of that monthly rent, subject to applicable annual general adjustments. Units with current tenancies established after March 1, 2020, that were formerly exempt as owner-occupied duplexes (under repealed subsection 13.76.050.F) shall register the monthly rent in effect on the first day of the tenancy and the initial rent ceiling shall be established on the basis of that initial rent set pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50, et. seq.). The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

J. No landlord shall be deemed to be in compliance with this section with respect to a given unit until the landlord has completed registration for all covered units in the same property. Registration shall be deemed complete when all required information has been provided and all outstanding fees and penalties have been paid.

K. Registration fees shall not be passed along to the tenants without the express, prior approval of the board. Under no circumstances shall penalties be passed along to tenants.

L. Landlords of partially-exempt units (set forth above in Sections 13.76.050I. and 13.76.050N.) shall register within sixty days of coming under coverage of this chapter. The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

Section 4. Section 13.76.130 of the Berkeley Municipal Code is amended to read as follows:

**13.76.130 Good cause required for eviction**

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

- a. The landlord has unreasonably withheld consent to the subtenancy; and
- b. The tenant remains an actual occupant of the rental unit; and
- c. The number of tenants and subtenants actually occupying the rental unit does not exceed the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater.

d. Withholding of consent by the landlord shall be deemed to be unreasonable where:

(i) The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy;

(ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information; and

(iii) The proposed new subtenant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and

(iv) The landlord has not articulated in writing a well-founded reason for refusing consent.

3. The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.

4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.

5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.

6. The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.

7a. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and

laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.

b. Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this subsection (13.76.130A.7.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.

c. Where the landlord owns any other residential rental units in the City of Berkeley, and any such unit is vacant and available at the time of premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this subsection (13.76.130A.7.), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

(i) To enter into a rental agreement (to be designated as a "temporary rental agreement") on any available rental unit which the tenant may choose, at a rent not to exceed the lesser of the lawful rent which may be charged for such available rental unit or the lawful rent in effect, at the time of the notice of termination of tenancy, on the unit being vacated, said rental agreement to be for a term of the lesser of ninety days or until completion of repairs on the rental unit being vacated by tenant; or

(ii) To enter into a new rental agreement or lease for such available rental unit at a rent not to exceed the lawful rent which may be charged for such available rental unit.

d. Where the landlord recovers possession under this subsection (13.76.130A.7.), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six

months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this subsection.

8. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

9. Owner Move-in Evictions.

a. The landlord seeks in good faith with honest intent and without ulterior motive to recover possession for his/her own use and occupancy as his/her principal residence for a period of at least 36 consecutive months; or

b. For the use and occupancy as the principal residence by the landlord's spouse or by the landlord's child, or parent for a period of at least 36 consecutive months.

c. For the purposes of this subsection (13.76.130A.9.), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record.

d. All notices terminating tenancy pursuant subsection 13.76.130.A.9 shall include the following: the existence and potential availability of relocation assistance under subsection 13.76.130A.9.g; the existence of tenant protections for families with minor children as defined in subsection 13.76.130A.9.k; the name and relationship of any qualified relative for purposes of subsection 13.76.130A.9b; and the landlord's ownership interest in any residential properties in the City of Berkeley where such interest, in any form whatsoever, is ten percent (10%) or greater. The landlord shall, within ten days of giving notice, file a copy of the notice terminating tenancy with the Rent Board.

e. The landlord may not recover possession under this subsection (13.76.130A.9.) if a comparable unit, owned by the landlord in the City of Berkeley, was, at the time of the landlord's decision to seek to recover possession of the

rental unit, already vacant and available, or if a comparable unit, owned by the landlord in the City of Berkeley, thereafter becomes vacant at any time until the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

f. The landlord shall offer any non-comparable unit owned by the landlord to the tenant if a non-comparable unit becomes available before the recovery of possession of the tenant's unit at a rate based on the rent the tenant is paying with an upward or downward adjustment based on the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.

g. Where a landlord recovers possession of a unit under subsection 13.76.130A.9, the landlord is required to provide standard relocation assistance to tenant households where at least one occupant has resided in the unit for one year or more in the amount of \$15,000. The landlord is required to provide an additional \$5,000 relocation assistance to tenant households that qualify as low-income; or include disabled or elderly tenants; minor children; or tenancies which began prior to January 1, 1999. The relocation fees set forth above shall be increased in accordance with the rules set forth in subsection 13.76.130A.9.h below. The procedures for payment of this relocation assistance are set forth below in subsection 13.76.130A.9.p.(i) through (iv). The following definitions apply for any tenant households evicted for owner move-in under subsection 13.76.130A.9:

(i)"low-income tenants" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States

Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5.

(ii) a person is “disabled” if he/she has a physical or mental impairment that limits one or more of a person's major life activities within the meaning of the California Fair Housing and Employment Act (Government Code § 12926).

(iii) “elderly” is defined as sixty (60) years of age or older.

(iv) “minor child” means a person who is under 18 years of age.

(v) “tenancy began prior to January 1, 1999” is a tenancy where an “original occupant” (as defined by Berkeley Rent Board Regulation) still permanently resides in the rental unit.

h. Effective January 1 of each year beginning in 2018, the fees set forth above in subsection 13.76.130A.9.g., may be increased in an amount based on the Consumer Price Index - All Urban Consumers in the San Francisco-Oakland-San Jose Region averaged for the 12-month period ending June 30, of each year, as determined and published by United States Department of Labor. Any increase shall be published by the Board on or before October 31<sup>st</sup> of each year.

i. It shall be evidence that the landlord has acted in bad faith if the landlord or the landlord's qualified relative for whom the tenant was evicted does not move into the rental unit within three months from the date of the tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least 36 consecutive months.

j. Once a landlord has successfully recovered possession of a rental unit pursuant to subsection 13.76.130A.9.a., then no other current or future landlords may recover possession of any other rental unit on the property pursuant to subsection 13.76.130A.9.a. It is the intention of this subsection that only one specific unit per property may be used for such occupancy under subsection 13.76.130A.9.a and that once a unit is used for such occupancy, all future occupancies under subsection 13.76.130A.9.a must be of that same unit.

k. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit has a custodial or family relationship with a minor child who is residing in the unit, the tenant with the custodial or family relationship has resided in the unit for 12 months or more, and the effective date of the notice of termination of tenancy falls during the school year. The term “school year” as used in this subsection means the first day of instruction for the Fall Semester through the first day of the month following the last day of instruction for the Spring Semester, as posted on the Berkeley Unified School District website for each year.

(i) For purposes of subsection 13.76.130A.9.k, the term “custodial relationship” means that the person is a legal guardian of the child, or has a caregiver’s authorization affidavit for the child as defined by Section 6550 of the California Family Code, or that the person has provided full-time custodial care of the child pursuant to an agreement with the child’s legal guardian or court-recognized caregiver and has been providing that care for at least one year or half of the child’s lifetime, whichever is less. The term “family relationship” means that the person is the biological or adoptive parent, grandparent, brother, sister, aunt or uncle of the child, or the spouse or domestic partner of such relations.

l. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit:

(i) Is 60 years of age or older and has been residing on the property for five years or more; or

(ii) Is disabled and has been residing on the property for five years or more; or

(iii) Has resided on the property for five years or more and the landlord has a ten percent (10%) or greater ownership interest, in any form whatsoever, in five or more residential rental units in the City of Berkeley.

m. A tenant who claims to be a member of one of the classes protected by subsection 13.76.130A.9.l must submit a statement, with supporting evidence, to the landlord. A



tenant's failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant's unit shall be deemed an admission that the tenant is not protected by subsection 13.76.130A.9.I. A landlord may challenge a tenant's claim of protected status by raising it as an issue at trial in an unlawful detainer action for possession of the tenant's unit.

n. The provisions of subsection 13.76.130A.9.I shall not apply to the following situations:

(i) Where a person is the owner of three or fewer residential units in the City of Berkeley and has no greater than a nine percent (9%) ownership interest in any other residential unit in the City of Berkeley; or

(ii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I and the landlord's qualified relative who is seeking possession of a unit subject to subsection 13.76.130A.9.b is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii) above; or

(iii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I, the landlord has owned the unit for which possession is being sought subject to subsection 13.76.130A.9.a for five years or more and is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii).

o. Where a landlord recovers possession under Subsection 13.76.130A.9, the tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy.

p. When a landlord is required to provide a relocation assistance payment subject to subsection 13.76.130A.9.g, the payment shall be divided among the tenants occupying

the rental unit at the time of service of the notice to terminate tenancy.

(i) Within ten days of service of a notice terminating tenancy under subsection 13.76.130A.9, the landlord shall deposit the standard relocation assistance (for households where an occupant has resided one year or more) with the City or its designated agent to be held in escrow. Within ten days after the funds

are deposited into escrow, the City shall release the standard relocation assistance to the tenant household, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(ii) In order to claim entitlement to additional relocation assistance under subsection 13.76.130A.9.g, a tenant must notify the landlord and the Rent Stabilization Program in writing that he/she is claiming low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 (hereinafter "entitlement to additional relocation assistance") per subsection 13.76.130A.9.g within 30 days of filing of notice of termination of tenancy with the Rent Stabilization Program. The landlord shall deposit the additional relocation payment with the Rent Stabilization Program or its designated agent to be held in escrow for any tenant household who claims entitlement to additional relocation assistance within ten days after such notice claiming entitlement to additional relocation assistance is mailed. Within ten days after the funds are deposited into escrow, the Rent Stabilization Program shall authorize release the relocation assistance to the tenant household that claims entitlement to additional relocation assistance, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(iii) When a tenant household's eligibility to receive standard or additional relocation

assistance as described in subsection 13.76.130A.9.g is disputed, either party may file a Rent Board petition requesting a determination of eligibility or file a claim in a court of competent jurisdiction. The Rent Stabilization Program shall release disputed relocation assistance funds to either the tenant or the landlord upon receipt of either a written agreement by both the landlord and the affected tenant, an order of a court of competent jurisdiction, or an order of a City or Rent Board hearing examiner issued pursuant to a petition process conducted in accordance with applicable Rent Board Regulations.

(iv) The landlord may rescind the notice of termination of tenancy prior to any release of relocation payment to the tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the landlord. Subsequent to the release of any relocation payment to the tenants, the landlord may rescind the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the tenants remain in possession of the rental units after service of a landlord's written notice of rescission of the eviction, the tenants shall provide an accounting to the landlord of the amount of the relocation payment expended for moving costs, return to the landlord that portion of the relocation payment not expended for moving costs, and assign to the landlord all rights to recover the amount of relocation payment paid to third parties. If a rescission occurs under this subsection, the tenant(s) shall continue the tenancy on the same terms as before the notice was served.

(v) Where a landlord has served a notice of termination of tenancy on a tenant prior to the date that this amendment takes effect and the notice of termination of tenancy has not expired, the landlord shall deposit the full relocation payment with the City or its designated agent to be held in escrow for the

tenants if the tenants have not vacated the rental unit as of the effective date of this amendment, and the landlord shall pay the full relocation payment to the tenants if the tenants have vacated the rental unit as of the effective date of this amendment. Said deposit in escrow or payment to the tenants shall be made within ten days of the effective date of this amendment.

(vi) Failure of the landlord to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the landlord's termination of tenancy notice pursuant to this subsection (13.76.130A.9). In addition, if the tenants of a rental unit have vacated the unit as a result of a notice of termination of tenancy pursuant to this subsection (13.76.130.A.9), and the landlord fails to make any payment specified herein, the landlord shall be liable to the tenants for three times the amount of the payment as well as reasonable attorney fees.

q. A tenant who prevails in an action brought under this subsection (13.76.130A.9), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

r. At least twice annually, Rent Board staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered pursuant to this subsection (13.76.130A.9) within the prior 36 months.

s. If any provision or clause of this subsection (13.76.130A.9) or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this subsection are severable.

10. A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for

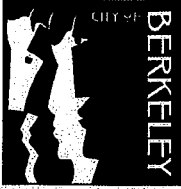
his/her occupancy as a principal residence under an existing rental agreement with the current tenants.

11. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13.76.130A.7.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of 90 days).

B. A landlord's failure to specify good cause as listed above in subsections 1. through 11. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter.

C. In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under subsection 13.76.130A.7., 13.76.130.A.8, or 13.76.130.A.11., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this chapter.

D. The landlord shall file with the board a copy of any notice of termination, notice to quit, and summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint.




Rent Stabilization Board  
Office of the Executive Director

**MEMORANDUM**

**DATE:** May 21, 2020

**TO:** Honorable Members of the Berkeley Rent Board

**FROM:** Honorable Members of the IRA/AGA/Habitability Committee

By: Matt Brown, Acting Executive Director   
Matthew Siegel, Staff Attorney  
Lynn Wu, Staff Attorney

**SUBJECT:** Proposed Amendments to Rent Stabilization and Eviction for Good Cause Ordinance

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**Summary**

The IRA-AGA-Registration Committee met on May 8, 2020 to discuss amendments to the Rent Stabilization and Eviction for Good Cause Ordinance and voted unanimously to propose them to the full Board. This memorandum compiles the Committee's recommendations for proposed amendments that are designed to ensure that the Ordinance better serves its purpose; namely the prevention of arbitrary, discriminatory or retaliatory evictions, in order to maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. In light of both the ongoing housing crisis and the new threat to housing stability posed by the COVID-19 pandemic, these proposed amendments enhance the ability of the Board and City Council to preserve the public peace, health and safety, and the availability of housing for low and fixed income households, people of color, students, people with disabilities, and older residents.

The proposed amendments include an expanded registration requirement for partially-exempt units; an amendment to eliminate the exemption for owner-occupied duplexes; an amendment to the nonpayment of rent cause for eviction to exclude rent that is delayed due to a covered reason related to a state of emergency such as the COVID-19 pandemic; and an amendment to eliminate the exemption for Accessory Dwelling Units (ADUs). Each proposed amendment is discussed separately below.

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TEL: 510.981.7368 ■ TDD: 510.981.6903 ■ FAX: 510.981.4940  
E-MAIL: [rent@ci.berkeley.ca.us](mailto:rent@ci.berkeley.ca.us) ■ INTERNET: [www.ci.berkeley.ca.us/rent/](http://www.ci.berkeley.ca.us/rent/)

**1. Expanded Registration**

**Background and Need for Rent Stabilization Board Action:**

This proposal would require the registration of certain types of units not covered by rent control for purposes of monitoring the ongoing housing crisis and improving the efficacy of local regulatory efforts to mitigate the crisis.

If this proposal were enacted, the Board would adopt a secondary Registration Fee for two types of partially-exempt units: single-family homes and newly constructed units. The Registration Fee for these units would cover only those additional expenses incurred by the Board as a result of counseling the owners and tenants of these partially-exempt units, as well as registration of those units, and would not cover the costs associated with petitions for individual rent adjustments and other services that are not provided to partially-exempt units.

The proposal should set forth a deadline for the registration of partially-exempt units, which are currently exempt from registration requirements. This deadline should be established in consideration of the administrative resources required by Board staff, in addition to the other policy goals of the proposal.

**Proposed Language:**

Chapter 13.76 is amended as follows:

Section 13.76.050

**APPLICABILITY**

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

...

I. Newly constructed rental units, as defined in Section 13.76.040. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of ~~Section 13.76.080, Rent Registration;~~ Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

...

O. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of such units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. The exemptions provided in this Section shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

Section 13.76.060

RENT STABILIZATION BOARD

...

N. Financing: The board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board. The registration fee for partially-exempt units shall reasonably approximate the cost of registration and counseling services for such units, and shall not include the cost of services from which such units are exempt. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the board. The board is also empowered to request and receive funding, when and if necessary, from the city of Berkeley and/or any other available source for its reasonable and necessary expenses, including expenses incurred at the request of the City.

Section 13.76.080

RENT REGISTRATION

A. The board shall require all landlords subject to the provisions of this chapter, including Section 13.76.130, to file with the board by September 1, 1980 a rent registration statement for each rental unit covered by this chapter. An owner who has resided in a single family dwelling for at least three hundred sixty five consecutive calendar days need not file a rent registration statement under the provisions of this chapter if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

...

L. Landlords of partially-exempt units (set forth above in Sections 13.76.050I. and 13.76.050O.) shall register within sixty days of coming under coverage of this chapter. The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

**2. "Golden Duplex" Repeal**

**Background and Need for Rent Stabilization Board Action:**

This proposal would repeal the "golden duplex" exemption for owner-occupied duplexes that were owner-occupied on December 31, 1979, and would bring all duplexes within the coverage of the ordinance, except those that are also exempt under a separate provision, such as new construction. Rent ceilings must be established for units that lose exemption. Thus, this proposal would set the rent ceilings at the amount of rent in effect on March 1, 2020, for tenants who occupied the unit continuously on or before March 1, 2020, through the date this amendment becomes effective. For tenancies that begin after March 1, 2020, the rent ceiling would be the lawfully established initial rent under the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et. seq.).



**Proposed Language:**

Section 13.76.050

APPLICABILITY

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

...  
~~F. Rental units in a residential property which is divided into a maximum of four units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.~~

Section 13.76.080

RENT REGISTRATION

A. The board shall require all landlords subject to the provisions of this chapter to file with the board by September 1, 1980 a rent registration statement for each rental unit covered by this chapter. An owner who has resided in a single family dwelling for at least three hundred sixty five consecutive calendar days need not file a rent registration statement under the provisions of this chapter if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

...  
I. Landlords of formerly exempt units shall register within sixty days of coming under coverage of this chapter. Units with tenancies established on or before March 1, 2020, that were formerly exempt as owner-occupied duplexes (under repealed subsection 13.76.050.F) shall register the rent in effect on March 1, 2020, and the initial rent ceiling shall be established on the basis of that monthly rent, subject to applicable annual general adjustments. Units with current tenancies established after March 1, 2020, that were formerly exempt as owner-occupied duplexes (under repealed subsection 13.76.050.F) shall register the monthly rent in effect on the first day of the tenancy and the initial rent ceiling shall be established on the basis of that initial rent set pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50, et. seq.). The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

**3. COVID19 Delayed Payments Are Not Good Cause for Eviction**

**Background and Need for Rent Stabilization Board Action:**

The Berkeley City Council’s COVID-19 Emergency Response Ordinance (Berkeley Municipal

Code Chapter 13.110) provides that where a tenant has a Covered Reason for Delayed Payment, those delayed payments shall not constitute grounds for eviction, even after the expiration of the local State of Emergency. Alameda County has enacted a similar protection that applies countywide. This proposal would amend the Rent Stabilization Ordinance to ensure that there is no conflict with these or any other future pieces of emergency legislation by limiting the substantive basis for eviction for nonpayment of rent so that it does not apply to rent payments that come due during a state or local state of emergency when triggered by applicable federal, state, or local emergency legislation.

**Proposed Language:**

Section 13.76.130

GOOD CAUSE REQUIRED FOR EVICTION

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency.

**4. Eliminating the Accessory Dwelling Unit (ADU) Exemption**

**Background and Need for Rent Stabilization Action:**

The committee proposes to eliminate the ADU exemption entirely.<sup>1</sup>

Rent ceilings must be established for units that lose exemption. Thus, this proposal would set the rent ceilings at the amount of rent in effect on March 1, 2020 for tenants who occupied the unit continuously from on or before March 1, 2020 through the date this amendment becomes effective. For tenancies that begin after March 1, 2020, the rent ceiling would be the lawfully

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<sup>1</sup> Starting in January 2020, owners may create ADUs in multi-family properties. If voters do not eliminate the ADU exemption as proposed by the committee, they will need to amend the exemption as currently written in the Rent Ordinance. Otherwise, there would likely be unintended exemptions created, since rental units in multi-family properties would become exempt after an owner occupies a unit on the property as their principal residence. As initially drafted the existing exemption was only meant to apply narrowly to situations in which only a Single Family Dwelling shares a property with a single ADU. If nothing else, this language must be amended to ensure that rental units are not exempted that were never meant to be.

established initial rent under the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et. seq.).

