



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

TUESDAY, SEPTEMBER 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**

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/86427223728>. 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: **864 2722 3728**. 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: September 8, 2020**
- 2. Review and Approve Draft Agenda:**
 - a. 10/13/20 – 6:00 p.m. Regular City Council Meeting
- 3. Selection of Item for the Berkeley Considers Online Engagement Portal**
- 4. Adjournments In Memory**

Scheduling

- 5. Council Worksessions Schedule**
- 6. Council Referrals to Agenda Committee for Scheduling**
- 7. Land Use Calendar**

Referred Items for Review

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

Unscheduled Items

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

- 9. 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

- 10. Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12** *(Item contains supplemental material)*
From: Fair Campaign Practices Commission
Referred: July 28, 2020
Due: January 29, 2021
Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950

Unscheduled Items

11. Relinquishments and grants from Councilmembers' office budgets

From: Open Government Commission

Referred: August 31, 2020

Due: February 15, 2021

Recommendation: Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

Financial Implications: None

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

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment – Next Meeting Tuesday, October 13, 2020

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 September 24, 2020.

A handwritten signature in black ink, appearing to read "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**

TUESDAY, SEPTEMBER 8, 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: 2:31 p.m. All present.

Public Comment – 15 speakers.

Review of Agendas

1. Approval of Minutes: August 31, 2020

Action: M/S/C (Wengraf/Hahn) to approve the minutes of 8/31/2020.

Vote: All Ayes.

2. Review and Approve Draft Agendas:

a. 9/22/20 – 6:00 p.m. Regular City Council Meeting

Action: M/S/C (Hahn/Wengraf) to approve the agenda of the 9/22/2020 regular meeting with the changes noted below.

- *Item Added: Measure FF Oversight (Arreguin) – added to Consent Calendar; Councilmembers Wengraf, Hahn, and Robinson added as co-sponsors*
- *Item Added: Extension of Emergency Declaration (City Manager) – added to Consent Calendar*
- *Item Added: Water for Unhoused (Davila) – added to Consent Calendar*
- *Item 7 Proposition 17 (Hahn) – Councilmember Wengraf added as a co-sponsor*
- *Item 8 SB 1079 (Wengraf) – Councilmembers Hahn, Harrison, and Robinson added as co-sponsors*
- *Item 12 Mindfulness (Davila) – moved to Consent Calendar (with committee recommendation added)*
- *Item 13 Healthy Checkout (Harrison) – revised item submitted*
- *Item 14 Community Refrigerators (Davila) – scheduled for 9/22 Action Calendar*
- *Item 15 Breathe Act (Davila) – revised item submitted; Councilmember Bartlett added as a co-sponsor; scheduled for 9/22 Action Calendar*

Vote: All Ayes.

Order of Action Calendar

Item 9 Navigable Cities

Item 10 Civic Center

Item 11 Crime Report

Item 13 Healthy Checkout

Item 14 Community Refrigerators

Item 15 Breathe Act

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

- None Selected

4. Adjournments In Memory

- Add standing adjournment in memory of Berkeley residents that have died from COVID-19

Scheduling

5. **Council Worksessions Schedule** – reviewed and approved
6. **Council Referrals to Agenda Committee for Scheduling**
 - Item 4 Ohlone History scheduled for 10/13/2020 at 5:00 p.m.
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. **Referral Response: Expanding community engagement within work to address Climate Impacts**

From: City Manager

Referred: July 21, 2020

Due: January 22, 2021

Recommendation:

1. Refer to the City Manager to continually advance engagement around community-driven, equitable climate solutions, and to seek external resources to enable increased community engagement of impacted communities around equitable climate solutions; and
2. Refer to the Agenda Committee a revision to the Council Rules of Procedures to update the Environmental Sustainability section of City Council items and staff reports as “Environmental Sustainability and Climate Impacts.”

Financial Implications: See report

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

Action: M/S/C (Arreguin/Wengraf) to send the item to the City Council with a Qualified Positive Recommendation to 1) request that the City Manager update the training materials and templates to include climate impacts in the Environmental Sustainability section of staff and council reports; and 2) codify the changes in Appendix B in the next update to the Rules of Procedure.

Vote: All Ayes.

Unscheduled Items

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

- 10. 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
- Action:** Continued to next meeting under Unscheduled Items.
- 11. Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12** *(Item contains supplemental material)*
From: Fair Campaign Practices Commission
Referred: July 28, 2020
Due: January 29, 2021
Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
- Action:** Continued to next meeting under Unscheduled Items.

Unscheduled Items

12. Relinquishments and grants from Councilmembers' office budgets

From: Open Government Commission

Referred: August 31, 2020

Due: February 15, 2021

Recommendation: Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

Financial Implications: None

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

Action: Continued to next meeting under Unscheduled Items.

Items for Future Agendas

- Discussion of items to be added to future agendas
 - None

Adjournment

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

Vote: All Ayes.

Adjourned at 3:55 p.m.

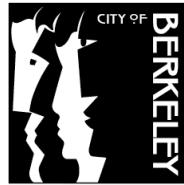
I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on September 8, 2020.