**Proposed Language:**

Section 13.76.050

APPLICABILITY

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

...  
~~N. A rental unit in a residential property containing a lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection (13.76.050N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018.~~

Section 13.76.080

RENT REGISTRATION

A. The board shall require all landlords subject to the provisions of this chapter to file with the board by September 1, 1980 a rent registration statement for each rental unit covered by this chapter. An owner who has resided in a single family dwelling for at least three hundred sixty five consecutive calendar days need not file a rent registration statement under the provisions of this chapter if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

...  
I. Landlords of formerly exempt units shall register within sixty days of coming under coverage of this chapter. Units with tenancies established on or before March 1, 2020, that were formerly exempt as Accessory Dwelling Units where the landlord also occupies a unit in the same property as his/her principal residence (under repealed subsection 13.76.050.N) shall register the monthly rent in effect on March 1, 2020, and the initial rent ceiling shall be established on the basis of that rent, subject to applicable annual general adjustments. Units with current tenancies established after March 1, 2020, that were formerly exempt as owner-occupied duplexes (under repealed subsection 13.76.050.N) shall register the monthly rent in effect on the first day of the tenancy and the initial rent ceiling shall be established on the basis of that initial rent set pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et. seq.). The registration fee for this first-time registration shall be pro- rated based upon the number of months remaining to the next July 1 annual registration deadline.

**CONCLUSION**

The IRA/AGA/Registration Committee has unanimously proposed that the Board adopt these proposed amendments at its May 8, 2020 meeting. After the Board discusses them and decides what it wishes to propose, the City Council will have to vote to place these matters on the ballot for the November general election. Typically, proposed Rent Ordinance amendments have also been brought to the 4 x 4 Committee, but that Committee has not been deemed essential and consequently is not convening at this time as a result of the local state of emergency related to the COVID-19 pandemic.

Time is of the essence as Council will have to place these matters on an agenda soon in order to meet any ballot measure deadlines. Staff awaits the Board's instruction on how it wishes to proceed.



Office of the Mayor

CONSENT CALENDAR

July 28, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguin

Subject: Improving Hate Crimes Reporting and Response

RECOMMENDATION

Refer to the City Manager to review the following proposals and implement new systems for reporting and response to hate incidents and crimes:

- Develop easy, transparent reporting systems for victims and/or their support networks, including a hate crimes reporting hotline (SF implemented) and/or an online reporting tool.
- Privacy policies and procedures that will provide support for victims and encourage reporting
- Culturally appropriate personnel structures to respond to incidents that will encourage reporting, reduce fear and provide support
- Establishing supportive community based networks that provide clear, decisive response to hate crimes and hate incidents
- The creation of accessible and multilingual reporting procedures and resources that deliver the clear message that hate has no place in Berkeley,
- Engaging youth and BUSD to make it clear that bullying, racial slurs and vandalism are hate-fueled incidents,
- Develop a public facing mapping tool that indicates patterns of hate incidents and crimes to help with outreach and prevention,
- Other emerging policies and activities that support an inclusive and safe community; and

SUMMARY

Hate crime victims are usually targeted not because of anything they have said or done, but because of who they are or what they believe in. As such, hate crimes violate the very basic tenets of our democracy by targeting the right of every resident to be themselves and live safely and freely.

Perpetrators of hate crimes seek to send a message to the victim and his or her community that they are unwanted, that they do not belong, and that the community at large does not care about what happens to them. While we cannot eliminate all hate crimes, we can drastically diminish their impact by the approach taken by the City when hate crimes or incidents occur. We can send an even stronger counter-message to hate by developing a strong community-based infrastructure to support victims and ensure that accurate and transparent reporting and accountability occurs.

## BACKGROUND

A 1969 federal hate crimes law was expanded in 2009 to provide protections beyond federally protected activity. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act gave the federal government the authority to investigate and prosecute crimes against victims targeted because of race, ethnicity, sexual orientation, gender identity, religion or disability. Proponents of this expansion argued that hate crimes are worse than regular crimes without a prejudiced motivation from a psychological perspective. The time it takes to mentally recover from a hate crime is almost twice as long as it is for a regular crime.

Sadly, Berkeley is not immune to hate incidents and hate crimes and has policies for police response to address hate incidents. (Attachment #1) In 2001, after a rise in violence and hate speech resulting from the September 11, 2001 terrorist attacks, Berkeley declared itself a Hate-Free Zone for those of Middle-Eastern descent and of Muslim faith in order to provide sanctuary and support and discourage hate crimes.

More recently, Berkeley has seen an increase in the number of hate incidents and crimes. Since Donald Trump's election in 2016, there has been a reported increase in hate crimes throughout the country. In response to this alarming trend, the Berkeley City Council adopted Resolution No. 67,794-N.S. The resolution recitals (Attachment #2) described the increase in hate incidents:

*“Communities all over America have witnessed a rise in violence directed towards minorities, particularly against those who are Immigrants, of Middle Eastern descent, Muslim, Jewish, Asian-American, African-American, Hispanics, Women, Disabled, part of LGBTQQIA+ communities, and advocating for equality; and”*

*“Hate speech, hate behavior and hate crimes appear to be proliferating now, after many years of progress at reducing explicit public displays of hate; and”*

On June 19, 2020, two black children learning to rock climb at the popular and picturesque Indian Rock Park in the Berkeley Hills were subjected to a racial slur by a white passerby.<sup>1</sup> And on that same day, Black Lives Matter posters were torn down on Hillcrest Road and a racist altercation occurred concerning the efforts of children chalking their support for their black neighbors. Back on October 23, 2017, at Berkeley's Pacific Center a man burned a rainbow flag and punched a volunteer.<sup>2</sup> And on November 28, 2018, someone entered the Pacific School of Religion campus chapel and drew a swastika inside a bible on display. A piece of paper with the words 'Adolph Hitler' scribbled on it was tacked onto a nearby bulletin board.<sup>3</sup>

Acts of hate violence or threats should be viewed as serious and investigations given priority. Such acts generate fear and concern in victims and the public; and have the potential for recurring, escalating and possibly cause retaliation. They divide us, intimidate our most vulnerable citizens and damage our collective spirit. Without

<sup>1</sup> <https://www.berkeleyside.com/2020/06/19/black-girls-at-climbing-camp-in-indian-rock-park-called-n-word-by-white-woman>

<sup>2</sup> <https://www.berkeleyside.com/2017/10/23/man-burns-rainbow-flag-punches-volunteer-pacific-center-berkeley>

<sup>3</sup> <https://www.berkeleyside.com/2018/11/28/pacific-school-of-religion-startled-by-anti-semitic-incidents>

addressing these incidents and crimes, communities experience broad harms – well beyond those of the individual victims.

Hate requires a visible and swift response. When such incidents occur the community must be reminded that an attack on one is an attack on all. It is important that Berkeley take proactive steps to create a system of response and reporting and enact procedures to prevent hate incidents. We must remain vigilant and committed to the visible rejection of hate, racism and bigotry.

### CURRENT SITUATION AND ITS EFFECTS

Hate Crimes targeted at people based on their perceived race, color, national origin, gender, gender identity, sexual orientation, religion and/or disability are a widespread problem in communities across the United States. However, an acute discrepancy exists between the number of actual hate crimes committed, and the number officially reported to the FBI. This results in significant challenges for a community:

- Hate and bias crimes can escalate if not identified, addressed and tracked
- Without accurate data, appropriate resources cannot be allocated to address tensions and violence in communities
- Inadequate response to hate crimes can leave affected victims feeling unheard and unsafe

Furthermore, there are serious factors that relate to underreporting:

- Communities targeted for hate may not feel safe or comfortable reporting hate crimes to law enforcement
- Long-standing distrust among some communities leads victims to believe law enforcement will be unwilling or unable to help
- Immigrant communities may fear deportation or other consequences if they step forward
- Victims who speak different languages or have disabilities may not report due to cumbersome, inaccessible hate crime reporting procedures
- Individuals and targeted communities may fear retaliation if they report incidents.

Approximately 25% of victims<sup>4</sup> do not report a hate crime because they do not believe the police would or could help. These statistics point out the reluctance of many targeted groups due to historical difficulties with police departments or a feeling that their interests will not be protected. For victims that are not comfortable reporting to law enforcement, a trusted intermediary or community group should be part of the reporting process, familiar with agency policies and demand accurate, transparent reporting protocols.

The Department of Justice recommends creating and fostering partnerships within community to respond to hate incidents and crime – communities need to be involved in the solutions. They also note that victims of hate and other vulnerable individuals are sometimes mistrustful or fearful of law enforcement and turn first to community groups

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<sup>4</sup> <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>

or faith-based organizations for support and as a link to law enforcement and other authorities.<sup>5</sup>

California Attorney General, Xavier Becerra, launched a new hate crime prevention website, intended to be a one-stop shop for information and resources, and a Hate Crime Rapid Response Team. At the time it was launched, AG Becerra stated, “When someone commits a crime motivated by hate, it is not just an attack on one innocent person, but an attack on the entire State.”<sup>6</sup>

Los Angeles has recently launched LA vs HATE in partnership with Los Angeles County’s Human Relations Commission and Department of Mental Health. 211 LA hosts a hotline for individuals who have been victims or witnesses to acts of bullying or incidents motivated by hate or discrimination to connect with services. San Diego has created a San Diego Regional Hate Crime Coalition<sup>7</sup> that coordinates outreach, education, and dialogue regarding bullying, hate incidents and hate crimes and also developed a Model Hate Crime Protocol Procedure Manual in coordination with their Hate Crimes Community Working Group.<sup>8</sup>

When a hate crime occurs:

1. Victimization is projected outward to all members of the victim’s wider community.
2. Other members of the same group feel victimized.
3. Members of other commonly targeted groups are reminded of their vulnerability to similar attacks.
4. The community is polarized into an “us-versus-them” mentality.
5. It impedes community spirit, morale, and growth.
6. Property values are lowered.
7. It increases security concerns at schools, churches, businesses, and private homes.

## RATIONALE FOR RECOMMENDATIONS

While Berkeley police do respond to hate crimes and incidents, real change and support for victims will only occur with a constructed, socially appropriate response from an organized community and neighborhoods infrastructure. City and community mechanisms must be developed to support impacted community members and organizations,

- Consistent communication that the City takes hate crimes and bias incidents seriously
- Online and call-center reporting systems that will allow the incident or crime to be directed to the appropriate resource within the City of Berkeley
- Conduct outreach to individuals and communities targeted for hate to listen to their concerns, assist with their needs and respect requests for privacy
- Develop easy, transparent reporting resources for victims and/or their support networks including accessible and multilingual reporting procedures

<sup>5</sup> <https://www.justice.gov/hatecrimes/preventing-hate-crimes-your-community>

<sup>6</sup> <https://oag.ca.gov/hatecrimes>

<sup>7</sup> <https://sdnohate.org>

<sup>8</sup> [https://www.ncjrs.gov/ovc\\_archives/reports/responding/files/appendixA.pdf](https://www.ncjrs.gov/ovc_archives/reports/responding/files/appendixA.pdf)



- Engage youth to make it clear that bullying, racial slurs and vandalism are hate-fueled incidents
- Establish culturally appropriate and supportive networks that prioritizes clear, decisive response to hate crimes and hate incidents, ongoing collaboration to promote healing and strengthen prevention activities
- Engage and organize the community when it is necessary to stand up to hate groups

Victims should be given an option of first speaking with a public health official or community support group before officially reporting a hate event to Berkeley Police. This could encourage reporting for those that would be otherwise inclined to stay silent. It would also provide support for the victims if it is determined that reporting the crime to Berkeley Police is necessary.

Engaging the community to respond to hate incidents, empowers all to stand up against hateful acts. The response from the Berkeley community to the tragic events of Charlottesville, and the still evident Berkeley Stands United Against Hate signs, speaks to the powerful message embraced by an entire community and region. Ensuring that there are mechanisms in place to rally the community when hate happens will only make Berkeley safer and more inclusive.

#### FINANCIAL IMPLICATIONS

Unknown. Staff time to determine the optimal approaches for hate crime reporting, organizing an internal response team and engaging the community for real-time action. Possible resource development that educates the public about what to do when a hate crime occurs.

#### ENVIRONMENTAL SUSTAINABILITY

Consistent with Berkeley's policies for a safe and resilient community

#### CONTACT PERSON

Mayor Jesse Arreguin                      510-981-7100

#### Attachments:

1. Berkeley Police Department Policy 319, Hate Crimes
2. Resolution No. 67,794-N.S., "Expand the City's Hate-Free Zone Resolution in Order to Support Vulnerable Individuals and Communities", December 13, 2016, Berkeley City Council

## Hate Crimes

### 319.1 PURPOSE AND SCOPE

The purpose of this policy is to meet or exceed the provisions of Penal Code § 13519.6(c) and provides members of this department with guidelines for identifying and investigating incidents and crimes that may be motivated by hatred or other bias.

#### 319.1.1 DEFINITIONS

**Hate crimes** - A criminal act committed in whole or in part, because of one or more of the following actual or perceived characteristics of the victim (Penal Code § 422.55; Penal Code § 422.56; Penal Code § 422.57):

- (a) Disability
- (b) Gender, gender identity or gender expression
- (c) Nationality
- (d) Race or ethnicity
- (e) Religion
- (f) Sexual orientation
- (g) Association with a person or group with one or more of these actual or perceived characteristics
- (h) Examples of hate crimes include, but are not limited to:
  1. Interfering with, oppressing or threatening any other person in the free exercise or enjoyment of any right or privilege secured by the constitution or laws because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6).
  2. Defacing a person's property because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6(b)).
  3. Terrorizing a person with a swastika or burning cross (Penal Code § 11411).
  4. Vandalizing a place of worship (Penal Code § 594.3).

The federal Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act expands federal hate crimes to include crimes motivated by a victim's actual or perceived sex, sexual orientation, gender identity or disability (18 USC § 249).

**Victim** - Includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library or other victim or intended victim of the offense (Penal Code § 422.56).

## *Hate Crimes*

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### **319.2 POLICY**

The Berkeley Police Department recognizes and places a high priority on the rights of all individuals guaranteed under the state and federal constitution and incorporated in state and federal law.

### **319.3 PREVENTION AND PREPARATION**

While it is recognized that not all crime can be prevented, this department is committed to taking a proactive approach to preventing and preparing for likely hate crimes by, among other things:

- (a) Make an affirmative effort to establish contact with persons and groups within the community who are likely targets of hate crimes and forming networks that address prevention and response.
- (b) Accessing assistance by, among other things, activating the California Department of Justice Hate Crime Rapid Response Protocol when necessary.
- (c) Providing victim assistance and community follow-up as outlined below.
- (d) Educating community and civic groups about hate crime laws.
- (e) Establishing a community relations liaison to work with community organizations and leaders to coordinate public meetings, local group meetings and school assemblies on recognizing, preparing for and preventing hate crimes.

### **319.4 HATE CRIME VS. HATE INCIDENT**

Many acts of hate violence fall under the category of a hate crime, which is punishable by law. However, not all hate incidents are hate crimes. For example, verbal name calling, although offensive, is not a crime and must be accompanied by a viable threat of violence and the ability to carry out the threat.

For a hate incident to be categorized as a hate crime, it must violate a criminal law. A hate crime might include threatening phone calls, physical assaults, destruction of property, bomb threats, and/or the disturbance of religious meetings.

A hate incident that does not constitute a hate crime might include hate speech, display of offensive materials on one's property, the distribution of hate materials in public places, and the posting of hate materials that does not result in property damage. Even if a hate incident does not rise to the level of a hate crime, the victim will still need support and assistance and may have an actionable civil claim as well.

### **319.5 CRIMINAL STATUTES**

The key criminal statutes on hate crimes are

- (a) Penal Code § 422.6 which provides that it is a misdemeanor to both (a) threaten or injure an individual or (b) damage property because of the real or perceived beliefs or characteristics of the other person; and
- (b) Penal Code § 422.7 which provides that it is a felony to both (a) threaten or injure an individual (when the injury could or does result in great bodily injury) or (b) damage

## Hate Crimes

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property (when the damage is in excess of \$950) because of the real or perceived beliefs or characteristics of the other person.

### 319.6 INVESTIGATIONS

Whenever any member of this department receives a report of a suspected hate crime or other activity that reasonably appears to involve a potential hate crime, the following should occur:

- (a) Assigned officers should promptly contact the victim, witness or reporting party to investigate the matter further as circumstances may dictate
- (b) A supervisor should be notified of the circumstances as soon as practical.
- (c) Once in-progress aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of suspects at the scene), the assigned officers should take all reasonable steps to preserve evidence that establishes a possible hate crime.
- (d) Based upon available information, officers should take appropriate action to mitigate further injury or damage to potential victims or the community.
  1. Officers should contact the property owner to remove any evidence that cannot be physically removed (i.e., painted words or signs on a wall) by the officer once the offense is documented.
- (e) The assigned officers should interview available witnesses, victims and others to determine what circumstances, if any, indicate that the situation may involve a hate crime.
  1. No victim of or a witness to a hate crime who is not otherwise charged with or convicted of a crime under state law may be detained for or turned over to federal authorities exclusively for any actual or suspected immigration violation (Penal Code § 422.93(b))
  2. Statements of victims and witnesses should be audio or video recorded if practicable (see the Portable Audio/Video Recorders Policy).
- (f) Depending on the situation, the assigned officers or supervisor may request additional assistance from detectives or other resources.
- (g) The assigned officers should include all available evidence indicating the likelihood of a hate crime in the relevant reports. All related reports should be clearly marked as "Hate Crimes" and, absent prior approval of a supervisor, should be completed and submitted by the assigned officers before the end of the shift.
- (h) The assigned officers will provide the victims of any suspected hate crime with a brochure on hate crimes (Penal Code § 422.92). Such brochures will also be available to members of the general public upon request. The assigned officers should also make reasonable efforts to assist the victims by providing available information on local assistance programs and organizations.
- (i) The assigned officers and supervisor should take reasonable steps to ensure that any such situation does not escalate further and should provide information to the victim regarding legal aid (e.g., Possible Temporary Restraining Order through the District Attorney or City Attorney Penal Code § 136.2 or Civil Code § 52.1 as indicated).

## *Hate Crimes*

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### 319.6.1 SUPERVISOR RESPONSIBILITY

The supervisor should confer with the initial responding officers to identify reasonable and appropriate preliminary actions. The supervisor should:

- (a) Review related reports to verify whether the incident is appropriately classified as a hate crime for federal and state bias crime-reporting purposes.
- (b) Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
- (c) Consider the need for further action to be taken for the protection of the victims or vulnerable sites, such as assigning an officer at specific locations that could become targets or increase neighborhood surveillance.
- (d) Ensure that members who are responsible for the conduct and maintenance of information on criminal groups are notified and that they make appropriate inquiries and entries into criminal intelligence systems.

### 319.6.2 DETECTIVE BUREAU RESPONSIBILITY

If a hate crime case is assigned to the Detective Bureau, the assigned detective will be responsible for:

- (a) Coordinating further investigation with the District Attorney and other appropriate law enforcement agencies.
- (b) Maintaining contact with the victims and other involved individuals, as needed.
- (c) Maintaining statistical data and tracking on suspected hate crimes as indicated for required reporting to the Attorney General (Penal Code § 13023). See the Records Management Policy.
- (d) Make reasonable efforts to identify additional witnesses.
- (e) Utilize available criminal intelligence systems as appropriate.
- (f) Provide the supervisor and the Public Information Officer (PIO) with information that can be responsibly reported to the media.
  - 1. When appropriate, the PIO should reiterate that the hate crime will not be tolerated and will be taken seriously.

### **319.7 TRAINING**

All members of this department will receive POST-approved training on hate crime recognition and investigation as provided by Penal Code § 13519.6. Training should also include recognition of bias motivators such as ranges of attitudes and perceptions toward a specific characteristic or group.

RESOLUTION NO. 67,794–N.S.

Attachment #2

EXPAND BERKELEY HATE FREE ZONE TO SUPPORT VULNERABLE INDIVIDUALS  
AND COMMUNITIES

WHEREAS, after a rise in violence and persecution resulting from the attacks of September 11, 2001, the City established Berkeley as a Hate-Free Zone for those of Middle-Eastern descent and of Muslim faith in order to provide sanctuary and support; and

WHEREAS, communities all over America have witnessed a rise in violence directed towards minorities, particularly against those who are Immigrants, of Middle Eastern descent, Muslim, Jewish, Asian-American, African-American, Hispanics, Women, Disabled, part of LGBTQQIA+ communities, and advocates for equality; and

WHEREAS, members of the affected communities have expressed their deep concerns for their safety and well-being; and

WHEREAS, hate speech, hate behavior and hate crimes appear to be proliferating now, after many years of progress at reducing explicit public displays of hate; and

WHEREAS, immigrant families and children live in fear of separation and possible permanent loss of loved ones who may be forcibly returned to a country where their lives are in danger; and

WHEREAS, numerous Muslims are facing, what the Council on American-Islamic Relations described as an accelerated spike in Islamophobia and Anti-Muslim rhetoric that have triggered an unbelievable spike of hate crimes targeting Muslims and other minorities with more than 100 incidents specifically targeting Muslims post-election; and

WHEREAS, the Jewish community has faced what the Anti-Defamation League (ADL) described as “growing numbers of reports about anti-Semitic, racist, and bigoted incidents, including vandalism, assaults and harassment, from around the country”; and

WHEREAS, according to Anirvan Chatterjee, the curator of the Berkeley South Asian Radical History Walking Tour that numerous Asian American community members experienced harassments including words like “go back to where you come from”, even when many of those members are in fact from the United States; and

WHEREAS, the disabled community has experienced ridicule and disrespect, on top of practical fears of privatization and reductions to life saving health support programs; and

WHEREAS, the LGBTQQIA+ community fears the ongoing failure to ban employment discrimination nationwide will be compounded by high ranking officials including Cabinet nominees who demean and disparage them, and risk rollbacks of the great progress seen in recent years of positive executive branch actions; and

WHEREAS, an estimated 1,500 Berkeley high students walked out of their classes to protest against the prospects of the new Trump administration; and

WHEREAS, the Southern Poverty Law Center has counted over 867 reported incidents of election related intimidation and harassment as of November 29.

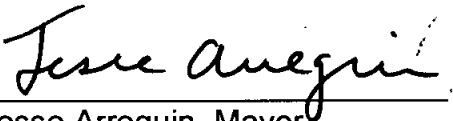
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley sends a clear message to all of our vulnerable threatened communities that we accept them, value them and respect them. Furthermore our city and our leaders will offer solidarity, stand up and speak out against hate speech, hate behavior and hate crimes, and that we will do everything we can to protect people during these difficult days.

The foregoing Resolution was adopted by the Berkeley City Council on December 13, 2016 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

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







Office of the Mayor

CONSENT CALENDAR

July 28, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Opposition to Nuclear Warfare

RECOMMENDATION

Adopt a Resolution marking the 75<sup>th</sup> anniversary of the atomic bombings of Hiroshima and Nagasaki with a call to prevent nuclear war.

BACKGROUND

On August 6 and 9, 1945, an estimated 210,000 were killed during the atomic bombings of Hiroshima and Nagasaki. 75 years later and the consequences of nuclear weapons continues. In January 2020, the Doomsday Clock, a symbolic clock designed in 1947 to show the risk of existential dangers, moved to 100 seconds to midnight, the closest it has ever been to midnight. The dual threat of nuclear weapons and climate change were attributed to this dire announcement. Mining, storage, and disposal of radioactive materials such as uranium frequently take place by indigenous lands. And over the next 30 years, the United States is planning to spend \$1.7 trillion on upgrading its nuclear arsenal instead of phasing it out. Also of great concern, the Trump administration has taken action that has increased the threat of nuclear weapons, such as leaving international treaties including the Treaty on the Prohibition of Nuclear Weapons and the Iran Deal, along with fumbling negotiations with North Korea.

The City of Berkeley has taken similar action in the past regarding nuclear weapons. Most notably, Berkeley voters approved the Nuclear Free Berkeley Act in 1986. While this act was in response to the growing threat of nuclear warfare during the Cold War, nuclear warfare remains a significant existential threat with continued proliferation and tensions between nuclear nations. Berkeley is also a part of Mayors for Peace, an organization consisting of over 7,900 cities worldwide that advocates for the abolition of nuclear weapons.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

The detonation of even a small number of nuclear weapons could have catastrophic human and environmental consequences that could affect everyone on the planet.

[Title of Report]

CONSENT CALENDAR  
July 28, 2020

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1: Resolution

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

ON THE 75th ANNIVERSARY OF THE U.S. ATOMIC BOMBINGS OF HIROSHIMA AND NAGASAKI; A CALL TO PREVENT NUCLEAR WAR

WHEREAS, August 6 and 9, 2020 mark the 75th anniversaries of the United States atomic bombings of Hiroshima and Nagasaki; and

WHEREAS, on August 6, 1945 the United States unleashed the nuclear age, dropping a single atomic bomb on Hiroshima – a tiny and crude nuclear weapon by today’s standards – indiscriminately incinerating tens of thousands of ordinary people and killing or injuring over 90% of the doctors and nurses in Hiroshima; and

WHEREAS, three days later, the United States dropped a second atomic bomb on Nagasaki; and

WHEREAS, by the end of 1945 more than 210,000 people - mainly civilians - were dead, and the surviving A-bomb victims (“hibakusha”), their children and grandchildren continue to suffer from physical and psychological effects of the bombings; and

WHEREAS, indigenous and colonized peoples have, in large part, borne the brunt of more than 75 years of nuclear devastation resulting from the mining of uranium, the testing of nuclear weapons, the dumping, storage and transport of plutonium and nuclear wastes, and the theft of their lands for nuclear infrastructure; and

WHEREAS, today, more than 13,000 nuclear weapons, most an order of magnitude more powerful than the atomic bombs that destroyed Hiroshima and Nagasaki— 92% held by the United States and Russia, continue to pose an intolerable threat to humanity; and

WHEREAS, the detonation of even a small number of these weapons could have catastrophic human and environmental consequences that could affect everyone on the planet; and

WHEREAS, over the next 30 years, the United States plans to spend an estimated \$1.7 Trillion to replace its entire nuclear weapons infrastructure and upgrade its nuclear bombs and warheads and the bombers, missiles and submarines that deliver them; and

WHEREAS, all the nuclear-armed nations are upgrading their nuclear arsenals; and

WHEREAS, the Bulletin of the Atomic Scientists has moved the hands of its iconic Doomsday Clock to 100 seconds to midnight, the closest it’s ever been set since its inception in 1947, due to “two simultaneous existential dangers – nuclear war and climate

change – that are compounded by a threat multiplier, cyber-enabled information warfare, that undercuts society’s ability to respond”; and

WHEREAS, according to United Nations High Representative for Disarmament Affairs Izumi Nakamitsu: “The specter of unconstrained nuclear competition looms over us for the first time since the 1970s. We are witnessing what has been termed a qualitative nuclear arms race, one not based on numbers but on faster, stealthier and more accurate weapons. Regional conflicts with a nuclear dimension are worsening, and proliferation challenges are not receding;” and

WHEREAS, the administration has requested over \$740 billion for the military in its FY 2021 budget proposal, far more than the United States spent for military purposes at the height of the Korean or Vietnam Wars or the peak of the Reagan buildup of the 1980s; and

WHEREAS, the biggest increase in the proposed FY 2021 budget is a nearly 20% increase in spending on nuclear weapons at \$45 billion; and

WHEREAS, the fact that the COVID-19 pandemic has come close to overwhelming the health care system even when only a small fraction of the population has required hospitalization— and hospitals were intact to provide care – demonstrates that there can be no meaningful response to or recovery from nuclear war; and

WHEREAS, every city in America is now facing severe budget challenges as a direct result of the COVID-19 pandemic, forcing them to lay off employees and make cuts to critical programs, including those for public safety; and

WHEREAS, according to a recent study, the amount of money spent by the United States in one year on nuclear weapons could instead provide 300,000 ICU (intensive care unit) beds, 35,000 ventilators and 75,000 doctors’ salaries; and

WHEREAS, the United States is obligated under the 1970 Nuclear Non-Proliferation Treaty (NPT) to take concrete steps to eliminate its nuclear arsenal; and

WHEREAS, the City of Berkeley has been a Nuclear Free Zone since passage of “The Nuclear Free Berkeley Act” (Ord.5784-NS Section 1, 1986), Berkeley Municipal Code (BMC) 12.90, which states: “The people of Berkeley find that: A. The nuclear arms race poses an intolerable threat to humanity;” and

WHEREAS, a grassroots movement called “Back from the Brink: The Call to Prevent Nuclear War” has been endorsed by 250 health, environmental, academic, peace, and justice organizations and has resulted in resolutions approved by the United States Conference of Mayors and 32 municipalities, including Los Angeles, Baltimore, Salt Lake City, and Washington DC, with more under consideration.

NOW, THEREFORE BE IT RESOLVED, that on the 75th anniversary of the U.S. atomic bombings of Hiroshima and Nagasaki, the City of Berkeley calls on the President and Congress to step back from the brink and to lead a global effort to prevent nuclear war by renouncing the option of using nuclear weapons first; ending the sole, unchecked authority of any president to launch a nuclear attack; taking U.S. nuclear weapons off hair-trigger alert; cancelling the plan to replace its entire arsenal with enhanced weapons; and actively pursuing a verifiable agreement among nuclear armed states to eliminate their nuclear arsenals; and

BE IT FURTHER RESOLVED, that the City of Berkeley urges the United States government to retract its opposition to the 2017 Treaty on the Prohibition of Nuclear Weapons and to embrace the Treaty as a welcome step towards negotiation of a comprehensive agreement on the achievement and permanent maintenance of a world free of nuclear arms; and

BE IT FURTHER RESOLVED, that the City of Berkeley calls on the President and Congress to reverse federal spending priorities and to redirect funds currently allocated to nuclear weapons and unwarranted military spending to support safe and resilient cities and meet human needs, including by providing immediate funding for critical needs exposed by the COVID-19 pandemic such as health care accessible and affordable for all, more robust public health capacity at every level of government, programs to secure housing and food security, and measures to assure secure funding for municipalities and states throughout this and future disasters for which they are the first line of defense; and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to Congressman Barbara Lee and to Senators Dianne Feinstein and Kamala Harris.





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR

July 28, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Urgency Ordinance: Updates to the COVID-19 Emergency Response Ordinance;  
Resolution: Request UC Berkeley Voluntarily Comply with Local Ordinances  
Restricting Evictions, Delaying Rent Payments, and Empowering Tenants to  
Terminate their Leases Without Penalty

RECOMMENDATION

1. Adopt an urgency ordinance amending Berkeley Municipal Code 13.110, Title 13, "The COVID-19 Emergency Response Ordinance," to enhance emergency tenant protections consistent with recently adopted Alameda County laws, action in other jurisdictions, and consultation with community stakeholders.
2. Adopt a Resolution Requesting University of California at Berkeley voluntarily comply with local eviction moratoriums and rent suspension ordinances.

BACKGROUND

**A. Berkeley's COVID-19 Emergency Response Ordinance**

On March 17, 2020, the Berkeley City Council adopted an emergency ordinance prohibiting evictions of residential and commercial tenants unable to pay their rent due to COVID-19. Subsequently, on April 21, 2020, the Council further amended the City's ordinance to enhance eviction protections for commercial tenants, namely a prohibition on unreasonable rent increases for impacted businesses and nonprofits. Subsequently, on May 26, 2020, the Council further amended the city's ordinance to enhance eviction protections for residential tenants and homeowners, including banning most residential evictions through the end of the local state of emergency. Subsequently, on June 30, 2020 the Council further amended the city's ordinance to clarify and enhance the ability of residential tenants to terminate a lease. Since the enactment of these protections, other jurisdictions in California, including neighboring jurisdictions and the Alameda County Board of Supervisors have enacted a number of additional protections that are either complimentary to, or more stringent than, Berkeley's ordinance. The item updates BMC 13.110 to include best practices and to align with newly adopted countywide protections.

**B. Alameda County's Urgency Ordinances**

On March 24, 2020, the Alameda Board of Supervisors passed an urgency ordinance creating a temporary moratorium on evictions for renters and homeowners in the Unincorporated County (Ordinance No. 2020-14).

On March 31, 2020, the Board extended protections to the entire County. Similar to our BMC 13.110, the ordinances applied a moratorium on evictions to tenants, homeowners or mobile home owners who can provide documentation that they cannot pay their rent or mortgage due to a substantial loss of income, substantial out-of-pocket medical expenses, or extraordinary childcare needs caused by COVID-19.

On April 21, 2020, the Board considered and adopted additional amendments,<sup>1</sup> after finding that the pandemic and shelter in place orders created severe new and exacerbated existing socioeconomic impacts. Accordingly, the County deemed any eviction, regardless of cause, a public health threat. Giving cities this option provides baseline protections for residents of cities without moratoria, but allows cities to make determinations in the best interest of their residents.

On June 30, 2020, the Board considered and adopted additional amendments following unrelenting lobbying from the county's landlords. Unfortunately, these amendments weakened the county's ordinance, such as by reducing administrative penalties for violating the ordinance to such an extent that they are now just "the cost of doing business." Additionally, the language regarding city ordinances changed: Instead of stronger protections in a city ordinance automatically applying, now "the city must duly affirm or declare in writing its intent to opt out of the County ordinance. The writing must enumerate the specific provisions of the County's ordinance from which the city intends to opt out and must include a finding that the city ordinance is stronger."

The California Attorney General has opined that when a county has declared a local emergency within its jurisdictional boundaries in an area that includes both unincorporated and incorporated territory, the county may adopt emergency rules and regulations pursuant to Government Code section 8634 that will be effective in both unincorporated and incorporated areas (62 Ops. Cal. Atty. Gen. 701 (1979)). However, questions have been raised as to whether this power of counties always covers charter cities, such as Berkeley; for example, in early June, many members of the Council questioned whether the county-wide curfew issued by the county sheriff was legally valid within Berkeley city limits.

### **C. Updates to The Covid-19 Emergency Response Ordinance**

Unreasonable evictions are directly at odds with local, state and federal measures to recover from the pandemic.

Housing stability is a prerequisite for flattening the COVID-19 infection curve. Loss of housing presents significant health risks for those directly affected and the population at large, through disruption of shelter in place orders, social distancing measures and increased homelessness. Testing, quarantine, and physical distancing measures are bolstered by housing security.

In recognition of developments at the Alameda County level, action in other jurisdictions, and consultation with community stakeholders, the item proposes the following additional key amendments to BMC 13.110:

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<sup>1</sup> Amend Countywide Temporary Moratorium on Residential Evictions, Alameda County Community Development Agency, April 21, 2020, [https://www.acgov.org/board/bos\\_calendar/documents/DocsAgendaReg\\_04\\_21\\_20/GENERAL%20ADMINISTRATION/Regular%20Calendar/CDA\\_294956.pdf](https://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_04_21_20/GENERAL%20ADMINISTRATION/Regular%20Calendar/CDA_294956.pdf), Amendments were crafted and presented by the Alameda County's Community Development Agency and the Housing and Community Development Department (HCD), in coordination with County Counsel, Public Health, all cities countywide, Resources for Community Development, and legal agencies including Bay Area Legal Aid, Centro Legal de la Raza, East Bay Community Law Center, and Housing and Economic Rights Advocates



1. *Expansion of Moratorium Scope:*

Consistent with numerous jurisdictions (including the City of Los Angeles), prohibits Ellis Act evictions. Additionally, minor amendments are made to the exception for health and safety threats to bring it in line with the language of the County ordinance; this is important to ensure there are no evictions prohibited by the County ordinance but ostensibly allowed under the City ordinance, thereby minimizing the risk of legal confusion.

2. *Extended Duration of Protections*

Currently, many protections under the Berkeley ordinance lapse either upon the expiration of the local state emergency or thirty days thereafter. This period is not as long as in other jurisdictions. For example, the City of Los Angeles's ordinance protects tenants from Ellis Act evictions for sixty (60) days after the expiration of the local state of emergency. These amendments would extend various protections to ninety (90) days after the expiration of the local state emergency. This would provide relief for many residents who will likely face difficulty finding sufficient employment for an extended period of time even following the expiration of the local state of emergency due to significantly depressed aggregate demand (i.e. a continuing economic recession or depression). By continuing to keep residents housed for a "buffer period," it would also reduce the risk of unintentionally causing an additional outbreak following the expiration of the state of emergency. These amendments would also allow the Council to extend this period by resolution (instead of an ordinance), allowing the Council to swiftly act by majority vote to protect public health and safety and keep residents housed if the local situation necessitates immediate action.

3. *Authorize Tenants To Self-Attest Financial Hardship*

Some tenants may have difficulty providing sufficient documentation that proves their COVID-related financial hardship. In order to ensure that no tenant is left behind, these amendments would authorize tenants to self-attest their COVID-related financial hardship. Given that landlords are ultimately allowed to recover back rent, there would ultimately be no barrier to their ability to ultimately be made financially "whole."

4. *Clarifies Covered Reasons for Delayed Payment*

Due to Berkeley's status as a "college town" and the transition of UC Berkeley (and other local institutions of higher education) to many online and/or hybrid-format classes in response to the ongoing COVID pandemic many segments of Berkeley's rental market have seen a significant drop in demand. While this reduced demand may benefit many tenants entering new rental agreements, continuing tenants are largely not receiving this benefit, and ironically some may be in a worse position even if their own financial situation remains unchanged. Many tenants, especially those who live with students, may have had one or more roommates move-out, and planned to replace them with a new roommate(s) who would pay the same share of the rent. However, many landlords required their tenants to sign lease renewals before the severity of the COVID crisis became clear. As a result, those tenants were not in a position to bargain for a rent reduction, and with reduced demand for housing may be unable to find a replacement roommate willing and able to pay the same share of the rent as an outgoing roommate. The remaining tenants can be left with an unwinnable choice: Delaying taking on a new roommate(s) in the hope of finding someone who can pay the same share of the rent (while having to pay the full share of the rent until they find a replacement), or take on a higher share of the rent in order to immediately have a new roommate. While previous versions of the ordinance were clearly intended to cover this situation, the failure to explicitly mention them creates a perpetual risk that the courts will interpret them otherwise. These amendments make clear that such scenarios are covered reasons for nonpayment, eliminating the risk of judicial misinterpretation.

Additionally, the amendments also remove self-contradicting language referencing group living arrangements; this ensures that all tenants are properly covered by that potential reason for delaying payment.

5. *Extends Additional Protections to Homeowners and Penalties to Lenders*

The County Ordinance extends evictions protections afforded to tenants and related requirements to homeowners; similarly, the county ordinance makes explicit that lenders (e.g. a bank that holds the property's mortgage) and their agents have the same obligations (e.g. providing residents notice of their rights under the ordinance) and penalties for noncompliance as landlords. These amendments extend that tenant-homeowner parity to the City ordinance.

6. *Places the Rent Stabilization Board in Charge*

Under the City Charter, "with the Rent Board's consent, the City Council may assign additional powers and duties to the Rent Board as appropriate." These amendments would place the Rent Stabilization Board in charge of enforcing, conducting outreach for, developing regulations, and otherwise implementing the City ordinance. In recognition of the financial costs of implementing the ordinance (which would occur even if the Rent Board was not put in charge), the Board would be authorized (but not required) to finance its expenses under this Chapter by charging landlords and/or lenders fees, which may not be passed on to tenants in the form of rent increases; this is the same method by which the Board finances its primary operations.

This change was requested by community stakeholders due to the agency's significant experience with tenant law, professionalism, and experience performing outreach to and education of both tenants and landlords, and has the support of the Board Chair. Community stakeholders explicitly requested that this be codified as an ordinance to ensure the Board is directly assigned responsibility and has maximum flexibility implementing the ordinance.

7. *Extends the Repayment Period for Back Rent*

Under the existing ordinance, tenants have twelve (12) months to repay back rent before landlords may sue. However, community stakeholders have raised significant concerns that this is much too short a period. For instance, if a tenant normally spends 50% or more of their income on rent (an obscene yet common scenario) and is unemployed due to COVID for 12 months, they would be mathematically unable to repay their back rent over 12 months even if they income immediately fully recovered (unlikely) and the the landlord waited until 12 months *after the tenant re-gained employment* (which is not required of the landlord).

Outside of the unlawful detainer process (which imposes a 12-month window), landlords have 48 months to collect back rent owed under a written agreement (Civ. Proc. §337.2) and 24 months to collect back rent owed under an oral agreement (Civ. Proc. §339.5). In recognition of these limits, these amendments extend the repayment period to forty-seven (47) months for written leases and twenty-three (23) months for oral rental agreements. This significantly increases the ability of a tenant to repay all their back rent, without conflicting with the legal right of landlords under state law to collect back rent.

8. *Provides Additional Examples of Prohibited Retaliation*

The ordinance prohibits retaliation against tenants for exercising their rights under it, and explicitly names shutting off utilities and reducing services as examples of prohibited

retaliation. These amendments add additional examples of prohibited retaliation.

9. *Improves Civil Remedies for Violations*

These amendments make various changes that bring civil remedies (including authorizing administrative fines and offering protections for tenants who act in good faith but do not prevail in court) in line with the County ordinance. Additionally, it makes clear that the City Attorney, Rent Stabilization Board, or another person or entity may sue to enforce the ordinance.