Mark Numainville
City Clerk

Communications

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DRAFT AGENDA



BERKELEY CITY COUNCIL MEETING

Tuesday, October 13, 2020
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) or 1-888-475-4499 (Toll Free) or 1-833-548-0276 (Toll Free) or 1-833-548-0282 (Toll Free) and enter Meeting ID: <<INSERT MEETING ID HERE>>. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info 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." Three members of the City Council must agree to pull an item from the Consent Calendar for it to move 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. Amending Ordinance No. 7,692-N.S. extending the grace period for Fair Chance Housing Ordinance**
From: Mayor Arreguin (Author)
Recommendation: Adopt second reading of Ordinance No. 7,733-N.S. amending Ordinance No. 7,692-N.S. (Fair Chance Housing Ordinance) to extend the grace period for landlords to be held liable to January 1, 2021 so that staff has adequate time to complete the intended outreach prior to the ordinance going into full effect.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 2. Healthy Checkout Ordinance; Adding Berkeley Municipal Code Chapter 9.82**
From: Councilmember Harrison (Author), Councilmember Hahn (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Davila (Co-Sponsor)
Recommendation: Adopt second reading of Ordinance No. 7,734-N.S. requiring stores over 2,500 square feet in size to sell more nutritious food and beverage options in their checkout areas, and adding Berkeley Municipal Code Chapter 9.82.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on October 13, 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: One-Time Grant Fund - \$325,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 4. Revenue Contract: Department of Health Care Services Performance Contract for City of Berkeley**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with the California Department of Health Care Services (DHCS). The contract, which will run through June 30, 2021, is for multiple projects that DHCS administers across the State, including the Mental Health Services Act (MHSA), the Lanterman-Petris-Short (LPS) Act, Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Block Grant (MHBG), and Crisis Counseling Assistance and Training Program (CCP) programs, and for county provision of community mental health services pursuant to the Bronzan-McCorquodale Act. The City of Berkeley will only receive revenue through the MHSA for this contract.
Financial Implications: Approximately \$6,000,000 (revenue)
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

5. Lease Agreement for 225 University Avenue – Qasemi Abdul Moqim dba Berkeley Sportsman Center

From: City Manager

Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement and necessary amendments with Qasemi Abdul Moqim, doing business as Berkeley Sportsman Center, at 225 University Avenue at the Berkeley Marina for a term of three years, with a two-year option.

Financial Implications: See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

6. Measure T1 Phase 1 Project List Additions

From: City Manager

Recommendation: Adopt a Resolution authorizing the following additions to the Measure T1 Phase 1 project list with no additional funding: James Kenney Park play area (ages 2-5, and 5-12) and picnic area; Euclid Street (at Rose Garden); Cedar Street from 6th Street to San Pablo Avenue; Center Street from Martin Luther King Jr. Way to Shattuck Avenue; Rose Street from Le Roy Avenue to La Loma Avenue; Santa Fe Avenue from Gilman Street to Cornell Avenue/ Page Street; Shasta Road from Grizzly Peak Boulevard to east City limit; Arcade Avenue from Fairlawn Drive to Grizzly Peak Boulevard; Dohr Street from Ashby Avenue to Prince Street; and West Street from Bancroft Way to Dwight Way.

Financial Implications: None

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700; Liam Garland, Public Works, (510) 981-6300

7. Resumption of Fees at Oregon Park Senior Apartments

From: City Manager

Recommendation: Authorize the City Manager to resume charging fees, including housing inspection service fees, at Oregon Park Senior Apartments (OPSA), located at 1425 Oregon Street, to increase the effectiveness of housing code enforcement.

Financial Implications: See report

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

8. Revenue Grant: Fiscal Year 2020-21 Alcoholic Beverage Control Grant

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager, and/or the Chief of Police, to execute a grant contract and any subsequent amendments with the State of California Department of Alcoholic Beverage Control (ABC) in the amount of \$51,900 for one fiscal year, July 1, 2020 through June 30, 2021.

Financial Implications: Alcoholic Beverage Control Program Fund - \$51,900 (grant)

Contact: Andrew Greenwood, Police, (510) 981-5900

Consent Calendar

9. **Contract No. 31900124 Amendment: B Bros Construction Inc. for Adult Mental Health Services Center Renovations Project at 2640 Martin Luther King Jr Way**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 31900124 with B Bros Construction, Inc. to complete renovation and seismic upgrade work at the Adult Mental Health Services Center, increasing the current contract amount of \$5,386,293 by \$230,000 for a total amount not-to-exceed of \$5,616,293.
Financial Implications: T1 Fund - \$230,000
Contact: Liam Garland, Public Works, (510) 981-6300

10. **Contract Award: First Carbon Solutions, Inc. for California Environmental Quality Act Compliance for the Solid Waste & Recycling Transfer Station Replacement Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to award a contract with First Carbon Solutions, Inc. for California Environmental Quality Act compliance for the Solid Waste & Recycling Transfer Station Replacement Project for a total amount not to exceed \$500,000 for a contract term of November 1, 2020 through December 31, 2021.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Council Consent Items

11. **Oppose Proposition 22 on the November 2020 ballot**
From: Councilmember Davila (Author)
Recommendation: Adopt a resolution opposing Proposition 22 on the November 2020 ballot.
Financial Implications: None
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

12. **Letter in Opposition to Proposition 22: App-Based Drivers as Contractors and Labor Policies Initiative (2020)**
From: Councilmember Bartlett (Author)
Recommendation: That the Council opposes Proposition 22, which is a ballot initiative that would exempt app-based transportation and delivery Companies from providing employee benefits to certain drivers, by sending a letter to the 'No on CA Prop 22' coalition.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

Council Consent Items

13. Letter of Support for Proposition 16: Repeal Proposition 209 Affirmative Action Amendment (2020)

From: Councilmember Bartlett (Author)

Recommendation: That the Mayor of Berkeley and Members of the City Council support Proposition 16--a ballot measure that would remove the ban on affirmative action--by sending 2 letters, 1) the YES ON 16, Opportunity for All Coalition Campaign and 2) State Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, and Buffy Wicks.