10. *Extends Criminal Penalties to non-Commercial Violations*

Currently, the city ordinance only imposes criminal penalties for violations relating to commercial properties. These amendments extend criminal penalties to any violations by a landlord or lender, using verbatim language from the County ordinance. In addition to providing legal certainty that violations also covered by the County ordinance can be criminally prosecuted, these amendments are necessary to allow criminal prosecution for violating residential property provisions not covered by the County ordinance (e.g. conducting an ostensible Ellis Act eviction).

11. *Liberal Construction*

States that the ordinance should be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Consistent with the actions of Alameda County, neighboring jurisdictions, and other jurisdictions throughout California, and the ongoing shelter-in-place order and associated emergency activities in response to the global pandemic, it is in the public interest to clarify and amend the COVID-19 Emergency Response Ordinance.

**D. Resolution Calling on UC Berkeley to Voluntarily Comply with Local Ordinances**

As a state agency, UC Berkeley (and the entire University of California system) is most likely exempt from ordinances protecting tenants during the ongoing COVID-19 pandemic. However, UC Berkeley's failure to comply with this has created significant problems for many students, and community stakeholders have raised alarms about the situation. The attached resolution calls on UC Berkeley to voluntarily comply with all local ordinances restricting evictions, delaying rent payments, and/or allowing tenants to terminate a lease without a penalty, regardless of legal obligation for UC Berkeley to do so.

**FINANCIAL IMPLICATIONS**

Preventing evictions can result in significant savings to the City in the short, medium, and long-term, by reducing homeless, infections, and social services spending. Additionally, bringing protections for tenants and other residents under Berkeley law to at least those of the County ordinance could result in savings from potential litigation by landlords or lenders seeking to nullify the County ordinance within Berkeley city limits (especially if such litigation names the City as a real party in interest). Preventing evictions will prevent the spread of COVID 19.

Finally, authorizing a fee to cover the costs of implementing the ordinance can ensure the City has maximal financial resources available from the General Fund for other purposes, including providing financial support for tenants, homeowners, nonprofits, and businesses suffering due to the ongoing COVID-19 pandemic and ensuing economic crisis.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSONS

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

ATTACHMENTS:

1. Urgency Ordinance
2. Resolution

ORDINANCE NO. -N.S.

URGENCY ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE, THE COVID-19 EMERGENCY RESPONSE ORDINANCE

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

Section 1. The Berkeley Municipal Code Chapter 13.110 is amended to read as follows:

**Chapter 13.110  
COVID-19 EMERGENCY RESPONSE ORDINANCE**

**Sections:**

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13.110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**
- 13.110.100 Liberal Construction**

**13.110.010 Findings and Purposes**

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the State of Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, the council ratified an extension of the local state of emergency through June 21, 2020. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel.

On March 31, this Shelter in Place Order was extended to May 3, 2020, and restricted activities further. This Shelter in Place Order was subsequently extended again.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

On April 6, 2020, the Judicial Council of California issued emergency rules suspending court proceedings for unlawful detainer and judicial foreclosures until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. ~~Even if the Alameda County ordinance did not have effect within the incorporated area of Berkeley, it would be~~ ~~Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is~~ desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is

over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.

Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Multiple jurisdictions have banned Ellis Act evictions. In Los Angeles County alone, the cities of Los Angeles, Inglewood, and Santa Monica (and possibly others have banned) Ellis Act evictions. For example, Los Angeles's ordinance bans Ellis Act evictions through 60 days after the expiration of the local state of emergency.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

### **13.110.020 Prohibited Conduct**

A. During the Covered Period-local State of Emergency, no landlord or lender-other entity shall evict or attempt to evict an occupant of real property unless necessary to stop an imminent threat to-for<sup>2</sup> the health and safety of tenants, neighbors, or the landlord. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19

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<sup>2</sup> Brings requirement in line with the county ordinance

illness or exposure to COVID-19, whether actual or suspected.in either of the following situations:

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the ~~Covered Period local State of Emergency~~. A Tenant is not required to provide such documentation to the Landlord in advance to qualify for the protections of this ordinance. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the local State of Emergency is ended, whichever is later; the tenant may self-attest as a form of documentation. In the case of nonpayment of rent, the failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure section 1161(2) does not waive the Tenant's right to claim this Chapter as a complete defense to non-payment of rent in an unlawful detainer action.

C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local state of emergency declared by the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.

D. Moratorium on Rent Increases Exceeding Annual General Adjustment in Rent Controlled Units. For rental units regulated by Berkeley Municipal Code Section 13.76.010 et seq, any notice of rent increase in excess of the Annual General Adjustment for the current year, as defined in Berkeley Municipal Code section 13.76.110, shall be void and unenforceable if the notice is served or has an effective date during the ~~Covered Period local State of Emergency~~, unless authorized by the decision of a Rent Stabilization Board hearing examiner.

~~E. D.~~ For the duration of the local State of Emergency, if a tenant has a Covered reason for delayed payment the tenant may terminate a lease or rental agreement with 30 days' notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic.

### **13.110.030 Definitions**

A. "Covered Reason for Delayed Payment" means:

(1) the basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a



material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or, in a group living arrangement wherein all tenants are collectively responsible for payment of the rent to the landlord,<sup>3</sup> a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of the rent) which reduces the ability of the remaining tenants to pay the rent, or a change in the tenants which reduces the ability of the collective tenants to pay the rent; and

(2) the decrease in household, or business, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

B. "Covered Period" means the period of time beginning with the effective date of this Chapter and concluding 90 days after the expiration of the local state of emergency.<sup>4</sup> However, the City Council may vote by resolution to extend the duration of the Covered Period.

C. B. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

D. C. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

E. D. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

F. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more Units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.<sup>5</sup>

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<sup>3</sup> The language around GLA's does not appear to make sense because it states that in GLA's everyone is collectively responsible for the rent, when in fact it's the opposite. Every resident of Cloynr, for instance, has a separate lease. If one member fails to pay, only that one member is delinquent, not the entire house membership.

<sup>4</sup> Economic recession (depression?) will still be in effect even after the state of emergency ends. Also, the county's protections don't end the moment the state of emergency ends.

<sup>5</sup> Near-verbatim language of county ordinance (modified to cover non-residential properties)

G. E. "Tenant" includes a tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement to use or occupancy a renter of either residential or commercial property.

### **13.110.040 Collection of Back Rent and Late Fees**

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the local State of Emergency. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. The Berkeley Rent Stabilization Board-City will develop standards or guidelines for tenants to repay unpaid rent accrued during the Covered Period-course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

Tenants shall have forty-eight (48)-twelve (12) months to pay rent that accrued during the Covered Period, except that in the case of an oral rental agreement this period shall be twenty-three (23) months, -was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").<sup>6</sup>

Any direct relief in the form of federal, state and local or private direct payments that result in a reduction in the Landlord's mortgage or tax obligations related to the subject property, shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be implied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

### **13.110.050 Application**

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, or filed, or which expire during the Covered Period-on or after the effective date of this Chapter through the end of the local State of Emergency. It does not apply to withdrawal of accommodations from the rental market pursuant to Government Code 7060 et seq. ("Ellis Act")<sup>7</sup>-or to units ordered by the City to be vacated for the preservation of public health.

B. With respect to delayed payment accrued during the Covered Period, a landlord may seek such rent after the Covered Period-expiration of the local State of Emergency, pursuant to Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) et seq. or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued during the Covered Period. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time during the Covered Period.-from the effective date of this Chapter the expiration of the local State of Emergency.

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<sup>6</sup> Providing 24 months instead of 12 months is crucial to ensure tenants aren't not overwhelmed by having to pay both regular rent and back rent (though we're not sure even 12 months is long enough; the state is talking about ten years). Additionally, it is important to have the clock start when folks go back to work, not as soon as rent is missed. Given the state of emergency could last many months, it could otherwise eat heavily into that window before folks can start earning money again.

<sup>7</sup> The Governor's executive order suspends all state laws that prevent cities and counties from preventing evictions, including the Ellis Act. Los Angeles has banned Ellis Act evictions, and Berkeley can too.

C. A Landlord or Lender shall not retaliate against a Tenant or other resident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities, ~~or~~ reducing services or amenities to which the Tenant or other resident would otherwise be entitled, refusing to offer a new rental agreement upon expiration of a prior rental agreement where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, or taking actions or inaction which hurts the tenant's or other resident credit rating or causes other landlords to not offer them a rental agreement or to offer them a rental agreement on less favourable terms than they would otherwise offer.<sup>8</sup>

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that if the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party.

#### **13.110.060 Implementation — ~~Implementing Regulations~~**

The Berkeley Rent Stabilization Board City-Manager<sup>9</sup> may promulgate implementing regulations and develop forms to effectuate this Ordinance, enforce the ordinance in court, issue administrative fines, and take other actions necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter<sup>10</sup>. This includes the option of requiring landlords and lenders to give a notice to Tenants and other residents informing them of this Chapter and the right to seek the benefits of this Chapter. The Berkeley Rent Stabilization Board may finance its reasonable and necessary expenses to implement its duties under this Chapter by charging landlords and/or lenders fees in amounts deemed reasonable by the Board. Such fees shall not be passed on to tenants in the form of rent increases.<sup>11</sup>

#### **13.110.080 Remedies**

A. Any person or entity aggrieved by a violation of this Chapter by a landlord or lender, any person or entity who will fairly and adequately represent the interests of tenants, the City , or the Berkeley Rent Stabilization Board,<sup>12</sup> ~~In the event of a violation of this Ordinance, an aggrieved tenant~~ may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate. No proof of knowledge, intent, or other mental state is required to establish a violation. Money damages shall only be awarded if the trier of fact finds that the landlord acted in knowing violation of or in reckless

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<sup>8</sup> Additional examples of what would retaliation; the language of the last one is based on the language Rent Stabilization Ordinance.

<sup>9</sup> Placing the Rent Board in charge by ordinance instead of potential administrative regulation ensures both that the Board will be in charge and that they will have the necessary freedom/independence to implement, advertise, and enforce the ordinance as effectively as possible. (It's possible that it might be good not to assign non-residential properties to non-Board staff. However, keeping it under the Board would be both legal and reasonable.)

<sup>10</sup> Language taken from the Rent Stabilization Ordinance

<sup>11</sup> Based on Article XVII, Section 123(3) of the Berkeley City Charter

<sup>12</sup> Language expanding standing is based on the language of the Tenant Protection Ordinance

~~disregard of this Ordinance<sup>13</sup>. A prevailing landlord or lender shall be entitled to an award of attorneys' fees only if it is determined by the Court the action was wholly without merit or frivolous. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state or federal law.<sup>14</sup> In addition, this Ordinance grants a defense to eviction in the event that an unlawful detainer action is commenced in violation of this Ordinance.~~

**B.** The protections provided by this ordinance shall be available to all tenants, regardless of any agreement wherein a tenant waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

~~C. A. Violations of Section 13.110.020(C) – (Commercial rent restrictions):-~~

1. Violations of ~~this Chapter by a landlord or lender Section 13.110.020(C)~~ may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a ~~commercial property landlord or lender violates this chapter demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. Each and every day of violation includes each day on which a failure to comply with this ordinance continues.~~ The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2. ~~Any landlord or lender violating any of the provisions of this ordinance is guilty of a misdemeanor. Each person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this ordinance is committed, continued or allowed in conjunction with the Landlord's or Lender's activities with respect to the Unit and is punishable accordingly. Each and every day of violation includes each day on which a failure to comply with this ordinance continues. No proof of knowledge, intent, or other mental state is required to establish a violation.<sup>15</sup> The Berkeley Rent Stabilization Board or City Attorney may refer those landlords and lenders in violation-violators of this Chapter Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of this Chapter and/or Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to this Chapter and/or Business and Professions Code section 17200, et seq.~~

~~D. The remedies provided by this ordinance are cumulative and in addition to any other remedies available at law or in equity.~~

**13.110.100 Liberal Construction**

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<sup>13</sup> Brings city in law in line county law regarding burden of proof

<sup>14</sup> Bring protections for non-prevailing complainants (e.g. tenants) in line with county law

<sup>15</sup> Adds county language (with non-substantive notifications) establishing violations of the ordinance as a misdemeanor

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Section 2. Vote Required, Immediately Effective

Based on the findings and evidence in Section 13.110.010 of this Urgency Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the City of Berkeley and must therefore go into effect immediately. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of Berkeley.

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY CALLING ON UC BERKELEY TO VOLUNTARILY COMPLY WITH ORDINANCES RESTRICTING EVICTIONS, DELAYING RENT PAYMENTS, AND/OR ALLOWING TENANTS TO TERMINATE A LEASE WITHOUT A PENALTY, REGARDLESS OF LEGAL OBLIGATION TO DO SO

WHEREAS, in the wake of the ongoing COVID-19 public health crisis and ensuing economic devastation, multiple jurisdictions; including the City of Berkeley, the City of Albany, and Alameda County; have passed ordinances restricting evictions and delaying rent payments; and

WHEREAS, in the wake of the ongoing COVID-19 public health crisis and ensuing economic devastation, the City of Berkeley has passed an ordinance empowering many tenants (including, de facto, all students) to terminate the their leases without penalty with thirty (30) days' notice; and

WHEREAS, as a state agency, UC Berkeley (and the entire University of California system) is most likely exempt from such ordinances; and

WHEREAS, students in University housing still need such protections. For example, residents of the University Village family housing complex have been organizing due to UC Berkeley not giving them protections equivalent to that of tenants in private housing. Furthermore, UC Berkeley has allowed what little protections it did offer to expire prematurely; and

WHEREAS, this failure by UC Berkeley threatens to force students students to drop out of school, disruption their children's education (in the case of student parents), become homeless, and more; and

WHEREAS, community stakeholders have raised alarms about this situation; and

WHEREAS, there is precedent for the University of California voluntarily complying (at least on paper) with local ordinances;<sup>16</sup> and

NOW, THEREFORE, BE IT RESOLVED that the City Council for the City of Berkeley calls upon UC Berkeley to voluntarily and indefinitely comply with all local ordinances restricting evictions, delaying rent payments, and/or allowing tenants to terminate a lease without a penalty, regardless of legal obligation for UC Berkeley to do so; and

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<sup>16</sup> University of California Policy PPSM-30: Compensation. [policy.ucop.edu/doc/4010400/PPSM-30](http://policy.ucop.edu/doc/4010400/PPSM-30). "In consultation with the Office of the President, the Executive Officer will establish local salary ranges for salary grades and jobs without salary grades at their location at a level at least consistent with federal, state, and local minimum wage provisions in the communities where the Executive Officer is located."

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Chancellor; Assistant Vice Chancellor and Chief Operating Officer for the Division of Student Affairs; and the Executive Director, Housing, Events, & Facilities Services of UC Berkeley, the Regents of University of California, and the President of the University of California; and

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the President, External Affairs Vice President, and Housing Commission of the Associated Students of the University of California; the President, External Affairs Vice President, and Basic Needs Project Director of the UC Berkeley Graduate Assembly; the UC Berkeley Village Residents Association; the UC Berkeley Residence Hall Assembly; and the Daily Californian.







Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR

July 28, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Initiate a Citywide, Regional and International Just Transition to a Regenerative Economy to Address the Climate Emergency

RECOMMENDATION

Adopt a resolution to initiate a Citywide, Regional and International Just Transition to a Regenerative Economy to Address the Climate Emergency, and taking the following actions:

1. The City of Berkeley recognizes that attempting to be sustainable is not enough to protect residents from cumulative impacts of centuries of environmental and social degradation and instead will reorient its city planning, policy, and resource allocation to be socially and environmentally positive and will invest in a regenerative whole city infrastructure, policy, development and design process.
2. The City of Berkeley embraces doughnut economics, which, by definition, recognizes the necessity of meeting the needs of residents within the carrying capacity of our planet Earth and the greater Bay area bioregion.
3. The City of Berkeley will accelerate the transition to a zero-waste cradle to cradle circular economy.
4. All City of Berkeley commissions shall propose city policies, procedures and programs to enact a just transition that is socially, economically and ecologically regenerative by securing racial justice, bioregional restoration and sustainability, maximally reduces greenhouse gas emissions, increases public health, increases disaster preparedness and community resilience and reverses inequality and wealth extraction of Berkeley and Bay Area residents.
5. The City of Berkeley will create a city commission responsible for planning and implementing a just transition to a regenerative economy that is anti-racist, provides reparations and transformative support for those who are black, Indigenous, people of color, low income, and those struggling with mental health challenges, is community-driven and democratically-funded, environmentally-regenerative, and prioritizes local and independent businesses.
6. The City of Berkeley commits to suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, social inequality, public health risks, and global warming.
7. The City of Berkeley calls for a regional collaborative effort to begin as soon as possible and formally requests all regional agencies, cities, and counties to a shared table to devise and execute a just transition plan to the regenerative economy here in the Greater Bay Area through a regional green new deal.

8. The City of Berkeley urges all neighboring governmental agencies (including local, state and federal) to suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, public health risks, and global warming.
9. The City of Berkeley calls on governments who have declared a climate emergency and who broadly recognize the immense challenge facing humanity to join together in collaborative exchange and begin a shared transitional peace effort in moving their immediate societies and economies toward ethical and regenerative trajectories.
10. The City of Berkeley identifies our current economy with its focus on near-term perpetual growth requiring resource extraction and wealth enclosure as defunct and incompatible with the needs of sustainability, human thriving, and dignity, and calls for a new economic system which in its design meets human needs within planetary and local environmental and social boundaries, focuses on human and ecological flourishing, furthers a regenerative human presence on earth, achieves equitable distribution of resources throughout the planet, and achieves sustainable transition to avert climate catastrophe in the near and long term.
11. The City of Berkeley endorses the intention and vision behind a global Green New Deal that reverses centuries of colonization, and post-colonial imbalances of power, health, wealth, sovereignty, addresses the climate emergency at the speed and scale necessary, and protects the world from impending climate impacts.
12. The City of Berkeley recognizes the importance of Indigenous leadership in designing and implementing a regenerative economy in Berkeley, the Greater Bay Area, and the World, and shall invite delegates from Indigenous communities to all stages of the planning and implementation process.

## BACKGROUND

In addition to the massive worldwide health crisis, COVID-19 also caused a slow down to the global economy. Governments around the world have begun to and are planning to spend trillions to invest in economic recoveries. There is a time-sensitive need to prevent a carbon rebound and prevent a return to extractive overconsumption in order to avert climate catastrophe and secure a just future for humankind and wildlife. Berkeley as the third city to recognize we face a climate emergency has an opportunity and responsibility to lead and collaborate effort with over 1700 cities, counties, and countries who have formally recognized and declared a climate emergency. Over 20 municipalities in the Bay Area have declared a climate emergency and called for a regional collaborative effort that has not yet begun. For the Bay Area to do its part for the world it must have a regional plan to achieve regeneration and sustainability, the City of Berkeley has a role and responsibility in leading this effort.

In leading this effort, Berkeley must recognize and address the following issues: (1) Climate change and its connection to public health (i.e., resurgence of diseases and pandemics, compounded effects on low income, people of color, and other groups systematically disenfranchised), (2) Injustice of the pre-COVID-19 economic and political system, and (3) a just transition to a sustainable and regenerative economy.

Climate change and harmful public health issues have a positive correlation. Even if reasonably curbed, global warming effects in the near future include increased danger from record breaking wildfires, increased oceanic storms potentially causing \$1 billion worth of damage to public infrastructure and coastal real estate in the U.S.<sup>1</sup>, forced migration for up to a billion climate

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<sup>1</sup> <https://www.ucsusa.org/resources/underwater>

refugees by 2050<sup>2</sup>, increased exposure to diseases, loss of arable farm land, increased death related to heat stress<sup>3</sup>, scarcity of freshwater, and further extinction of wildlife and biodiversity threatening the entire population of the world. More specific to the greater Bay area, the increased air pollution results in higher vulnerability to infectious viral respiratory illnesses, and low income neighborhoods systematically located close to oil refineries are disproportionately and compactly affected<sup>4</sup>.

Due to a history of imperial dominance, the United States has forcibly positioned itself to consume an unsustainable and inequitable portion of the world's resources. We must recognize that San Francisco Bay Area, California, and the United States are historic beneficiaries of hundreds of years of enslavement of African people, genocide of Indigenous peoples, economic exploitation of the Global South and numerous unjust wars which has afforded it the ability to consume an unsustainable and inequitable portion of the world's resources and at the expense of people of color worldwide.

A Just Transition to a Regenerative Economy as championed by Movement Generation and GrassRoots Global Justice is a framework for achieving a regenerative economy that: focuses on Indigenous and Tribal Sovereignty, Justice for Black and Immigrant Communities, Just Transitions for Workers and communities impacted by extractive industries; reinvests in environmental sacrifice zones and communities and healthcare for all; ensures a home guarantee, further democracy in energy, food and land sovereignty, equitable clean energy and emissions free transit, a just recovery in the face of diverse forms of disasters; and advances feminist economies and regenerative finance.

The City of Berkeley should become a model post-COVID-19 city by creating a regenerative economy that reverses a history of colonization, wealth extraction and globalization, de-incarcerates and de-militarizes community life, makes reparative investments in marginalized communities, makes reparations for the descendants of enslaved persons for providing generations of free labor, supports Indigenous peoples and tribal nations in land reclamation and governance of their rightful lands, organizes workplaces and communities to collectively self govern, shifts means of production to works and communities, divests from fossil fuels and other extractive economies, invests in common access to energy, food, housing, and advances public dollars to build community wealth toward reversing inequality.

### FINANCIAL IMPLICATIONS

To be determined.

### ENVIRONMENTAL SUSTAINABILITY

Go beyond sustainability to embrace regenerative and restorative practices as necessary to achieve sustainability. Do a whole city community participatory design on how to shift the City into a net regenerative ecological and social impact.

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<sup>2</sup> <https://unu.edu/media-relations/media-coverage/climate-migrants-might-reach-one-billion-by-2050.html>

<sup>3</sup> [https://www.nature.com/articles/nclimate3322.epdf?sharing\\_token=MuYgnDiD-ztxrwuEdc-3xtRgN0jAjWEl9jnR3ZoTv0P1ZmqVLxKfxqQX-KqJzVRLBBVboAwwW8gu7iH3qRbNOymWZ\\_WLKYDK4-9wUkfwjoVC5-B45GtJEP2hxXrl49IGj-ukRYIR0z5H0Ps9kJtFARSUhBqgg4Q3sT1BsLgpXbQUGDQWRvtvQBvQRmVVAfq-OHUCsqHStoFZ0JZRaGO91BHNhojMky0ysY-TI9zjISCKsullA9wdl3ohvm8mQMdWbyqk-9ol7o9g\\_2CJmFBcSrualCAY-UnopfvSUMuidWbuAYOxifLoTWRbj2rCF\\_YwNh\\_INWWYrNDLcsrQoHUOyyPwf02XWGva7D8jQiREZU%3D&tracking\\_referrer=ww.w.theguardian.com](https://www.nature.com/articles/nclimate3322.epdf?sharing_token=MuYgnDiD-ztxrwuEdc-3xtRgN0jAjWEl9jnR3ZoTv0P1ZmqVLxKfxqQX-KqJzVRLBBVboAwwW8gu7iH3qRbNOymWZ_WLKYDK4-9wUkfwjoVC5-B45GtJEP2hxXrl49IGj-ukRYIR0z5H0Ps9kJtFARSUhBqgg4Q3sT1BsLgpXbQUGDQWRvtvQBvQRmVVAfq-OHUCsqHStoFZ0JZRaGO91BHNhojMky0ysY-TI9zjISCKsullA9wdl3ohvm8mQMdWbyqk-9ol7o9g_2CJmFBcSrualCAY-UnopfvSUMuidWbuAYOxifLoTWRbj2rCF_YwNh_INWWYrNDLcsrQoHUOyyPwf02XWGva7D8jQiREZU%3D&tracking_referrer=ww.w.theguardian.com)

<sup>4</sup> John Loike and Robert Pollack, "What We Can Do to Preserve Our Clean Air," Bo Peiter Johannes Andree, "Incidence of Covid-19 Connections with Air Pollution Exposure: Evidence from the Netherlands." 4-7.

CONTACT PERSONS

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Councilmember District 2  
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ATTACHMENTS:

1. Resolution

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY TO INITIATE A CITYWIDE, REGIONAL AND INTERNATIONAL JUST TRANSITION TO A REGENERATIVE ECONOMY TO ADDRESS THE CLIMATE EMERGENCY

WHEREAS, the City of Berkeley was the third city in the world to have declared a climate emergency in June 2018, calling for a just transition and regional collaborative effort in the San Francisco Bay Area as well as a statewide, national and global effort to immediately end greenhouse gas emissions; and

WHEREAS, the University of California<sup>5</sup> and cities of Richmond, Oakland, Hayward, El Cerrito, Fairfax, Sebastopol, San Jose, Petaluma, Cupertino, Alameda, San Anselmo, Benicia, Cloverdale, Cotati, Healdsburg, Santa Rosa, Windsor, Menlo Park, Santa Cruz and the counties of San Francisco, Santa Cruz, San Mateo, Santa Clara and Sonoma have responded by declaring we face a climate emergency and joining the call for a regional collaborative effort in the San Francisco Bay Area; and

WHEREAS, there is not a focused collaborative implementation plan in sight regionally or internationally amongst the thousands of universities and governments across the globe that have declared a climate emergency; and

WHEREAS, emissions need to intentionally fall between 2020 - 2030 are a critical frame wherein emissions must sharply and permanently fall to minimize climate catastrophe and meet internationally agreed upon targets which are insufficient to protect people from climate impacts; and

WHEREAS, governments are already spending or planning to spend \$9 trillion or more globally in the next few months on rescuing their economies,<sup>6</sup> during the same timeframe that addressing the root causes of global warming is required for meaningful action; and

WHEREAS, returning to a pre-COVID-19 global economic system, which is designed for unlimited growth on a finite planet requiring more extraction, production and consumption of materials and labor than the earth or people can handle, is a recipe for destruction; and

WHEREAS, a transformative economic intervention specifically designed to address the climate emergency and deal with the COVID-19 economic impacts is fully justified by the imminent and time-sensitive existential threat both crises pose; and

WHEREAS, the traditional land management and stewardship methods of Chochenyo, Muwekma, Karkin, Lisjan, Ohlone and other neighboring Indigenous peoples serve as the original design for a regenerative economy on the lands now occupied by the nine counties of the SF Bay Area; and

WHEREAS, legally recognizing the inherent rights of nature such as the Bay, is necessary to establish precautionary and restrictive measures to prevent human activities from causing additional harms to water, air, soil, species, ecosystems or ecological cycles on both local and global scales; and

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<sup>5</sup> <https://www.universityofcalifornia.edu/news/university-california-declares-climate-emergency>

<sup>6</sup> <https://www.theguardian.com/environment/2020/jun/18/world-has-six-months-to-avert-climate-crisis-says-energy-expert>

WHEREAS, for the Greater Bay Area to fulfill its responsibility to address global warming without exacerbating a history of racial violence, wealth inequality, and ecological degradation, it must: Implement a Just Transition to a Regenerative Economy; Embrace a doughnut economics<sup>7</sup> wherein the Bay Area brings its overall footprint well within the earth's carrying capacity while meeting the social needs of its residents; phase out the refining, transport, and consumption of fossil fuels and other polluting industries, energies, and waste products; and define the bioregional boundaries upon which the Bay Area attempts to be regenerative and sustainable; and be an accelerator for a circular economic strategies such as cradle-to-cradle design wherein the material streams of waste is designed to be feedstock; lead the world by collaboratively initiating a world-saving transitional effort; sustain focus and unity of purpose in successfully executing a just transition to a regenerative economy until such an economy is fully functioning; and

WHEREAS, a Regenerative Economy as defined by Movement Generation<sup>8</sup> and GrassRoots Global Justice<sup>9</sup> as a framework for achieving a regenerative economy that focuses on: Indigenous and Tribal Sovereignty, Justice for Black and Immigrant Communities, Just Transitions for Workers and communities impacted by extractive industries; Reinvestment in environmental sacrifice zones and communities; Healthcare for all; Ensures a home guarantee; Energy democracy; Food and land sovereignty; Equitable clean energy; Emissions-free transit; Bioregional governance; A just recovery in the face of diverse forms of disasters; and Advances feminist economies; and

WHEREAS, a just transition to a regenerative economy should in practice: Reverse a history of colonization, wealth extraction and imperialistic globalization; Reverse patterns of mass incarceration and demilitarize community life; Make reparative investments in marginalized communities; Make reparations for the descendants of enslaved persons; Support Indigenous peoples and tribal nations in land reclamation and governance of their rightful lands; Organize workplaces and communities to be democratic, equitable and collectively self governing; Shift to cooperative and public ownership of businesses; Divest from fossil fuels and other extractive economic activities; Invest in common access to renewable energy, food, and housing; Advance public dollars to build community wealth reversing inequality; and

WHEREAS, for any transition plan to be successful, it must include: reducing consumption and production of the remaining GHG budget in order to extend our transition timeline; investing in research and innovation to transform major industries; creating an optimal psychological and cultural climate wherein the work of transition can be carried out free from the compounded stress of racism, climate change impacts, income and wealth inequality, jobs loss, COVID-19, and political polarization are relieved; and training and preparation of our workforces for all the skilled labor required for a just transition; enacting regenerative and sustainable constraints for whole societies that are in balance with humans needs, ecosystems and wildlife; and

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley will initiate a Citywide Just Transition to a Regenerative Economy because this moment in history as our best and last chance to avert climate catastrophe in an attempt to at least meet agreed upon international targets; and

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<sup>7</sup> <https://www.amsterdam.nl/en/policy/sustainability/circular-economy/>  
<https://www.theguardian.com/world/2020/apr/08/amsterdam-doughnut-model-mend-post-coronavirus-economy>

<sup>8</sup> [https://movementgeneration.org/wp-content/uploads/2016/11/JT\\_booklet\\_English\\_SPREADs\\_web.pdf](https://movementgeneration.org/wp-content/uploads/2016/11/JT_booklet_English_SPREADs_web.pdf)

<sup>9</sup> <https://ggjalliance.org/programs/a-pathway-to-a-regenerative-economy/>



BE IT FURTHER RESOLVED, the City of Berkeley recognizes that attempting to be sustainable is not enough to protect residents from cumulative impacts of centuries of environmental and social degradation and instead will reorient its city planning, policy, and resource allocation to be socially and environmentally positive and will invest in a regenerative whole city infrastructure, policy, development and design process; and

BE IT FURTHER RESOLVED, the City of Berkeley embraces doughnut economics, which, by definition, recognizes the necessity of meeting the needs of residents within the carrying capacity of our planet Earth and the greater Bay area bioregion; and

BE IT FURTHER RESOLVED, the City of Berkeley will accelerate the transition to a zero-waste cradle to cradle circular economy; and

BE IT FURTHER RESOLVED, all city commissions shall propose city policies, procedures and programs to enact a just transition that is socially, economically and ecologically regenerative by securing racial justice, bioregional restoration and sustainability, maximally reduces greenhouse gas emissions, increases public health, increases disaster preparedness and community resilience and reverses inequality and wealth extraction of Berkeley and Bay Area residents; and

BE IT FURTHER RESOLVED, the City of Berkeley will create a city commission responsible for planning and implementing a just transition to a regenerative economy that is anti-racist, provides reparations and transformative support for those who are black, Indigenous, people of color, low income, and those struggling with mental health challenges, is community-driven and democratically-funded, environmentally-regenerative, and prioritizes local and independent businesses; and

BE IT FURTHER RESOLVED, the City of Berkeley commits to suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, social inequality, public health risks, and global warming; and

BE IT FURTHER RESOLVED, the City of Berkeley calls for a regional collaborative effort to begin as soon as possible and formally requests all regional agencies, cities, and counties to a shared table to devise and execute a just transition plan to the regenerative economy here in the Greater Bay Area through a regional green new deal; and

BE IT FURTHER RESOLVED, the City of Berkeley urges all neighboring governmental agencies (including local, state and federal) to suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, public health risks, and global warming; and

BE IT FURTHER RESOLVED, the City of Berkeley calls on governments who have declared a climate emergency and who broadly recognize the immense challenge facing humanity to join together in collaborative exchange and begin a shared transitional peace effort in moving their immediate societies and economies toward ethical and regenerative trajectories; and

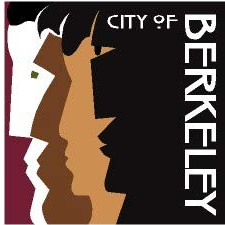
BE IT FURTHER RESOLVED, the City of Berkeley identifies our current economy with its focus on near-term perpetual growth requiring resource extraction and wealth enclosure as defunct and incompatible with the needs of sustainability, human thriving, and dignity, and calls for a new economic system which in its design meets human needs within planetary and local environmental and social boundaries, focuses on human and ecological flourishing, furthers a

regenerative human presence on earth, achieves equitable distribution of resources throughout the planet, and achieves sustainable transition to avert climate catastrophe in the near and long term; and

BE IT FURTHER RESOLVED, the City of Berkeley endorses the intention and vision behind a global Green New Deal that reverses centuries of colonization, and post-colonial imbalances of power, health, wealth, sovereignty, addresses the climate emergency at the speed and scale necessary, and protects the world from impending climate impacts; and

BE IT FURTHER RESOLVED, the City of Berkeley recognizes the importance of Indigenous leadership in designing and implementing a regenerative economy in Berkeley, the Greater Bay Area, and the World, and shall invite delegates from Indigenous communities to all stages of the planning and implementation process.





Kate Harrison  
Councilmember District 4

Action Item  
July 28, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Resolution in Support of 1921 Walnut Street

### RECOMMENDATION

Adopt A Resolution In Support of The Preservation of 1921 Walnut Street, Currently Under The Threat of Being Purchased and Demolished by the University of California at Berkeley.

### FISCAL IMPACT OF RECOMMENDATION

None

### CURRENT SITUATION AND ITS EFFECTS

UC Berkeley is currently in contract talks to buy and demolish the property at 1921 Walnut street to build The Gateway Student Housing Project to house up to 810 students. Previously the university had planned to build around the property at 1921 Walnut but have since changed their plan and would like to purchase it for demolition.

UC Berkeley would be required to provide tenants with “fair and reasonable relocation payment” but many tenants have valid fears that that relocation will force them out of Berkeley.

Organizations that have spoken out against the purchase and redevelopment of the property include the Berkeley Tenant’s Union, Eviction Defense Center, and student organizations at UC Berkeley that understand the need for affordable student housing but do not want it to come at the cost of evicting people from their homes, which are existing affordable housing.

The resolution calls onb UC Berkeley to respect the tenants living in 1921 Walnut, some of which have been living in the building for over 20 years, and to build the gateway in way that preserves 1921 Walnut Street.

### BACKGROUND

ENVIRONMENTAL SUSTAINABILITY

No impact

RATIONALE FOR RECOMMENDATION

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Councilmember Kate Harrison

Attachments:

- 1: Resolution
2. Letter from Mayor Arreguín

**WHEREAS**, 1921 Walnut Street in Berkeley is an eight-unit rent-controlled property that is a good, affordable home for people living in our downtown, allowing people to live close to work, the University of California, transit, and all that the downtown has to offer,

**WHEREAS**, many of the tenants have called this building their home for many years,

**WHEREAS**, the Regents of the University of California have expressed their intent to purchase 1921 Walnut Street and redevelop the property into housing that will not include the former rent-controlled units,

**WHEREAS**, the City of Berkeley values rent control, has had rent control since 1980, and that a core value of the City, as expressed numerous times by its voters is the preservation of affordable housing and the protection of its tenants,

**WHEREAS**, The University of California is a state entity, unencumbered by local land use regulations and some statewide legislation,

**WHEREAS**, the histories of the University of California and the City of Berkeley are inextricably linked and the community they have built together continues to influence the world,

**WHEREAS**, the University of California is a valued member of our community and has responsibilities to that community outside of simple legal obligation,

**WHEREAS** the Berkeley Rent Stabilization Board has given an identical charge to the University of California in a letter dated June 8, 2020,

**NOW THEREFORE BE IT RESOLVED** that the council of the City of Berkeley calls on the Regents of the University of California to preserve the property at 1921 Walnut and the local rent control status of its tenants or, in the alternative, that should the property be removed from the protection of the local rent control ordinance either via sale demolition of other means that the regents commit to replacing these eight units on a one-to-one basis with comparable affordable units. In addition, should the tenants at Walnut St. be displaced from their homes we urge that they be relocated into units of comparable size and rent. Finally, while the Regents are generally exempt from local land use regulations and some statewide legislation, we urge that the regents honor all applicable local and state laws that pertain to the tenancy rights of these citizens.



Office of the Mayor

Jesse Arreguin  
Mayor

June 22, 2020

Chancellor Carol Christ  
University of California at Berkeley  
200 California Hall, # 1500  
Berkeley, CA 94720-1500

**Re: Purchase of 1921 Walnut St., Berkeley, California/Preservation of Affordable Housing**

Dear Chancellor Christ,

I would like to thank your staff for briefing me on the Anchor House project last month. As suggested in our June 12, 2018 letter to you<sup>1</sup>, the City Council suggested that the University/Walnut/Oxford site (“Gateway” site) be developed for student housing. The Council found this and three other locations as “consensus supported sites for new student housing in the short term”. We concluded that these opportunity sites could generate enough student housing to fulfill the remaining 1,500 beds approved under the current 2020 LRDP.

The “Gateway” site is a perfect location for a substantial amount of student housing and pedestrian serving retail. I appreciate the street level improvements and integration of spaces within the building for public use. This project is literally an anchor to the City and University and will help revitalize our Downtown and fulfill the goals of our Downtown Area Plan.

While I am supportive of the overall project, I am writing to raise my concerns over the potential acquisition, demolition and displacement of residents at 1921 Walnut Street. Over the past few months, I have been contacted by tenants at 1921 Walnut Street, an existing rent-controlled building, raising questions about the proposed acquisition of their building and the applicability of local and state laws around rent control and demolitions.

I am in receipt of the April 20, 2020 letter from Michelle De Guzman, Director, Real Estate Acquisitions and Development for the University, sent to the tenants of 1921 Walnut Street, an existing eight-unit building which is subject to the rent and eviction controls under the Berkeley Rent Stabilization Ordinance, BMC Chapter 13.76, and the Berkeley Demolition Ordinance, BMC Chapter 23C.08. The letter detailed that the property was to be purchased by the Regents and the University would demolish it and ultimately displace its tenants.

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<sup>1</sup> Letter to Chancellor Carol Christ from Berkeley City Council, “UC Berkeley Master Leasing of Student Housing”, June 12, 2018, [https://www.cityofberkeley.info/.../2018-06-12\\_Item\\_25\\_UC\\_Berkeley\\_Master\\_Leasing\\_of\\_Student.aspx](https://www.cityofberkeley.info/.../2018-06-12_Item_25_UC_Berkeley_Master_Leasing_of_Student.aspx)

The City of Berkeley has had a rent control ordinance since 1980 to protect tenants from arbitrary rent increases and evictions and preserve the economic and cultural diversity of the Berkeley community. This ordinance has been reaffirmed and strengthened by the voters over the years. One of its core principals is preserving existing affordable housing and protecting tenants from displacement. Since 1984, the City of Berkeley Zoning Ordinance, in its Demolition provisions (BMC Chapter 23C.08) has contained restrictions on the demolition of controlled rental units. Existing Berkeley law requires that the demolition of any rental units constructed before 1980 be replaced with a deed-restricted affordable unit for each unit demolished or payment of an in-lieu fee to the Housing Trust Fund. The premise behind this ordinance is that the loss of naturally occurring affordable housing must be mitigated with either a below market-rate unit or funding to build permanently affordable housing.

If the University acquires 1921 Walnut Street, under its state constitutional exemption it does not appear to be subject to these local regulations regarding rent and demolition controls.

As Mayor of Berkeley, I am very concerned that in the process of creating new homes the University would eliminate existing affordable housing and displace current tenants. Some of the existing tenants at 1921 Walnut have resided there for at least 10 years and are very anxious over their impending eviction. While I understand the University's desire to maximize the footprint in order to increase the number of units, I believe UC Berkeley can exclude this site from its development plans and still achieve a substantial number of housing units, given project height at 16 stories.

I join the Berkeley Rent Stabilization Board in calling on UC Berkeley, the project donor/developer and the Regents to not acquire this property and ensure its preservation as rent-controlled housing. If the University decides to proceed in purchasing the property and therefore remove the property from the protections of the local rent control ordinance, the University of California should voluntarily commit to the requirements of Berkeley's Demolition Ordinance and replace each of the eight demolished units with a deed restricted affordable unit in the project for perpetuity, or payment of an in-lieu fee to the City of Berkeley Housing Trust Fund. In addition, should the tenants at 1921 Walnut Street be displaced from their homes I urge that they be relocated into units of comparable size and rents, and provided relocation assistance comparable to that required under the City of Berkeley Relocation Ordinance.