Financial Implications: None

Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

Action Calendar

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

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

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

Action Calendar – Public Hearings

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

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

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

Action Calendar – Public Hearings

14. California Municipal Finance Authority Bond Financing for 1717 University Avenue

From: City Manager

Recommendation: Conduct a public hearing under the requirements of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Internal Revenue Code of 1986, as amended, and upon conclusion, adopt a Resolution approving the issuance of the bonds by the California Municipal Finance Authority (CMFA) for the benefit of the 1717 University Avenue rental housing development.

Financial Implications: See report

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

15. ZAB Appeal: 1346 Ordway Street, Administrative Use Permit #ZP2018-0174

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board decision to approve Administrative Use Permit #ZP2018-0174 to: legalize an existing 128 sq. ft. accessory building in the southwest corner of the subject lot; legalize an existing 5 ft. x 21 ft., 9-ft. tall trellis located within the south setback; legalize an existing 11-ft. tall hedge in the north and south setbacks; establish a front yard off-street parking space to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act, under BMC's Reasonable Accommodation Section; and dismiss the appeal.

Financial Implications: None

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

Action Calendar – Old Business

16. 2019 Crime Report and Five Year Use of Force Report *(Continued from September 22, 2020)*

From: City Manager

Recommendation: Review and discuss the presentation on Crime Report for 2019 and Use of Force Report for 2015-2019.

Financial Implications: None

Contact: Andrew Greenwood, Police, (510) 981-5900

17. Proposed Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley *(Continued from September 22, 2020)*

From: Commission on Disability

Recommendation: Receive a presentation on the Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley.

Financial Implications: See report

Contact: Dominika Bednarska, Commission Secretary, (510) 981-6300

Action Calendar – Old Business

18. **Support Community Refrigerators** *(Continued from September 22, 2020)*
From: Councilmember Davila (Author)
Recommendation:
1. Adopt a Resolution to create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
19. **Request the United States House of Representatives and/or Senate to introduce “The Breathe Act”** *(Continued from September 22, 2020)*
From: Councilmember Davila (Author), Councilmember Bartlett (Co-Sponsor)
Recommendation:
1. Adopt a resolution requesting the United States House of Representatives and Senate to introduce legislation known as “The Breathe Act”
2. Send copies of this resolution to United States Congresswoman Barbara Lee, Alexandria Ocasio-Cortez, Pramila Jayapal, Rashida Tlaib, Ayanna Pressley and Senator Bernie Sanders.
Financial Implications: None
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Action Calendar – New Business

20. **University of California, Berkeley, Long Range Development Plan Update and Housing Projects #1 and #2**
From: City Manager
Recommendation: Review and discuss a presentation from the University of California (UC), Berkeley, Capital Strategies staff on the Long Range Development Plan Update (LRDP) and Housing Projects #1 and #2.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar – New Business

- 21a. Compiling Commission Recommendations in a Reference Manual** *(Reviewed by Agenda & Rules Committee)*

From: Homeless Commission

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

- 21b. Companion Report: Compiling Commission Recommendations in a Reference Manual** *(Reviewed by Agenda & Rules Committee)*

From: Homeless Commission

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: No direct fiscal impact

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

Council Action Items

- 22. 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** *(Reviewed by Agenda & Rules Committee)*

From: Councilmember Davila (Author)

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

Action Calendar – Policy Committee Track Items

- 23. Authorize Installation of Security Cameras at the Marina and Request an Environmental Safety Assessment**
From: Councilmember Kesarwani (Author), Councilmember Wengraf (Co-Sponsor)
Recommendation: Adopt the following recommendations in order to address the recent dramatic uptick in reported crime incidents at the Berkeley marina: -Declare that “exigent circumstances” exist at the Berkeley marina; -Request that the City Manager install security cameras and signage as expeditiously as possible as a long-term safety measure; -Refer to the City Manager to perform an environmental safety assessment of the Berkeley marina with particular attention to the berther parking areas.
Financial Implications: See report
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110
- 24. Introduce an Ordinance permanently banning the use of less lethal weaponry, chemical irritants, smoke projectiles, acoustic weapons, directed energy weapons, water cannons, disorientation devices and ultrasonic cannons used by the police on civilians**
From: Councilmember Davila (Author)
Recommendation: Direct the City Manager and City Attorney to prepare the attached ordinance: “Prohibition On The Use Of Certain Munitions Ordinance” for first reading for the October 27, 2020 Regular City Council Meeting.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 25. “Step Up Housing” Initiative: Allocation of Measure P Funds to Lease and Operate a New Permanent Supportive Housing Project at 1367 University Avenue**
From: Councilmember Bartlett (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Wengraf (Co-Sponsor), Mayor Arreguin (Co-Sponsor)
Recommendation: Adopt a resolution allocating approximately \$900,000 per year for 10 years, as well as a one-time allocation of approximately \$32,975 from Measure P transfer tax receipts to support the lease and operation of a new permanent supportive housing project for the homeless at 1367 University Avenue. This resolution is put forward out of consideration that the City Council has already approved in its FY 2020-21 budget—on June 30, 2020—an allocation of \$2.5 million for permanent housing subsidy, a portion of which is available to be spent on the 1367 University Avenue project.
Refer to the next meeting of the Budget and Finance Policy Committee to confirm the availability of requested funding for the 1367 University project and to set priorities for other Measure P-funded programs and services as part of the mid-year budget process
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