Finally, while UC Berkeley is generally exempt from local land use regulations, I urge the University to honor all applicable local and state laws that pertain to the tenancy rights of these citizens and local demolition controls, consistent with the voter approved Measure N, "The Public Agency Accountability Measure", November 1988<sup>2</sup>.

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<https://www.cityofberkeley.info/recordsonline/api/Document/AV7V8DjB%C3%89BaRNvFa2%C3%89nr0XSsOMv7R8w6Q6%C3%81Y%C3%81fgjioz7gGf2PcasVw6SqzyL3ujEk6%C3%89BitUojYUtUmooMtl6JkY%3D/>

Sincerely,

Jesse Arreguin  
Mayor, City of Berkeley

C.c.  
Chair John Perez and Regents of the University of California  
UC President Janet Napolitano  
Berkeley City Councilmembers  
Commissioners, Berkeley Rent Stabilization Board  
Michelle De Guzman, Director, Real Estate Acquisitions and Development  
Tenants at 1921 Walnut Street







Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
July 28, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kate Harrison  
Subject: Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals

RECOMMENDATION

Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.

BACKGROUND

Berkeley has had regulations on short term rentals (STRs) since 2017, allowing STRs in most residential and commercial zones, as long as the host pays the transient occupancy tax and the unit being rented fits particular criteria (no Below Market Rate unit may be a short term rental, no unit may be a short term rental if it has had a No Fault Eviction in the past five years, etc). The City of Santa Monica also has an ordinance regulating STRs that places the regulatory burden on the *host platform* (i.e., AirBnB or other corporate host platforms) rather than the individual renting out their unit. Santa Monica placed four obligations on the host platform: collecting and remitting transient occupancy taxes, regularly disclosing listings and booking information to the City, refraining from booking properties not licensed by the City, and refraining from collecting fees for ancillary services.<sup>1</sup> The Ninth Circuit Court of Appeals upheld the legality in the case of *Homeaway.com v. Santa Monica*, thus confirming the rights of Cities to regulate short term rental host platforms.

The proposed amendments update the City of Berkeley's STR regulations to more closely align with Santa Monica's ordinance, as well as other amendments intended to ensure that the short term rentals in Berkeley serve the needs of the City. The primary five changes are as follows:

**1) Regulatory burden shifted to the Host Platform**

We clarify the definition of a hosting platform in 23C.22.030.H (page 2) as a marketplace that derives revenue from maintaining said short term rental marketplace. Regulating the host platform consolidates regulation and ensures that the transient occupancy tax owned

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<sup>1</sup> *Homeaway.com v Santa Monica*. United State Court of Appeals for the Ninth Circuit. No. 18-55367.

to the City gets paid. Recommended changes to 23C.22.050.H and I (page 5) state that if a hosting platform is utilized to book a short term rental, both it and the individual host are legally responsible and are jointly liable for remitting the transient occupancy tax. New section 23C.22.050.I (pages 5-6) also outlines new duties of the hosting platform, including a regular disclosure of short term rental listings in the City as well as their address, length of stay, and listed prices. In addition, the hosting platform is responsible for ensuring that all short term rentals are appropriately licensed with a Zoning Certificate and adds the requirements that STRs must list the Zoning Certificate on any STR advertisements. The new regulations also include a safe harbor clause, making clear that hosting platforms that disclose listings, regularly remit the transient occupancy tax, and ensure the listing has a Zoning Certificate will be presumed to be in compliance with the chapter.

## **2) Hosts can have only one residence**

Individual people have the right to rent out their homes on a short term basis, but in a housing crisis, it is in the best interest of the City to ensure that no one has extra units for STRs when they could house someone long term instead. To that end, 23C.22.030.F and 23C.22.030.I (pages 2-3) clarify that hosts may not have more than one principle place of residency, which may include accessory buildings or ADUs.

## **3) Short term rentals limited to single ADUs, single Accessory Buildings or Golden Duplexes not rented for the past five twelve years**

The current ordinance limits use of Accessory Buildings or Accessory Dwelling Units to those that have not been rented for ten years. Additions to Section 23C.22.020.D (page 1) expand that prohibition to include more than one Accessory Building or ADU on a property and prohibits short term rentals in Golden Duplexes if those units have been rented in the last ten years. Unpermitted use of these units would be investigated by the Rent Stabilization Board under Section 23C.22.060.I (page 7).

## **4) Closing 14/30 day loophole**

Under current law, any rental over 14 days is not a short term rental and thus does not require paying a transient occupancy tax. Any rental that is shorter than 30 days is not a long term rental and thus rent control and other rental protections are awarded to the tenant. As it now stands there are instances of regularly renting a unit for a period of time between 14 days and fewer than 30 days, thus circumventing standard regulations. 23C.22.030.N (page 3) and 23C.22.040 (page 4) close this loophole by disallowing rentals between 14 and 30 days, and stating that no Zoning Certificate or advertisement for a short term rental may be permitted for rentals longer than 14 days.

## **5) Remedies**

New language under 23C.22.060E and 23C.22.060.J (page 7) clarify that in the case of a private right of action the prevailing party is entitled to recover reasonable costs and attorney's fees, thus making private right of action more financially feasible. The new

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

ACTION CALENDAR  
July 28, 2020

language also gives the City the right to issue administrative subpoenas to determine whether short term rentals are in compliance with the chapter. Both of these edits are intended to encourage enforcement and compliance.

Finally, the ordinance clarifies the definitions of the terms Accessory Building, Accessory Dwelling Unit, and the Transient Occupancy Tax and defines a Golden Duplex and other clarifying language.

**CONTACT PERSON**

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

**ATTACHMENTS**

Ordinance

## 100Chapter 23C.22 Short-Term Rentals

### 23C.22.010 Purposes

The purposes of the Short-Term Rentals related regulations contained in this Chapter are:

- A. To prevent long-term rental units from being replaced with Short-Term Rentals and protect affordable housing units from conversion.
- B. To preserve and protect neighborhood character and livability from nuisances that are often associated with Short-Term Rentals.
- C. To generate City revenue to share City infrastructure cost and other public expenditures by operation of Short-Term Rentals under established standards.
- D. To provide alternative forms of lodging. (Ord. 7521-NS § 1 (part), 2017)

### 23C.22.020 Applicability

- A. Short-Term Rentals shall be allowed in residential uses in the following zoning districts: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-NS, C-SA, C-T, C-W, and MU-R.
- B. Short-Term Rentals shall be prohibited in below market rate (BMR) units. BMR units for Short-Term Rental purposes refer to Dwelling Units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income-qualified.
- C. A property containing a Dwelling Unit protected by a No-Fault Eviction cannot operate Short-Term Rentals for five years from eviction unless it is a single-family home that has been vacated for purposes of Owner Occupancy in compliance with the Rent Stabilization Ordinance.
- D. Short-Term Rentals are only allowed in a single, Accessory Building and in single existing Accessory Dwelling Units (ADUs), or a Golden Duplex unless such ADUs are or have within the last 10 (ten) years preceding the effective date of this ordinance been used for long term rentals, as defined by the requirements of the Rent Stabilization Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date this Ordinance first became effective. (Ord. 7521-NS § 1 (part), 2017)

### 23C.22.030 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

A. Accessory Building: A detached building containing habitable space, excluding a kitchen, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.

B. Accessory Dwelling Unit: A secondary dwelling unit that is located on a lot which is occupied by one legally established Single-Family Dwelling that conforms to the standards of Section 23C.24. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements and provide the following features independent of the Single-Family Dwelling: 1) exterior access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes an efficiency unit and a manufactured home, as defined in the Health and Safety Code.

C. "Adjacent Properties" mean the Dwelling Units abutting and confronting, as well as above and below, a Dwelling Unit within which a Short-Term Rental is located.

D. "Dwelling Unit" means a building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household.

E. "Golden Duplex" means an owner-occupied duplex that is exempt from rent control and eviction protection, so long as it was occupied by the owner on December 31, 1979 and is currently occupied by the owner.

F. "Host" means any Owner and is used interchangeably in this Title with Owner Host. An Owner Host is a person who is the owner of record of residential real property, as documented by a deed or other such evidence of ownership, who offers his or her Host Residence, or a portion thereof, as a Short-Term Rental. For purposes of offering a Short-Term Rental, an Owner Host may not have more than one "Host Residence" in the City of Berkeley, excluding an Accessory Building or an Accessory Dwelling Unit on the same residential real property. A Tenant Host is a lessee of residential real property, as documented by a lease or other such evidence, who offers their Host Residence, or portion thereof, as a Short-Term Rental.

G. "Host Present" or "Host Presence" means the Host is living in the Host Residence during the Short-Term Rental period. In the case of a parcel comprised of a Single Family Dwelling and one or more authorized Accessory Dwelling Units and/or Accessory Buildings, the Host is considered Present if he or she is present in any Dwelling Unit on such property during the Short Term Rental period.

H. "Hosting Platform" means a business or person that provides a marketplace through which an Owner Host may offer a Dwelling Unit for Short-Term Rentals. A Hosting Platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a Dwelling Unit to be advertised through a website provided by the Hosting Platform and provides a means for potential Short-Term Rental Transients to arrange and pay for Short-Term Rentals, and from which operator of the Hosting Platform derives revenue, including booking fees or advertising revenues, from providing or maintaining the marketplace.

L. "Host Residence" means a Host's principal place of residence as defined by whether the Host carries on basic living activities at the place of residence, and whether the place of residence is the Host's usual place of return. Motor vehicle registration, driver's license, voter registration or other evidence as may be required by the City shall be indicia of principal residency. A Host may have only one place of principal residency in the City, and if that principal place of residency contains more than one dwelling unit, the principal place of residency shall be only one such dwelling unit.

J. "Host Responsibilities" means the requirements that a "Host" is obligated to comply with as set forth in this Ordinance.

K. "Local Contact" means a person designated by the Host who shall be available during the term of any Short-Term Rental for the purpose of (i) responding within sixty minutes to complaints regarding the condition or operation of the Dwelling Unit or portion thereof used for Short-Term Rental, or the conduct of Short-Term Rental Transients; and (ii) taking appropriate remedial action on behalf of the Host, up to and including termination of the Short Term Rental, if allowed by and pursuant to the Short Term Rental agreement, to resolve such complaints.

L. "No Fault Eviction" means an eviction pursuant to the Ellis Act or Sections 13.76.130.A.9 or 10 of the Berkeley Municipal Code.

M. "Short-Term Rental" or "STR" means the use of any Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portions thereof for dwelling, sleeping or lodging purposes by Short-Term Rental Transients. Short-Term Rental shall be an accessory use to a residential use and be considered neither a Tourist Hotel nor a Residential Hotel for purposes of this Title.

N. Short Term Rentals are allowed for 14 or fewer consecutive days. Any rental for more than 14 consecutive days is not permitted as a Short Term Rental, and any rental for more than 14 consecutive days and less than 30 consecutive days is not permitted in the City of Berkeley.

O. "Short-Term Rental Transient" or "STR Transient" means any person who rents a Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portion thereof, [for 14 or fewer consecutive days](#).

P. ["Transient Occupancy Tax" or "TOT" means local transient tax as set forth in Berkeley Municipal Code Section 7.36. The tax is paid by the Short-Term Rental Transient at the time payment is made for the Short-Term Rental. The TOT is then remitted to the City.](#)

### **23C.22.040 Permit And License Required**

Short Term Rentals are permitted only in the Host Residence. A Zoning Certificate [and a Business License](#) for a Short-Term Rental shall be required for each Host to operate a Short-Term Rental. [A Host must provide the Uniform Resource Locator \(URL\) — specifically, the website address — for any and all advertisements for the STR, if applicable, on the Zoning Certificate application.](#)

[No Zoning Certificate may be issued to allow for a Short-Term Rental of more than 14 consecutive days, and no advertisement for a Short Term Rental of more than 14 consecutive days is allowed.](#)

### **23C.22.050 Operating Standards and Requirements**

A Short-Term Rental is allowed only if it conforms to each of the operating standards and requirements set forth in this Section, [and the Host complies with all Host Responsibilities set forth in this Ordinance.](#)

#### A. Proof of Host Residency.

1. An Owner-Host of a Short-Term Rental must provide documentation of Owner Host and Host Residence status and, if applicable, Host Presence, as defined [above](#).

2. A Tenant-Host must provide documentation of lessee status, Host Residence and Host Presence, if applicable, as defined in subdivisions C, E, and B of Section [23C.22.030](#). In addition, a Tenant-Host must present written authorization allowing for a Short-Term Rental in the Host Residence from the building owner or authorized agent of the owner.

#### B. STR Duration and Required Residency Timeframes

1. When the Host is Present, the unit, or a portion thereof, may be rented as a Short-Term Rental for an unlimited number of days during the calendar year.

2. When the Host is not Present, the number of days that the unit can be used for Short-Term Rental purposes shall be limited to 90 days per calendar year.

C. Number of Occupants. The maximum number of Short-Term Rental Transients allowed for a Short-Term Rental unit shall be as provided for in the Berkeley Housing Code (BMC Chapter [19.40](#)).

D. Notification.

(i) Initial, one-time notification of the establishment of a Short-Term Rental by [Zoning Certificate](#) and Business license, shall be provided to the residents of all Adjacent Properties. Notification shall include Host and Local Contact information. Additional notification shall be required within a week of updated Host [or Local Contact information](#).

(ii) In any advertisement for the STR, a Host must include the [Zoning Certificate number](#).

E. Enforcement Fee. For the initial enforcement period, while enforcement costs are being determined, the Host shall pay an additional enforcement fee in an amount equal to 2% of the rents charged by that Host, not to exceed the cost of the regulatory program established by this Chapter over time. Such fees may be paid by the Hosting Platform on behalf of the Host. After the initial enforcement period, the Council may revise the enforcement fee by resolution.

F. Liability Insurance. Liability insurance is required of the Host, or Hosting Platform on behalf of the Host, in the amount of at least \$1,000,000.

G. Documents Provided to STR Transients. Electronic or paper copies of the Community Noise Ordinance and Smoke-Free Multi-Unit Housing Ordinance must be provided to STR Transients upon booking and upon arrival.

H. Transient Occupancy Tax. (“TOT”). The TOT shall be collected on all Short-Term Rentals. The Host is responsible for collecting and remitting the TOT, in coordination with any Hosting Platform, if utilized, to the City. If a Hosting Platform collects payment for rentals, then both it and the Host shall have legal responsibility for collection and remittance of the TOT.

I. Housing Platform Responsibilities.

(i) Subject to applicable laws, A Hosting Platform shall disclose to the City on a regular basis each rental listing located in the City, the names of the person or persons responsible for each such listing, the address of each such listing, the length of stay for each such listing, and the price paid for each booking transaction.



(ii) A Hosting Platform shall not complete any booking transaction for any STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform receives a fee the booking transaction.

(iii) A Hosting Platform shall not collect or receive a fee for a STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform would otherwise be entitled to receive a fee for the booking transaction.

(iv) Safe Harbor: A Hosting Platform operating exclusively on the internet, which operates in compliance with subsections (i), (ii) and (iii) above, shall be presumed to be in compliance with this Chapter.

J. Housing Code Compliance. Any building or portion thereof used for Short-Term Rentals shall comply with the requirements of the Berkeley Housing Code (BMC Chapter [19.40](#)).

K. Payment of Additional Taxes: The Host shall pay all City taxes and fees owed, in addition to the TOT, if applicable, in a timely manner. [100](#)

L. The Host shall be responsible for listing on any rental ad the Zoning Certificate number. The Host shall also provide both the Business License number, if required pursuant to Chapter [9.04](#), and Zoning Certificate for the STR to the City and/or a vendor hired by the City to administer this Chapter, upon request.

### **23C.22.060 Remedies**

A. Compliance with Second-Response Ordinance. The Host shall comply with the Second Response Ordinance (BMC Chapter [13.48](#)). The Host shall be prohibited from operating Short-Term Rentals for one year upon issuance of a third violation affidavit.

B. Violation of any provision of this Chapter is punishable as set forth in Chapters [1.20](#) and [1.28](#).

C. Violation of any provision of this Chapter is hereby declared to be a public nuisance subject to abatement under Chapters [1.24](#), [1.26](#) and [23B.64](#).

D. In any enforcement action by the City, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section [38773.5](#), attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of

attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

E. Any resident of the City may bring a private action for injunctive or other relief to prevent or remedy a public nuisance as defined in this Chapter, or to prevent or remedy any other violation of this Chapter. No action may be brought under this subdivision unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute. The prevailing party in any such action shall be entitled to recover reasonable costs and attorney's fees.

F. Any occurrence at a Short-Term Rental unit that constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions, constitutes a public nuisance.

G. It shall be a public nuisance for any STR Transient of a Short-Term Rental unit where an event is taking place to refuse access to, or interfere with access by, Fire Department or other City personnel responding to an emergency call or investigating a situation.

H. Notwithstanding any provision of Chapter [13.48](#) to the contrary, a public nuisance as defined in this Section shall be subject to remedies set forth in Section [23C.22.060](#). (Ord. 7521-NS § 1 (part), 2017)

I. A violation of this Chapter by a Host Owner who offers or rents a rent controlled unit, multiple ADU's, multiple Accessory Buildings, or a Golden Duplex, may be reported to the Berkeley Rent Stabilization Board for investigation by the Board. Upon report of a violation to the Rent Stabilization Board, the Board is required to provide a written report of the investigation within 30 days. Where a violation is found, the Rent Board will immediately provide the written report supporting its finding of a violation to the City Attorney's office for remedial action by the City.

J. The City may issue and serve administrative subpoenas as necessary to obtain specific information regarding Short-Term Rentals located in the City, including but not limited to, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay, to determine whether the STR and related listing complies with this Chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than 30 days

from the date of service. A person or entity that has been served with an administrative subpoena may seek judicial review during that 30 day period.





Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
July 28, 2020

To: Members of the City Council

From: Councilmember Harrison

Subject: Adopt a Resolution Implementing Core Police Accountability Board and Director of Police Accountability functions by July 1, 2021

RECOMMENDATION

1. Adopt a Resolution, contingent upon voter approval of the Charter Amendment contained in Resolution No. 69,363-N.S., implementing the following core Police Accountability Board and Director of Police Accountability functions and policy changes by July 1, 2021:
  - a. Establish and convene the Police Accountability Board with all investigatory, policy and other authorities, and;
  - b. Pending confirmation of a Director of Police Accountability, appoint the existing Police Review Commission Officer as interim Director.

BACKGROUND

On April 14, 2020 the Council unanimously adopted Resolution 69,363-N.S. submitting Police Accountability Board and Director of Police Accountability Charter Amendment initiative to the November 2020 ballot.

The purpose of the Police Accountability Board is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department. The purpose of the Director of Police Accountability is to investigate complaints filed against sworn employees of the Berkeley Police Department, to reach an independent finding as to the facts and recommend corrective action where warranted. The Director of Police Accountability may also serve as the Secretary to the Police Accountability Board to assist the Board in carrying out their duties.

Adopt a Resolution Implementing Core Police Accountability Board and Director of Police Accountability functions by July 1, 2021

Section 27 of the Charter Amendment states that the “Police Review Commission established by Ordinance No. 4,644-N.S., as amended, shall continue in existence until its functions are transferred to the Police Accountability Board, but no later than January 3, 2022.”

It is in the public interest to establish the new Board and Director Office as soon as possible to facilitate modern police accountability functions, especially in light of ongoing efforts to transform public safety. While the final appointment of the Director of Police Accountability may take time, the City is positioned to establish the new functions and policy changes of the Police Accountability Board and appoint an interim Director no later than July 1, 2021.

This resolution would implement the outcomes outlined in the Charter Amendment no later than July 1, 2021, while understanding that the permanent Director may be appointed later.

#### FINANCIAL IMPLICATIONS

Staff time.

#### ENVIRONMENTAL SUSTAINABILITY

No environmental impact.

#### CONTACT

Councilmember Kate Harrison  
kharrison@cityofberkeley.info | 510-981-7140

#### ATTACHMENTS:

1. Resolution

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

ADOPT A RESOLUTION IMPLEMENTING CORE POLICE ACCOUNTABILITY BOARD  
AND DIRECTOR OF POLICE ACCOUNTABILITY FUNCTIONS BY JULY 1, 2021

WHEREAS, on April 14, 2020 the Council unanimously adopted Resolution 69,363-N.S. submitting Police Accountability Board and Director of Police Accountability Charter Amendment initiative to the November 2020 ballot; and

WHEREAS, the purpose of the Police Accountability Board is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department; and

WHEREAS, the purpose of the Director of Police Accountability is to investigate complaints filed against sworn employees of the Berkeley Police Department, to reach an independent finding as to the facts and recommend corrective action where warranted, and the Director of Police Accountability may also serve as the Secretary to the Police Accountability Board to assist the Board in carrying out their duties; and

WHEREAS, Section 27 of the Charter Amendment states that the Police Review Commission established by Ordinance No. 4,644-N.S., as amended, shall continue in existence until its functions are transferred to the Police Accountability Board, but no later than January 3, 2022; and

WHEREAS, it is in the public interest to establish the Police Accountability Board and Director of Police Accountability as soon as possible to facilitate modern police accountability functions, especially in light of ongoing efforts to transform public safety; and

WHEREAS, the City is positioned to establish the functions and policy changes of the Police Accountability Board and appoint an interim Director no later than July 1, 2021.

NOW THEREFORE BE IT RESOLVED that the City Council, contingent upon voter approval of the Charter Amendment contained in Resolution No. 69,363-N.S., establishes the following core Police Accountability Board and Director of Police Accountability functions and policy changes for implementation by July 1, 2021:

- a. Establish and convene the Police Accountability Board with all investigatory, policy and other authorities, and;
- b. Pending confirmation of a Director of Police Accountability, appoint the existing Police Review Commission Officer as interim Director.





Kate Harrison  
Councilmember District

ACTION CALENDAR

July 28, 2020

To: Members of the City Council

From: Councilmember Harrison

Subject: Adopt an Ordinance Adding Chapter 2.64.170 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment

RECOMMENDATION

1. Refer draft Ordinance to the Police Review Commission for further consideration and policy development and submit recommendations to the Public Safety Committee and author within 60 days; and
2. Adopt an Ordinance Adding Chapter 2.64.170 to the Berkeley Municipal Code to Regulate Police Acquisition and Use of Controlled Equipment.

BACKGROUND

The acquisition and use of certain police equipment and weapons pose grave threats to civil liberties and public health and safety. It is in the public interest that acquisition of any police equipment with the potential to impose physical or psychological harm to community members should be thoroughly reviewed by the Police Review Commission and Council; legally enforceable safeguards, including transparency, oversight, and accountability measures, must be in place to protect the public's welfare, safety, civil rights, and civil liberties before certain categories of equipment are funded, acquired, or used.

The Council already relies on the Police Review Commission to review certain Police equipment acquisitions and uses. In addition, the Council has imposed limits directly, for example: limiting further acquisition of material from the Department of Defense 1033 Program, acquisitions of armored vehicles, the use of pepper spray in crowd control situations, and the use of tear gas. However, the City currently lacks a comprehensive framework for reviewing and regulating the acquisition of a broad spectrum of potentially problematic equipment, including use of such equipment by other departments during mutual aid events.

Adopt an Ordinance Adding Chapter 2.64.170 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment

The Oakland Police Commission is currently in the process of recommending to the Oakland City Council a new policy inspired by Berkeley's Surveillance Technology Ordinance and California Assembly Bill AB3131, a prior attempt to regulate military equipment statewide, to thoroughly consider the proposed acquisition and use of potentially problematic police equipment *before* community members can be harmed.

The primary concepts of the proposed Oakland and Berkeley Ordinances are as follows:

1. Controlled Equipment Use Policies and Controlled Equipment Impact Reports must be reviewed and adopted before the use of Controlled Equipment may be authorized.
2. Requires the Police Department to submit Controlled Equipment Use Policies and Controlled Equipment Impact Reports to the Police Commission for review and recommendation.
3. Requires the Police Commission to review submissions at a public hearing and determine whether such submissions warrant a recommendation to Council for adoption or rejection.
4. Requires the City Council to ratify or reverse the Police Commission's recommendations following the Commission's review of Controlled Equipment Use Policies.
5. Requires the Police Department to submit an annual report describing the use of authorized Controlled Equipment during the year prior.
6. Requires the Police Commission to review the annual Controlled Equipment report, determine whether covered equipment has complied with the standards for approval, and recommend renewal or modification of Use Policies, or the revocation of authorization for use.
7. Requires the City Council to ratify or reverse the Police Commission's recommendations following the Commission's review of the Controlled Equipment annual report.

The intent of this item is to provide the Police Review Commission with sufficient time to review the draft ordinance and provide input and feedback to the Public Safety Committee and author before proceeding to the full Council.

#### FINANCIAL IMPLICATIONS

Staff time.

#### ENVIRONMENTAL SUSTAINABILITY

No environmental impact.

Adopt an Ordinance Adding Chapter 2.64.170 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment

CONTACT

Councilmember Kate Harrison

kharrison@cityofberkeley.info | 510-981-7140

ATTACHMENTS:

1. Ordinance

ORDINANCE NO. -N.S.

ORDINANCE ADDING CHAPTER 2.64.170 TO THE BERKELEY MUNICIPAL CODE  
REGULATING POLICE ACQUISITION AND USE OF CONTROLLED EQUIPMENT

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

Section 1. The Berkeley Municipal Code Chapter 2.64.170 is added to read as follows:

**Chapter 2.64.170**  
**POLICE EQUIPMENT AND COMMUNITY SAFETY ORDINANCE**

**Sections:**

- 2.64.170.010 Findings and Purpose**
- 2.64.170.020 Prohibited Conduct**
- 2.64.170.030 Definitions**
- 2.64.170.040 Collection of Back Rent**
- 2.64.170.050 Application**
- 2.64.170.060 Implementing Regulations**
- 2.64.170.070 Waiver**
- 2.64.170.080 Remedies**

**2.64.170.010 Name of Ordinance.**

(A) This Ordinance shall be known as the Police Equipment and Community Safety Ordinance.

**2.64.170.020. Definitions**

A. "Controlled Equipment" means equipment that is military or militaristic in nature and includes, but is not limited to, all of the following:

(1) Special-purpose wheeled vehicles that are either built or modified to provide ballistic protection to their occupants, such as mine-resistant ambush protected (MRAP) vehicles or armored personnel carriers.

(a) Police versions of standard passenger vehicles are specifically excluded from this section.

(2) Multi-purpose wheeled vehicles that are either built to operate both on-road and off-road, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, or a five-ton truck, or vehicles built or modified to use a breaching or entry apparatus as an attachment.

(a) Unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this section.

- (3) Tracked vehicles that are built or modified to provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
- (4) Weapon-bearing aircraft, vessels, or vehicles of any kind, whether manned or unmanned.
- (5) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, and equipment that is ballistic, such as a slug, or equipment that is explosive in nature.
- (6) Firearms of .50 caliber or greater.
- (7) Ammunition of .50 caliber or greater.
- (8) Specialized firearms and associated ammunition of less than .50 caliber, as defined in Sections 30510 and 30515 of the California Penal Code.
- (9) Projectile launch platforms and their associated munitions, such as 40mm projectile launchers, "bean bag", rubber bullet, or specialty impact munition (SIM) weapons, and "riot guns" used to disperse chemical agents.
- (10) Any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.
- (11) Explosives, pyrotechnics, such as "flashbang" grenades, explosive breaching tools, and chemical weapons such as "teargas", CS gas, pepper spray, and "pepper balls".
- (12) Crowd-control equipment, such as riot batons, riot helmets, and riot shields, but excluding service-issued telescopic or fixed length straight batons.
- (13) Active area denial weapons, such as the Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD).
  - (a) Only LRAD as an area denial tool shall trigger the reporting requirements of this ordinance.
- (13) Any other equipment as determined by the City Council to require additional oversight.

(B) "City" means any department, agency, bureau, and/or subordinate division of the City of Berkeley.

(C) "City Staff" means City personnel authorized by the City Administrator or designee to seek City Council approval of the acquisition of Controlled Equipment in conformance with this Ordinance.

(D) "Controlled Equipment Impact Statement" means a publicly released, written document that includes, at a minimum, all of the following:

- (1) Description: A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.
- (2) Purpose: The purposes and reasons for which the Berkeley Police Department (hereinafter, "Police Department") proposes to use each type of Controlled Equipment.
- (3) Fiscal Cost: The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential

adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.

(4) Impact: An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public, and what specific affirmative measures will be implemented to safeguard the public from potential adverse impacts.

(5) Mitigations: Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.

(6) Alternatives: Alternative method or methods by which the Police Department can accomplish the purposes for which the Controlled Equipment is proposed to be used, the annual costs of alternative method or methods, and the potential impacts of alternative method or methods on the welfare, safety, civil rights, and civil liberties of the public.

(7) Location: The location(s) it may be used, using general descriptive terms.

(8) Third Party Dependence: Whether use or maintenance of the Controlled Equipment will require the engagement of third party service providers.

(9) Track Record: A summary of the experience (if any) other entities, especially government entities have had with the proposed Controlled Equipment, including, if available, quantitative information about the effectiveness of the Controlled Equipment in achieving its stated purpose in other jurisdictions, and any known adverse information about the Controlled Equipment (such as unanticipated costs, failures, or civil rights and civil liberties abuses).

(E) "Controlled Equipment Use Policy" means a publicly released, legally enforceable written document governing the use of Controlled Equipment by the Berkeley Police Department that addresses, at a minimum, all of the following:

(1) Purpose: The specific purpose or purposes that each type of Controlled Equipment is intended to achieve.

(2) Authorized Use: The specific uses of Controlled Equipment that are authorized, and rules and processes required prior to such use.

(3) Prohibited uses: A non-exclusive list of uses that are not authorized.

(4) Training: The course of training that must be completed before any officer, agent, or employee of the Police Department is allowed to use each specific type of Controlled Equipment.

(4) Auditing and Oversight: The mechanisms to ensure compliance with the Controlled Equipment Use Policy, including which independent persons or entities have oversight authority, and what legally enforceable sanctions are put in place for violations of the policy.

(5) Transparency: The procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of Controlled Equipment, and how the Police Department will ensure that each complaint, concern, or question receives a response in a timely manner.

(F) "Police Area" refers to each of the geographic districts assigned to a police commander and as such districts are amended from time to time.

(G) "Exigent Circumstances" means a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires the use of unapproved Controlled Equipment.

#### **2.64.170.030. Acquisition and Use of Controlled Equipment.**

##### (A) Restrictions Prior to Submission and Approval

(1) The Berkeley Police Department shall submit to the Berkeley Police Commission (hereinafter "Police Commission") a Controlled Equipment Impact Report and a Controlled Equipment Use Policy prior to engaging in any of the following:

(a) Requesting the transfer of Controlled Equipment pursuant to Section 2576a of Title 10 of the United States Code.

(b) Seeking funds for Controlled Equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(c) Acquiring Controlled Equipment either permanently or temporarily, including by borrowing or leasing.

(d) Collaborating with another law enforcement agency, such as commanding, controlling, or otherwise directing that agency or its personnel, in the deployment or other use of Controlled Equipment within Berkeley.

(e) Using any new or existing Controlled Equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this Ordinance.

(f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, Controlled Equipment.

(2) The funding, acquisition, or use of Controlled Equipment by the Police Department shall not be permitted without the review and recommendation, by the Police Commission, and approval, by City Council, of a Controlled Equipment Impact Report and a Controlled Equipment Use Policy submitted pursuant to this Ordinance.

(a) The Chair of the Police Commission, in consultation with the Vice Chair, may provide limited approval, in writing, for the Department to solicit funding for Controlled Equipment prior to the submission of a Controlled Equipment Impact Report and a Controlled Equipment Use Policy.

(b) Controlled Equipment funded under the exception provided by this subsection shall not be used unless a Controlled Equipment Impact Report and Controlled Equipment Use Policy is subsequently submitted to the Police Commission for review and subsequently approved by City Council, pursuant to the general requirements of this section.

(3) The Police Department shall not cooperate with law enforcement agencies or mutual aid partners that deploy Controlled Equipment that would be subject to this ordinance unless said cooperation and deployment of Controlled Equipment by such agency or mutual aid partner is consistent with the restrictions, use policies, and reporting requirements established by this ordinance.

(B) Submission to Police Commission

(1) When seeking the review and recommendation of the Police Commission, the Police Department shall submit to the Police Commission a proposed Controlled Equipment Impact Report and a Controlled Equipment Use Policy.

(2) At least 15 days prior to any public hearing concerning the Controlled Equipment at issue, the Department shall publish the proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy for public review. Publishing to the Department's website shall satisfy the requirements of this subsection.

(3) In order to facilitate public participation, any proposed or final Controlled Equipment Impact Report and Controlled Equipment Use Policy shall be made publicly available on the Department's website for as long as the Controlled Equipment is proposed or available for use.

(4) The Police Commission shall consider Controlled Equipment Impact Reports and Controlled Equipment Use Policies as an agenda item for review at an open session of a regularly noticed meeting.

(C) Criteria for Police Commission Recommendations

(1) The Police Commission shall only recommend approval of a request to fund, acquire, or use Controlled Equipment pursuant to this chapter if it determines all of the following:

(a) The Controlled Equipment is needed despite available alternatives.

(b) The proposed Controlled Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

(c) The use of Controlled Equipment will not be used based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability, or disproportionately impact any community or group.

(d) The use of Controlled Equipment is the most cost-effective option among all available alternatives.

(2) If the submitted Controlled Equipment Impact Report identifies a risk of potential adverse effects on the public's welfare, safety, civil rights, or civil liberties, a recommendation for approval for the funding, acquisition, or use of Controlled Equipment by the Police Commission pursuant to this Ordinance shall not be deemed an acquiescence to those effects, but instead an acknowledgment of the risk of those effects and the need to avoid them proactively.

(E) Police Commission Review Required Before City Council Consideration of Approval.



(1) The Police Commission shall recommend that the City Council adopt, modify, or reject the proposed Controlled Equipment Use Policy.

(a) If the Police Commission proposes that the Controlled Equipment Use Policy be modified or rejected, the Police Commission shall propose such modifications to City Staff. City Staff shall present such modifications or notice of rejection to City Council when seeking City Council approval pursuant to this Ordinance.

(b) Failure by the Police Commission to make its recommendation on a proposal within ninety (90) days of submission shall enable City Staff to proceed to the City Council for approval of the proposal.

#### (F) Police Commission Review of Prior Recommendations

(1) The Police Commission shall review any recommendation that it has adopted pursuant to this Ordinance approving the funding, acquisition, or use of Controlled Equipment at least annually and vote on whether to recommend renewal of the approval.

(2) A Police Commission recommendation to City Council that a prior approval be revoked shall be presented to Council for immediate consideration. If City Council has not reviewed and taken action on a Police Commission recommendation that a prior approval be revoked within four (4) City Council meetings from when the item was initially scheduled for City Council consideration, the City shall cease its use of the Controlled Equipment.

#### (G) Review Process for Previously-Acquired Equipment

(1) The Police Department shall have one year from the date of passage of this Ordinance to submit Controlled Equipment Use Policies and Controlled Equipment Impact Statements for approval pursuant to this Ordinance if the Department wishes to continue the use of Controlled Equipment acquired prior to the passage of this Ordinance. The Department shall cease the use of Controlled Equipment acquired prior to the date of passage of this ordinance if, after one year, no approval, pursuant to the requirements of this Ordinance, has been granted.

(2) In order to ensure that the review of previously-acquired Controlled Equipment is appropriately prioritized, the Police Department shall provide a prioritized ranking of Controlled Equipment possessed and/or used by the City, and the Police Commission shall consider this ranking in determining order in which previously-acquired Controlled Equipment that is prioritized for review.

#### (H) City Council Approval Process

(1) After the Police Commission Notification and Review requirements have been met, City Staff seeking City Council approval shall schedule for City Council consideration the proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy, and include Police Commission recommendations, at least fifteen (15) days prior to a public meeting.

(2) The City Council shall only approve a proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy after first considering the recommendation of the Police Commission, and subsequently making a determination that the City's interest in community safety outweighs the potential adverse affects of using Controlled Equipment.

(3) For approval of existing Controlled Equipment for which the Police Commission has failed to make a recommendation within ninety (90) days as provided by this Section, if the City Council has not reviewed and approved such item within four (4) City Council meetings from when the item was initially scheduled for City Council consideration, the City shall cease its use of the Controlled Equipment until such review and approval occurs.

#### **2.64.170.040. Reports on the Use of Controlled Equipment.**

##### **(A) Annual Report on Controlled Equipment**

(1) The Berkeley Police Department shall submit to the Police Commission an annual report on Controlled Equipment to the Police Commission within one year of approval, and annually thereafter for as long as the Controlled Equipment is available for use. The annual report shall be provided no later than March 15th of each year, unless the Police Commission advises the Police Department that an alternate date is preferred. The Police Department shall also make each annual report required by this section publicly available on its website for as long as the Controlled Equipment is available for use. The annual report shall, at a minimum, include the following information for the immediately preceding calendar year:

- (a) Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.
  - (b) A summary of how Controlled Equipment was used.
  - (c) If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.
  - (d) A summary of any complaints or concerns received concerning Controlled Equipment.
  - (e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.
  - (f) The total annual cost for each type of Controlled Equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for Controlled Equipment in the calendar year following submission of the annual report.
- (2) Within 60 days of the Police Department submitting and publicly releasing an annual report pursuant to this section, the Police Commission shall place the report as an

agenda item for an open session of a regular meeting. After review and approval by the Police Commission, City Staff shall submit the annual report to City Council.

(C) Compliance & Revocation of Approval

(1) The Police Commission shall determine, based on the annual report submitted pursuant to Section 4, whether each type of Controlled Equipment identified in that report has complied with the standards for approval set forth in Section 3. If the Police Commission determines that any Controlled Equipment identified in the annual report has not complied with the standards for approval set forth in Section 3, the Police Commission shall either recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations pursuant to this section shall be forwarded to City Council in accordance with the approval process in Section 3.

**2.64.170.050. Enforcement.**

(A) Remedies for Violations of this Ordinance

(1) Any violation of this Ordinance, or of a Controlled Equipment Use Policy promulgated under this Ordinance, constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in the Superior Court of the State of California to enforce this Ordinance. An action instituted under this paragraph shall be brought against the respective city department, and the City of Berkeley, and, if necessary to effectuate compliance with this Ordinance or a Controlled Equipment acquisition or use policy, any other governmental agency with possession, custody, or control of Controlled Equipment subject to this Ordinance, to the extent permitted by law.

(2) Any person who has been subjected to the use of Controlled Equipment in violation of this Ordinance may institute proceedings in the Superior Court of the State of California against the City of Berkeley and shall be entitled to recover actual damages (but not less than liquidated damages of one thousand dollars (\$1,000.00) or one hundred dollars (\$100.00) per day for each day of violation, whichever is greater).

(3) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought under subpart (1) or (2) above.

(4) Violations of this Ordinance by a city employee may result in consequences that may include retraining, suspension, or termination, subject to due process requirements.

**2.64.170.060. Transparency**

(A) Disclosure Requirements

(1) It shall be unlawful for the City to enter into any Controlled Equipment-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.

(2) To the extent permitted by law, the City shall publicly disclose all of its Controlled Equipment-related contracts, including any and all related non-disclosure agreements, if any, regardless of any contract terms to the contrary.

**2.64.170.070. Whistleblower Protections.**

(A) Protections Against Retaliation

(1) Neither the City nor anyone acting on behalf of the City may take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment, including but not limited to discriminating with respect to compensation, terms and conditions of employment, access to information, restrictions on due process rights, or civil or criminal liability, because:

(a) The employee or applicant was perceived to, about to, or assisted in any lawful disclosure of information concerning the funding, acquisition, or use of Controlled Equipment based upon a good faith belief that the disclosure evidenced a violation of this Ordinance; or

(b) The employee or applicant was perceived to, about to, or assisted or participated in any proceeding or action to carry out the purposes of this Ordinance.

(c) It shall be grounds for disciplinary action for a city employee or anyone else acting on behalf of the city to retaliate against another city employee or applicant who makes a good-faith complaint that there has been a failure to comply with any Controlled Equipment Use Policy or administrative instruction promulgated under this Ordinance.

(d) Any employee or applicant who is injured by a violation of this Section may institute a proceeding for monetary damages and injunctive relief against the city in any court of competent jurisdiction.