Action Calendar – Policy Committee Track Items

- 26. Removal of Traffic Bollards on the Intersection at Fairview and California St.**
From: Councilmember Bartlett (Author)
Recommendation: Refer to the Public Works Department to remove the traffic bollards at the intersection at Fairview and California St. for the following reasons: 1. To allow residents, emergency responders, street cleaning and garbage disposal services, and delivery vehicles ease of access to enter and exit Fairview Street; 2. To allow residents of the 1600 block of Fairview St. access to additional parking spots because the current capacity is inadequate; and 3. To decrease illegal dumping that has been incentivized by the traffic bollards and eliminate the harborage of junk, debris, and garbage.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 27. Enforce Bi-Weekly Residential Cleaning Measures to Address Encampments and Promote Clean Streets in Berkeley**
From: Councilmember Bartlett (Author)
Recommendation: Refer to the Public Works Department to promote equitable street cleaning practices and require biweekly cleanings of populated encampment sites in Berkeley and adjacent residential neighborhoods. In order to determine where City Staff should prioritize residential cleaning services, the Public Works Department should establish a radius around the campsites. When encampments are on non-City owned property, such as Caltrans, the City should bill the appropriate agency for the cost of staff and materials
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

Information Reports

- 28. LPC NOD: 2277 Shattuck Avenue/#LMSAP2020-0001**
From: City Manager
Contact: Jordan Klein, Economic Development, (510) 981-7530
- 29. LPO NOD: 1915 Berryman Street/#LMIN2020-0003**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 30. LPO NOD: 2328 Channing Way/#LMIN2020-0001**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 31. LPC Annual Report to City Council for the period May 2019 to May 2020**
From: Landmarks Preservation Commission
Contact: Fatema Crane, Commission Secretary, (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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Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
October 13, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Cheryl Davila  
Subject: Oppose Proposition 22 on the November 2020 ballot

RECOMMENDATION

Adopt a resolution opposing Proposition 22 on the November 2020 ballot.

BACKGROUND

Multibillion-dollar corporations such as Uber, Lyft, and DoorDash have invested \$181 Million to exempt themselves from a current state law, AB-5, which requires companies to hire their drivers and deliverers as employees, not independent contractors. This law would ensure that Uber, Lyft and other app companies provide the same basic rights and protections to their drivers that all other employers provide to their workers in California.

These same Multibillion-dollar corporations have paid to place Proposition 22 on this November ballot. They hired lawyers to write misleading initiatives and paid political operatives millions to collect the voter signatures they needed.

Proposition 22 is a special exemption that would allow Uber and other app companies to continue denying their drivers the rights and protections they are owed - for example paid sick and vacation leave, workers compensation or unemployment benefits.

Proposition 22 only applies to Uber and the app companies. It is designed to maximize their profits by shifting the cost of doing business onto their drivers, 78% of whom are people of color. No other California business would benefit from this special exemption.

Current state law requires Uber and the app companies to provide their drivers with rights and protections, just like every other California business. The Attorney General recently sued them for breaking this law.

Proposition 22 was written by multibillion-dollar companies, not drivers nor workers. That's why we must oppose Proposition 22.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Protecting our workers 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)

Eshal Sandhu  
Jovi Tseng  
Sanjita Pamidimukkala  
District 2 Interns

ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
OPPOSING PROPOSITION 22 ON THE NOVEMBER 2020 BALLOT

WHEREAS, Multibillion-dollar corporations such as Uber, Lyft, and DoorDash have invested \$181 Million to exempt themselves from a current state law, AB-5, which requires companies to hire their drivers and deliverers as employees, not independent contractors. This law would ensure that Uber, Lyft and other app companies provide the same basic rights and protections to their drivers that all other employers provide to their workers in California; and

WHEREAS, These same Multibillion-dollar corporations have paid to place Proposition 22 on this November ballot. They hired lawyers to write misleading initiatives and paid political operatives millions to collect the voter signatures they needed; and

WHEREAS, Proposition 22 is a special exemption that would allow Uber and other app companies to continue denying their drivers the rights and protections they are owed - for example paid sick and vacation leave, workers compensation or unemployment benefits; and

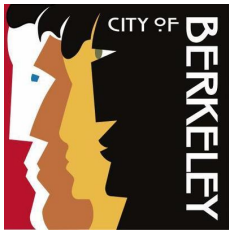
WHEREAS, Proposition 22 only applies to Uber and the app companies. It is designed to maximize their profits by shifting the cost of doing business onto their drivers, 78% of whom are people of color. No other California business would benefit from this special exemption; and

WHEREAS, Current state law requires Uber and the app companies to provide their drivers with rights and protections, just like every other California business. The Attorney General recently sued them for breaking this law; and

WHEREAS, Proposition 22 was written by multibillion-dollar companies, not drivers nor workers. That's why we must oppose Proposition 22.