**2.64.170.080 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 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.



|                                                                               |                                                                                                                   |
|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                   |
| Scheduled Dates                                                               |                                                                                                                   |
| July 21                                                                       | 1. Climate Action Plan/Resiliency Update                                                                          |
| Sept. 29                                                                      | 1. Digital Strategic Plan/FUND\$ Replacement/Website Update<br>2. Update: Zero Waste Priorities<br>3. Vision 2050 |
| Oct. 20                                                                       | 1. Update: Berkeley’s 2020 Vision<br>2. BMASP/Berkeley Pier-WETA Ferry                                            |

|                                                                                |
|--------------------------------------------------------------------------------|
| Unscheduled Workshops                                                          |
| 1. Cannabis Health Considerations<br>2. Presentation from StopWaste on SB 1383 |

|                                          |
|------------------------------------------|
| Unscheduled Presentations (City Manager) |
| 1. Systems Realignment                   |

|    | <b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <p><b>68. Revisions to Ordinance No. 7,521--N.S. in the Berkeley Municipal Code to increase compliance with the city's short-term rental ordinance</b> (<i>Referred from the July 24, 2018 agenda. Agenda Committee to revisit in April 2019.</i>) <b>March 18, 2019 Action:</b> <i>Item to be agendized at future Agenda and Rules Committee Meeting pending scheduling confirmation from City Manager.</i></p> <p><b>From: Councilmember Worthington</b></p> <p><b>Recommendation:</b> Refer the City Manager to look into adopting revisions to Ordinance No. 7,521--N.S by modeling after the Home-Sharing Ordinance of the City of Santa Monica and the Residential Unit Conversion Ordinance of the City of San Francisco in order to increase compliance with city regulations on short-term rentals of unlicensed properties.</p> <p><b>Financial Implications:</b> Minimal</p> <p>Contact: Kriss Worthington, Councilmember, District 7, 981-7170</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 2. | <p><b>47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow</b> (<i>Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee</i>) (<i>Referred from the January 21, 2020 agenda</i>)</p> <p><b>From: Councilmember Harrison</b></p> <p><b>Recommendation:</b></p> <ol style="list-style-type: none"> <li>1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow.</li> <li>2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.</li> </ol> <p><b>Financial Implications:</b> See report</p> <p>Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140</p> <p><i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>                                                                                                                                                                                                                                                                                                                                                                                        |
| 3. | <p><b>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</b> (<i>Reviewed by the Facilities, Infrastructure, Transportation, Environment &amp; Sustainability Committee</i>) (<i>Referred from the April 21, 2020 agenda</i>)</p> <p><b>From: Councilmember Harrison (Author), Mayor Arreguin (Author), Councilmember Robinson (Co-Sponsor), Councilmember Hahn (Co-Sponsor)</b></p> <p><b>Recommendation:</b> 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 (&gt;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><b>Financial Implications:</b> See report</p> <p>Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140</p> <p><i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p> |



|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4. | <p><b>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers</b> <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p><b>From: City Manager</b></p> <p><b>Recommendation:</b> 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><b>Financial Implications:</b> 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 &amp; Rules for future scheduling.</i></p>                                                         |
| 5. | <p><b>Referral to Schedule a Special City Council Meeting on Ohlone History and Culture</b></p> <p><b>From: Councilmembers Hahn and Davila</b> <i>(referred from February 25, 2020)</i></p> <p><b>Recommendation:</b> Refer to the Agenda &amp; Rules Policy Committee to schedule a Special City Council Meeting of at least one hour in duration immediately prior to a Regular City Council Meeting for representatives of the Ohlone community to present on Ohlone history and culture to provide additional context for the placement of signs stating "Welcome to the City of Berkeley Ohlone Territory" at entrances to our City.</p> <p><b>Financial Implications:</b> None</p> <p>Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150</p> <p><i>Note: moved from the Upcoming Worksessions list to this list for scheduling purposes on June 15, 2020.</i></p> |

| CITY CLERK DEPARTMENT                                          |                      |                       |                                         |                   |
|----------------------------------------------------------------|----------------------|-----------------------|-----------------------------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS               |                      |                       |                                         |                   |
| BEFORE THE CITY COUNCIL                                        |                      |                       |                                         |                   |
| Address                                                        | Board/<br>Commission | Appeal Period<br>Ends | Determination<br>on Appeal<br>Submitted | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                               |                      |                       |                                         |                   |
| 2099 Martin Luther King Jr. Way (construct mixed-use building) | ZAB                  | 7/16/2020             |                                         |                   |
| 2590 Bancroft Way (construct mixed-use building)               | ZAB                  | 7/16/2020             |                                         |                   |
|                                                                |                      |                       |                                         |                   |
|                                                                |                      |                       |                                         |                   |
| <b>Public Hearings Scheduled</b>                               |                      |                       |                                         |                   |
| 1533 Beverly Place (single-family dwelling)                    | ZAB                  |                       |                                         | 7/14/2020         |
| 1346 Ordway St (legalize additions)                            | ZAB                  |                       |                                         | TBD               |
|                                                                |                      |                       |                                         |                   |
|                                                                |                      |                       |                                         |                   |
| <b>Remanded to ZAB or LPC</b>                                  |                      |                       |                                         |                   |
|                                                                |                      |                       |                                         |                   |
|                                                                |                      |                       |                                         |                   |
|                                                                |                      |                       |                                         |                   |
| <b>Notes</b>                                                   |                      |                       |                                         |                   |
|                                                                |                      |                       |                                         |                   |
|                                                                |                      |                       |                                         |                   |
|                                                                |                      |                       |                                         |                   |

7/8/2020



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 Numainville, City Clerk







Homeless Commission

## ACTION CALENDAR

July 14, 2020

To: Honorable Mayor and Members of the City Council  
 From: Homeless Commission  
 Submitted by: Carole Marasovic, Chairperson, Homeless Commission  
 Subject: Compiling Commission Recommendations in a Reference Manual

### RECOMMENDATION

The Homeless Commission recommends that Council refer to staff to develop a procedure for staff secretaries to all City of Berkeley commissions to compile all commission recommendations, whether in report or letter form, in a binder. Such binder shall also track the outcomes of all commission recommendations including action taken by Council and subsequent implementation of Council action. One copy of the binder shall remain with the staff secretary; another copy of the binder shall be available as a resource in the City Clerk's office. The City Clerk shall index all subject matters of commission proposals so that there is cross-referencing of all subjects that commissions have addressed. This reference manual shall be available for use by commissions to share information, the Mayor and Council, staff and members of the public. The City Clerk shall also provide this information online.

### SUMMARY

This recommendation would create a reference manual which would track the work of City advisory commissions and the outcomes and implementation of their recommendations. It would serve to provide information-sharing between commissions when they work on similar or overlapping issues. It would provide a reference manual for all City commissioners, Mayor and Council, staff and members of the public.

### FISCAL IMPACTS OF RECOMMENDATION

Staff would have to assess the cost, and staff time, of providing this manual and maintaining it. The cost would seem to be outweighed by the benefits of information sharing and coordination between commissions and providing easily accessible information to all including the public.

### CURRENT SITUATION AND ITS EFFECTS

Currently, commissions often operate without knowledge of how other commissions are approaching similar or overlapping issues. There is no single resource to go to view information other than reviewing individual commissions' minutes. Recommendations occasionally have not been tracked and have fallen by the wayside. The work output of commissions, producing recommendations, cannot always be evaluated or reviewed in

detail because there is no reference manual for commission recommendations. At a recent strategic plan session conducted by the City Manager's office educating commissioners, across all commissions, of the strategic plan, when receiving input from commissioners in attendance, several commissioners, from multiple commissions, indicated that they wanted to access additional knowledge how other commissions are addressing the same or similar, related issues. In addition, some commissions have placed information sharing between commissions on their agendas and/or addressed the need for information sharing, between commissions, on their agendas

### BACKGROUND

The Homeless Commission voted on March 11, 2020 as follows:

**Action:** M/S/C Hirpara/ Hill to approve and send the recommendation to Council as written.

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

### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects except the use of a nominal amount of additional paper.

### RATIONALE FOR RECOMMENDATION

Binders, and online access, as described in the recommendation would provide for better tracking of recommendations and outcomes including Council action and subsequent implementation of outcomes. This reference manual would provide better coordination between commissions when they are addressing similar or overlapping subject matters. This reference manual would also provide easily accessible information for not only commissioners but also Mayor and Council, staff and members of the public.

### ALTERNATIVE ACTIONS CONSIDERED

An alternative would be for no action to be taken.

### CITY MANAGER

See companion report.

### CONTACT PERSON

Brittany Carnegie, Homeless Commission Secretary, HHCS, 510-981-5415



Homeless Commission

ACTION CALENDAR

July 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk  
Brittany Carnegie, Homeless Commission Secretary

Subject: Companion Report: Compiling Commission Recommendations in a Reference Manual

RECOMMENDATION

Refer the commission recommendation to the City Manager to 1) consider the impacts on staffing levels, approved Strategic Plan projects, and existing baseline services in the context of the projected budget shortfall for FY 2021 and the hiring freeze currently in effect; and 2) work within existing resources to facilitate information sharing among commissions on items referred from the City Council.

FISCAL IMPACTS OF RECOMMENDATION

No direct fiscal impact.

CURRENT SITUATION AND ITS EFFECTS

The City is facing an unprecedented \$28.5 million shortfall in the FY 2021 budget. As a part of the measures taken to close the gap, all departments are facing 15% reductions in personnel and non-personnel expenditures. In addition, a hiring freeze has been implemented by the City Manager and vacant positions are not being filled.

Commission secretaries have a full time employee's regular duties and the additional responsibilities of supporting a commission. The City Clerk Department is also newly affected by several new additions to baseline responsibilities including the Citizens Redistricting Commission, the Lobbyist Registration Ordinance, the Public Financing Program for Candidates, and support of the City Council Policy Committees.

The tracking and reporting as described in the commission recommendation is a significant new task added to the baseline responsibilities of the City Clerk Department and commission secretaries. The commission item extends the tracking requirement beyond agenda items to also include letters from a commission to the Council, which are more difficult to track.

Currently, the City does log commission referrals in the ServiceNow program to keep track of the adopted referrals. Some expansion of the tracking and reporting in

ServiceNow could be a possible method to meet some of the commission's request, but this would require purchasing new software licenses for commission secretaries. The estimated cost for 40 licenses at \$242 each is \$9,680 annually. This additional cost is not currently funded in the FY 2021 budget.

Under the current guidelines in the Commissioners' Manual, commission secretaries are tasked with keeping the commission informed of the referrals adopted by Council for their commission and also to notify other commissions of items that may be of overlapping jurisdiction among multiple commissions. The City Manager and the City Clerk Department can reach out to all secretaries to highlight this responsibility and inquire about ways in which the City Clerk Department can support secretaries with information sharing among commissions.

#### BACKGROUND

On March 11, 2020 by a 5-0-1-1 vote, the Homeless Commission adopted a recommendation that Council refer to staff to develop a procedure for staff secretaries to all City of Berkeley commissions to compile all commission recommendations, whether in report or letter form, in a binder. Such binder shall also track the outcomes of all commission recommendations including action taken by Council and subsequent implementation of Council action. One copy of the binder shall remain with the staff secretary; another copy of the binder shall be available as a resource in the City Clerk's office. The City Clerk shall index all subject matters of commission proposals so that there is cross-referencing of all subjects that commissions have addressed. This reference manual shall be available for use by commissions to share information, the Mayor and Council, staff and members of the public. The City Clerk shall also provide this information online.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects except the use of a nominal amount of additional paper.

#### RATIONALE FOR RECOMMENDATION

Due to current budgetary and staffing limitations, there are not adequate staffing resources to implement the full measure of the commission's request.

#### CONTACT PERSON

Mark Numainville, City Clerk, 510-981-6900  
Brittany Carnegie, Homeless Commission Secretary, HHCS, 510-981-5415



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
July 14, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Amending Council Rules of Procedures such that items submitted by the Mayor or Councilmembers be placed directly on the City Council Agenda to allow the whole City Council to review and take action on the submitted item to ensure equity in the process.

#### RECOMMENDATION

Adopt a Resolution to amend Council Rules of Procedures Section C-1 and G-1 such that items submitted by the Mayor or Councilmembers be placed directly on the City Council agenda rather than beginning with submission to commissions or Council Policy Committees to ensure equity in the process.

#### BACKGROUND

Section C-1 of the Council Rules and Procedures states, "All items are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules and limitations contained herein. The Agenda & Rules Committee shall be a standing committee of the City Council." This section should be amended to state: "all submitted items by the Mayor or a Councilmember shall be placed on the requested Council Meeting Agenda, and have the whole City Council review the submitted items, take action, and/r or refer to a commission or Council Policy Committee."

Section G-1 of the Council Rules and Procedures states, "All agenda items begin with submission to the Agenda & Rules Committee." Instead, it shall be amended to state: "All agenda items shall go straight to the full City Council for review and action." The Agenda & Rules Committee should not determine the placement of an item in the first place.

Section G-1 furthers that, "Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda." Items submitted by the Mayor or Councilmembers should be placed directly onto the City Council agenda since many items are urgent and cannot be held up in individuals committees. It shall be amended to state: "Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts shall be placed on the requested Council meeting date, be place on the Council meeting agenda, and have the whole City Council review the item and take necessary action."

Most cities across California do not follow the procedure of deferring council items to commissions or committees, rather all policy items are brought before the Council at meetings and are considered for approval in one single action. If needed, the City Councilmembers have the opportunity to remove an item from the consent calendar for purposes of discussion and further amendment. It is imperative that the City of Berkeley also adopt similar procedures in order to maintain the momentum of policymaking. The full Council should have an opportunity to discuss each item and choose to refer to a commission or Council Policy Committee. Currently, the Agenda & Rules committee sends items which doesn't allow the full Council to be aware or even know about the item prior to being sent to a committee or commission where it may be for 120 days. The current process is not just and should be changed to ensure equity in the decision to refer to a commission or Council Policy Committee.

This process for items can take months to even hear back about their status. Council should refer Council items to commissions and Council Policy Committees.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

None.

#### CONTACT PERSONS

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#### ATTACHMENTS:

1. Resolution

#### REFERENCES:

1. The Berkeley City Council Rules of Procedure and Order:  
[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/City%20Council%20Rules%20of%20Procedure%20-%20June%202020%20-%20FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/City%20Council%20Rules%20of%20Procedure%20-%20June%202020%20-%20FINAL.pdf)

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA, AMENDING THE COUNCIL RULES OF PROCEDURES SUCH THAT ITEMS SUBMITTED BY THE MAYOR OR COUNCILMEMBERS BE PLACED DIRECTLY ON THE CITY COUNCIL AGENDA TO ALLOW THE WHOLE CITY COUNCIL TO REVIEW AND TAKE ACTION ON THE SUBMITTED ITEM TO ENSURE EQUITY IN THE PROCESS.

WHEREAS, Section C-1 of the Council Rules and Procedures states, "All items are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules and limitations contained herein. The Agenda & Rules Committee shall be a standing committee of the City Council." This section should be amended to state: "all submitted items by the Mayor or a Councilmember shall be placed on the requested Council Meeting Agenda, and have the whole City Council review the submitted items, take action, and/r or refer to a commission or Council Policy Committee."; and

WHEREAS, Section G-1 of the Council Rules and Procedures states, "All agenda items begin with submission to the Agenda & Rules Committee." Instead, it shall be amended to state: "All agenda items shall go straight to the full City Council for review and action." The Agenda & Rules Committee should not determine the placement of an item in the first place; and

WHEREAS, Section G-1 furthers that, "Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda." Items submitted by the Mayor or Councilmembers should be placed directly onto the City Council agenda since many items are urgent and cannot be held up in individuals committees. It shall be amended to state: "Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts shall be placed on the requested Council meeting date, be place on the Council meeting agenda, and have the whole City Council review the item and take necessary action."; and

WHEREAS, Most cities across California do not follow the procedure of deferring council items to commissions or committees, rather all policy items are brought before the Council at meetings and are considered for approval in one single action. If needed, the City Councilmembers have the opportunity to remove an item from the consent calendar for purposes of discussion and further amendment. It is imperative that the City of Berkeley also adopt similar procedures in order to maintain the momentum of policymaking. The full Council should have an opportunity to discuss each item and choose to refer to a commission or Council Policy Committee. Currently, the Agenda & Rules committee sends items which doesn't allow the full Council to be aware or even know about the item prior to being sent to a committee or commission where it may be for 120 days. The current process is not just and should be changed to ensure equity in the decision to refer to a commission or Council Policy Committee; and

WHEREAS, This process for items can take months to even hear back about their status. Council should refer Council items to commissions and Council Policy Committee; and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley, California hereby amend Council Rules of Procedures Section C-1 and G-1 such that items submitted by

the Mayor or Councilmembers be placed directly on the City Council agenda rather than beginning with submission to commissions or Council Policy Committees to ensure equity in the process.





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.<sup>1</sup>

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.<sup>2</sup> 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,<sup>3</sup> reduce implicit bias,<sup>4</sup> increase emotional resilience when confronted with negative feedback,<sup>5</sup> and to help leaders be more confident and act in line with their values.<sup>6</sup> Due to its benefits, mindfulness has been deployed in a multitude of institutions such as

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

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

<sup>3</sup> [https://greatergood.berkeley.edu/article/item/meditation\\_causes\\_compassionate\\_action](https://greatergood.berkeley.edu/article/item/meditation_causes_compassionate_action)

<sup>4</sup> [https://greatergood.berkeley.edu/article/item/can\\_mindfulness\\_help\\_reduce\\_racism](https://greatergood.berkeley.edu/article/item/can_mindfulness_help_reduce_racism)

<sup>5</sup> [https://greatergood.berkeley.edu/article/item/can\\_mindfulness\\_help\\_students\\_cope\\_with\\_failure](https://greatergood.berkeley.edu/article/item/can_mindfulness_help_students_cope_with_failure)

<sup>6</sup> [https://greatergood.berkeley.edu/article/item/can\\_mindfulness\\_help\\_you\\_be\\_more\\_authentic](https://greatergood.berkeley.edu/article/item/can_mindfulness_help_you_be_more_authentic)

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

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 Order<sup>12</sup> 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

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<sup>7</sup> <https://www.mindfulschools.org/>

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

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

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

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

<sup>12</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/City%20Council%20Rules%20of%20Procedure%20-%20Feb%2011%202020%20-%20FINAL.pdf](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

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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.





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                    | <a href="https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/External%20Roster.pdf">https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3 - Commissions/External%20Roster.pdf</a> |
| Antioch                  | 112,000           | 6                     | <a href="https://www.antiochca.gov/government/boards-commissions/">https://www.antiochca.gov/government/boards-commissions/</a>                                                                               |
| Concord                  | 130,000           | 14                    | <a href="https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm">https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm</a>                                             |
| Daly City                | 107,000           | 7                     | <a href="http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm">http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm</a>         |
| Fairfield                | 117,000           | 7                     | <a href="https://www.fairfield.ca.gov/gov/comms/default.asp">https://www.fairfield.ca.gov/gov/comms/default.asp</a>                                                                                           |
| Fremont                  | 238,000           | 15                    | <a href="https://www.fremont.gov/76/Boards-Commissions-Committees">https://www.fremont.gov/76/Boards-Commissions-Committees</a>                                                                               |
| Hayward                  | 160,000           | 12                    | <a href="https://www.hayward-ca.gov/your-government/boards-commissions">https://www.hayward-ca.gov/your-government/boards-commissions</a>                                                                     |
| Richmond                 | 110,000           | 29                    | <a href="https://www.ci.richmond.ca.us/256/Boards-and-Commissions">https://www.ci.richmond.ca.us/256/Boards-and-Commissions</a>                                                                               |
| San Mateo                | 105,000           | 7                     | <a href="https://www.cityofsanmateo.org/60/Commissions-Boards">https://www.cityofsanmateo.org/60/Commissions-Boards</a>                                                                                       |

|           |         |    |                                                                                                                                                           |
|-----------|---------|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sunnyvale | 153,000 | 10 | <a href="https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804">https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804</a> |
| Vallejo   | 122,000 | 17 | <a href="http://www.ci.vallejo.ca.us/cms/one.aspx?pageId=22192">http://www.ci.vallejo.ca.us/cms/one.aspx?pageId=22192</a>                                 |

### 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<br>(Total Commissions in<br>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<br>Community Services<br>(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)**

|                                       | <b>Current Situation</b> | <b>Collaborative Approach</b> | <b>Policy Committee Alignment</b> | <b>Extreme Consolidation</b> |
|---------------------------------------|--------------------------|-------------------------------|-----------------------------------|------------------------------|
| <b>Benefit/ Effectiveness</b>         | medium                   | high                          | medium                            | low                          |
| <b>Cost</b>                           | high                     | medium                        | low                               | low                          |
| <b>Administrative Burden</b>          | high                     | low                           | low                               | medium                       |
| <b>Relative Environmental Benefit</b> | 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 <b>Direct</b> Cost of Commission <b>per Month</b> |
|-----------------------------------|--------------------|------------------------|---------------------------------------------------------|
| 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.