NOW, THEREFORE, BE IT RESOLVED that the City Council for the City of Berkeley oppose Proposition 22 on the November 2020 ballot.





Councilmember Ben Bartlett  
City of Berkeley, District 3

CONSENT CALENDAR  
October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett

Subject: Letter in Opposition to Proposition 22: App-Based Drivers as Contractors and Labor Policies Initiative (2020)

### RECOMMENDATION

That the Council opposes Proposition 22, which is a ballot initiative that would exempt app-based transportation and delivery Companies from providing employee benefits to certain drivers, by sending a letter to the 'No on CA Prop 22' coalition.

### BACKGROUND

This November, California voters will have the opportunity to vote for or against Proposition 22, which would consider app-based drivers as contractors instead of employees and create different labor and wage policies for these drivers. If passed, the proposition will affect components of the California Assembly Bill 5 (2019 AB 5) that relate to app-based drivers.

AB 5 established a criteria-based test that is designed to determine a worker's status as an employee or an independent contractor for the purposes of deciding whether a worker was entitled to benefits and regulations found in the California Wage Orders.<sup>1</sup> In relation to app-based drivers, this bill seeks to protect gig company employees who are not receiving labor protections and benefits, such as unemployment insurance, paid time off, overtime pay, workers' compensation, a guaranteed minimum wage, and the ability to unionize.<sup>2</sup> Despite the passing of AB 5, Uber and Lyft have insisted on misclassifying their workers as independent contractors in order to avoid providing their workers with a minimum wage, healthcare, paid sick leave, unemployment insurance, and other critical employee benefits.

To help codify their actions into law, Uber and Lyft, along with other gig companies (e.g. DoorDash, Instacart, Postmates), have spent millions of dollars to fund Proposition 22.

<sup>1</sup> [https://ballotpedia.org/California\\_Assembly\\_Bill\\_5\\_\(2019\)](https://ballotpedia.org/California_Assembly_Bill_5_(2019))

<sup>2</sup> <https://www.vox.com/2019/9/11/20850878/california-passes-ab5-bill-uber-lyft>

Their investment in this campaign signifies their priorities in increasing their profits at the expense of the rights and lives of their workers.

It is also important to note that 78% of drivers are people of color and 70% of drivers work more than 30 hours a week.<sup>3</sup> Proposition 22 will exploit marginalized communities and further reify a substantial role in systems of oppression and inequity that harm Black, Brown, and Indigenous workers, and other workers of color. The City of Berkeley must take a stance against Proposition 22 and ensure that every employee, especially app-based drivers, in California receive what they are entitled to: a minimum wage for all hours worked, overtime pay, health and unemployment insurance, and the right to unionize. This item will send a letter in opposition to Proposition 22 to the 'No on CA Prop 22' coalition.

#### FISCAL IMPACTS OF RECOMMENDATION

If Proposition 22 passes, there would be minor increases in state income taxes paid by rideshare and delivery company drivers and investors.<sup>4</sup>

#### ENVIRONMENTAL SUSTAINABILITY

No environmental impact.

#### CONTACT PERSON

Councilmember Ben Bartlett  
Katie Ly  
James Chang

510-981-7130  
[kly@cityofberkeley.info](mailto:kly@cityofberkeley.info)  
[jchang@cityofberkeley.info](mailto:jchang@cityofberkeley.info)

#### ATTACHMENTS

1. Letter to 'No on CA Prop 22' coalition

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<sup>3</sup> <https://nooncaprop22.com/>

<sup>4</sup> <https://voterguide.sos.ca.gov/propositions/22/title-summary.htm>

Attachment 1

October XX, 2020

No on CA Prop 22 coalition

Re: Vote No on Proposition 22 or “Exempts App-Based Transportation and Delivery Companies from Providing Employee Benefits to Certain Drivers”

Dear No on CA Prop 22 coalition,

The Honorable Mayor and Members of the Berkeley City Council respectfully opposes Proposition 22, which would consider app-based drivers as contractors instead of employees and create different labor and wage policies for these drivers. It would also prevent components related to app-based drivers in California Assembly Bill 5 from being affected.

Proposition 22 will disrupt the rights of and exploit workers by creating a legal channel for gig companies to not provide their workers with critical employment benefits. In addition, this proposition will have an inequitable impact on communities of color who make up most of the population of app-based drivers. As a result, we must vote NO on Proposition 22 and ensure that every employee, especially app-based drivers, in California receive what they are entitled to: a minimum wage for all hours worked, paid sick leave, overtime pay, health and unemployment insurance, and the right to unionize.

The City of Berkeley is in solidarity with the No on CA Prop 22 coalition.

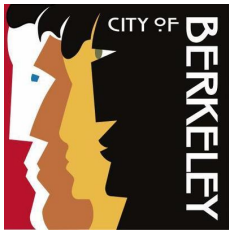
Respectfully,

Jesse Arreguin  
Mayor, City of Berkeley

Ben Bartlett  
Member of the Berkeley City Council







Councilmember Ben Bartlett  
City of Berkeley, District 3

CONSENT CALENDAR  
October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett

Subject: Letter of Support for Proposition 16: Repeal Proposition 209 Affirmative Action Amendment (2020)

RECOMMENDATION

That the Mayor of Berkeley and Members of the City Council support Proposition 16--a ballot measure that would remove the ban on affirmative action--by sending 2 letters, 1) the YES ON 16, Opportunity for All Coalition Campaign and 2) State Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, and Buffy Wicks.

BACKGROUND

On June 30, 2020, Councilmember Rigel Robinson introduced a resolution in support of Assembly Constitutional Amendment (ACA) 5, which eventually led to Proposition 16. The Council adopted the resolution. This item seeks to reinforce the City's support for affirmative action by referring the Council to send a letter to California state legislators and to the YES ON 16, Opportunity for All Coalition Campaign in favor of the passage of Proposition 16. If passed, Proposition 16 will repeal Proposition 209 (1996).

Proposition 209, known as the California Civil Rights Initiative, added Section 31 to Article I of the California Constitution, which reads, "*The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.*"<sup>1</sup> Since its passage in 1996, California has become one of only eight states that do not allow race or gender to be among the many factors considered in public employment, education, and contracting. Removing essential tools to fight discrimination against women and people of color, Proposition 209 set up obstacles to success for marginalized and underrepresented groups.

Allowing racial, gender, and ethnic diversity to be considered as one of many factors in public employment, contracting, and education will allow the City to effectively and equitably serve its constituents. As a city that is home to one of the largest public universities in California and committed to equal opportunity, the City of Berkeley should

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<sup>1</sup>[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=)

send a letter of support for Proposition 16 to State Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, Lorena Gonzalez, and Buffy Wicks.

ENVIRONMENTAL SUSTAINABILITY

No environmental impact.

FISCAL IMPACTS

No fiscal impact.

CONTACT PERSON

Councilmember Ben Bartlett:  
James Chang  
Katie Ly

510-981-7130  
[jchang@cityofberkeley.info](mailto:jchang@cityofberkeley.info)  
[kly@cityofberkeley.info](mailto:kly@cityofberkeley.info)

ATTACHMENTS AND MATERIALS

1. Sample Letter of Support to the YES ON 16, Opportunity for All Coalition Campaign
2. Sample Letter of Support to Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, Lorena Gonzalez, and Buffy Wicks

Attachment 1

October XX, 2020

YES ON 16 - Opportunity for All Coalition Campaign

Re: Proposition 16 Support

Dear leaders of the YES ON 16 - Opportunity for All Coalition Campaign,

The Honorable Mayor and Members of the Berkeley City Council are pleased to support Proposition 16 and demonstrate our solidarity with the YES on 16 - Opportunity for All Coalition campaign.

The current political climate and the COVID-19 pandemic illuminates the ways in which California must unite communities and work together to help those most vulnerable in our state. Now, more than ever, we must support and pass Proposition 16 in order to ensure that the most impacted communities receive equitable support and to take a strong stance against racism, sexism, xenophobia, and the current policies on the federal level that use race and gender to divide our communities.

Let's pass Proposition 16 and fight for equal opportunities for all!

Respectfully,  
the Honorable Mayor and Members of the Berkeley City Council

Jesse Arreguin  
Mayor, City of Berkeley

Members of the Berkeley City Council

Attachment 2

October XX, 2020

The Honorable Shirley Weber  
Member of the California State Assembly

The Honorable Mike Gipson  
Member of the California State Assembly

The Honorable Miguel Santiago  
Member of the California State Assembly

The Honorable Lorena Gonzalez  
Member of the California State Assembly

The Honorable Buffy Wicks  
Member of the California State Assembly

Re: Proposition 16 Support

Dear Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, Lorena Gonzalez, and Buffy Wicks,

The Honorable Mayor and Members of the Berkeley City Council are pleased to support Proposition 16. Proposition 16 will repeal Proposition 209 (1996), allowing the State of California to pursue minority equal opportunities with access initiatives in public employment, education, and contracting.

The current political climate and the COVID-19 pandemic illuminates the ways in which Minority-owned businesses have been disproportionately impacted by the COVID-19 pandemic and current political climate. Such impacts require a plan for equitable economic recovery that consists of racially conscious governmental intervention.

Now, more than ever, we must support and pass Proposition 16 in order to ensure that the most impacted communities receive equitable support and to take a strong stance against racism, sexism, and xenophobia, and the current policies on the federal level that use race and gender to divide our communities.

Respectfully,  
the Honorable Mayor and Members of the Berkeley City Council

Jesse Arreguin  
Mayor, City of Berkeley

Members of the Berkeley City Council





Commission on Disability

ACTION CALENDAR

October 13, 2020

*(Continued from September 22, 2020)*

To: Honorable Mayor and Members of the City Council

From: Commission on Disability

Submitted by: Alex Ghenis, Chairperson, Commission on Disability

Subject: Proposed Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley

RECOMMENDATION

Receive a presentation on the Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley.

CURRENT SITUATION AND ITS EFFECTS

The Commission on Disability recently agreed upon a series of priorities for 2019 and early 2020. One of these priorities is a proposed “Navigable Cities” framework to guide investments, regulations, and other actions in the City of Berkeley. An initial Navigable Cities framework was approved by the Commission in its meeting on April 3, 2019. The framework features three (3) Principles of Navigable Cities and four (4) initiatives that the Commission on Disability will pursue throughout 2020. The full Navigable Cities outline is attached to this item.

The Commission on Disability requests that the City Council review and support the Navigable City framework, principals and initiatives. The Commission will provide updates to the City Council on progress moving forward, including any information discovered by the Commission, proposed action items for the City Council, etc. (Item approved 5/1/2019 to be submitted with photos. Motion: Singer, Second: Ramirez, Walsh: Aye, Smith: Aye, Ghenis: Aye, Weiss: Aye, Leeder: LOA, Abstain: 0. Photos approved 11/6/2019: Motion: Leeder, Second: Singer, Smith: Aye, Walsh: Aye, Ghenis: Aye, Ramirez: Aye, Absent: 0 Abstain: 0)

The full principles and initiatives of Navigable Cities are featured in the attached document. They are summarized here:

Principles:

1. All people residing in and/or visiting the City of Berkeley have the right to efficient, convenient and barrier-free movement.

2. People with disabilities (PWDs) often have distinct transportation-related needs and may be less able to navigate around items obstructing pathways.
3. Changes to commercial activities and government policies (whether in Berkeley, the Bay Area, the State of California, or the United States as a whole) can have notable impacts on navigability.

#### Initiatives:

1. Support smooth, barrier-free pathways frequently used by PWDs.
2. Ensure that new transportation services provide appropriate access to PWDs and do not negatively impact navigability.
3. Provide appropriate input on plans to adjust the layout of neighborhoods, urban centers, streets, pathways, etc.
4. Address the availability and accessibility of appropriate parking options, especially in city-owned and/or city-maintained parking lots/garages.

Proposed “navigable cities” framework for ensuring access and freedom-of-movement for people with disabilities in Berkeley is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

The City of Berkeley contains hundreds of miles of streets, sidewalks and other public spaces (e.g. outdoor plazas and parks). Many streets, sidewalks, bicycle pathways and other public spaces do not provide smooth navigation for people with disabilities (PWDs), who collectively represent around 15% of the City’s residents and visitors. In addition, Berkeley features many transportation options including pedestrian and bicycle pathways, BART, buses, paratransit, nonprofit transportation services, transportation network companies (TNCs, e.g. Uber & Lyft), bike-sharing services, etc.; however, not all of these provide full access to people with disabilities, endangering independence and potentially violating civil rights. Examples of inaccessibility include:

- Not all sidewalks feature “curb cuts” at intersections, meaning that individuals using wheelchairs or scooters must essentially take detours – either a full block, or to a nearby driveway. Exiting through driveways may present dangers, such as a lack of visibility to oncoming cars.
- Many sidewalks are excessively uneven, for example as tree roots push soils upward and displace sections of sidewalk. The exact nature of sidewalk damage varies across the City – some feature clear vertical breaks between sidewalk segments, while some sidewalks have “bumps” and cracks.
- Construction of new buildings and maintenance to pathways blocks sidewalks, forcing individuals to use designated temporary pathways or cross streets entirely.



Certain pathways do not feature appropriate accessibility – such as ramps from sidewalks to street-level pathways – or are otherwise difficult to navigate.

- “Shared mobility” services – e.g. ride-sharing and shared bicycles (Ford Go-Bike, etc.) – do not always feature fully-accessible products and services. For example, TNCs have only recently introduced wheelchair-accessible vehicles, which still feature delays compared to TNCs’ regular time frames. Bike-sharing services do not provide alternative, accessible options for individuals with limited balance who could otherwise ride tricycles. Proposed motorized scooters likewise do not provide accessible options, and scooter-riders on sidewalks present dangers to many PWDs.
- Items which are present in the middle of sidewalks and other public spaces may pose barriers to some PWDs; these items include the large sign downtown announcing BART and bus schedules, as well as informational kiosks being explored by City Council and staff. Barriers are of particular concern to individuals who are blind or low-vision and have become familiar with Berkeley’s pathways without obstacles.

These items and more represent ongoing barriers and progressing problems for PWDs in Berkeley. The Commission on Disability is concerned by a lack of accessibility, in general and especially considering Berkeley’s identity as the home of the modern disability rights movement.

BACKGROUND

None noted, aside from the information above.

ENVIRONMENTAL SUSTAINABILITY

The Commission on Disability believes that pursuing a Navigable Cities framework will present opportunities to improve environmental sustainability. For example, more easily navigable pedestrian pathways and accessible alternatives to shared bicycles will enable PWDs to reduce reliance on personally-operated vehicles and related carbon emissions. The Commission will consider sustainability in its Navigable Cities initiatives.

POSSIBLE FUTURE ACTION

Unknown.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown.

CONTACT PERSON

Dominika Bednarska, Disability Services Specialist  
(510) 981-6418

Attachments:

- 1: Attachments: Pictures and image descriptions of sidewalk issues.

## 2: Presentation

**From:** Shira Leeder [mailto:shira@leeder.com]

**Sent:** Tuesday, September 24, 2019 2:34 AM

**To:** Helen Walsh <branach@comcast.net>; Bednarska, Dominika <DBednarska@cityofberkeley.info>; Alex Ghenis <alex.ghenis@gmail.com>

**Subject:** Re: Shira's unsafe sidewalk experience Photos and notes

Photo 1: Rose and Henry streets pass the Safeway.

Side uneven tree roots causing cracks and uneven pavement making it unsafe for wheelchair users especially those with mobility equipments and seniors, it's like a roller coaster going down a deep grade drop.

Photo 2: 2 blocks away from Rose and Henry around apt 137 uneven side walk by tree. Side walk goes up then angles down very unsafe for wheelchair uses and those with mobility devices.

Photo 3: Up from last photo uneven sidewalk pavement unsafe for wheelchair and those with mobility devices and baby strollers.

Photo 4: by bus stop Berryman street uneven pavement unsafe for wheelchair, mobility devices and baby strollers to pass. The sidewalk needs to be repaved the entire block because the sidewalk is bumpy and dangerous and too narrow. I have to go in the streets where vehicles are and it is risky because of taking chances of being hit and killed.

Photo 5: Sutter and Amador streets by bus stop uneven pavement bump in front of curb cut making it unsafe to pass. I have to use bike lane against traffic or with traffic depending on where I am going especially going home when going toward Solano Avenue. That whole two or three blocks of that since from Shattuck and Rose going toward Sutter street needs to be repaved and put several stop signs or pedestrians safely signals.

Photo 6: No curb cut, drive way cracked sidewalk and street, gravel ditch my wheelchair has to go up or down. This is by the bus stop. The sidewalks are too narrow and at a down incline.

Photo 7: Using bike lane in opposite direction no other cross walks or ways to get to sidewalk. I have to ride in the streets / bike lanes if the sidewalks are too bumpy and hazardous and if there are tree roots issues or construction zones,

Photo 8: No curb cut from bike lane using only cross walk to cross street, no stop sign cars go fast and not stop especially at night time with no street lights and signal to walk in the crosswalk without risking of being hit and killed by vehicles passing by.

On Monday, September 23, 2019, 3:25:08 PM PDT, Helen Walsh <[branach@comcast.net](mailto:branach@comcast.net)> wrote:

Photo 1: Rose and Henry

side uneven tree roots causing cracks and uneven pavement making it unsafe for wheelchair users.

Photo 2: 2 blocks away from Rose and Henry around apt 137 uneven side walk by tree. Side walk goes up then angles down very unsafe for wheelchair uses.

Photo 3: Up from last photo uneven sidewalk pavement unsafe for wheelchair.

Photo 4: by bus stop Berryman street uneven pavement unsafe for wheelchair to pass.

Photo 5: Sutter street by bus stop uneven pavement bump in front of curb cut making it unsafe to pass. I have to use bike lane against traffic or with traffic depending on where I am going.

Photo 6: No curb cut, drive way cracked sidewalk and street, gravel ditch my wheelchair has to go up or down. This is by bus stop.

Photo 7: using bike lane in opposite direction no other cross walks or ways to get to sidewalk.

Photo 8: no curb cut from bike lane using only cross walk to cross street. no stop sign cars go fast.

iSent from the Event Horizon





























**From:** MARTHA SINGER [mailto:marthasinger@me.com]  
**Sent:** Wednesday, November 06, 2019 3:06 PM  
**To:** Bednarska, Dominika <DBednarska@cityofberkeley.info>  
**Subject:** sidewalk obstacles domingo ave



MARTHA SINGER MD  
[marthasinger@mac.com](mailto:marthasinger@mac.com)

# NAVIGABLE CITIES FRAMEWORK

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ALEX GHENIS

CHAIRMAN

COMMISSION ON DISABILITY

# OVERVIEW

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- Goals & Framework
- Principles
- Initiatives
- Current situation
- Other factors
- Q&A

# GOALS & FRAMEWORK

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- Overarching work: create a fully navigable, inclusive city for people with disabilities
- Principles: 3 overarching principles on equity & inclusion
- Initiatives: 4 focus areas for ongoing & upcoming efforts
- COD will continue addressing initiatives; appreciate partnership & support

# PRINCIPLES

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1. All people residing in and/or visiting the City of Berkeley have the right to efficient, convenient and barrier-free movement.
2. People with disabilities (PWDs) often have distinct transportation-related needs and may be less able to navigate around items obstructing pathways.
3. Changes to commercial activities and government policies (whether in Berkeley, the Bay Area, the State of California, or the United States as a whole) can have notable impacts on navigability.

# INITIATIVES

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1. Support smooth, barrier-free pathways frequently used by PWDs.
2. Ensure that new transportation services provide appropriate access to PWDs and do not negatively impact and navigability.
3. Provide appropriate input on plans to adjusted the layout of neighborhoods, urban centers, streets, pathways, etc.
4. Address the availability and accessibility of appropriate parking options, especially in city-owned and/or city-maintained parking lots/garages.

# EXAMPLES OF INACCESSIBILITY

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| Curb Cuts                                                                                                                                                                                                                                                                | Sidewalks                                                                                                                                                          | Construction Barriers                                                                                                         | Shared Mobility                                                                                                                                                       | Sidewalk Obstructions                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Not enough curb cuts</li><li>• Need more detectable warnings</li><li>• Problems:<ul style="list-style-type: none"><li>• Extra travel distance (detours)</li><li>• Unsafe crossings</li><li>• Tripping hazard</li></ul></li></ul> | <ul style="list-style-type: none"><li>• Sudden or gradual changes in elevation</li><li>• Often from tree roots</li><li>• Long back-log of 50/50 requests</li></ul> | <ul style="list-style-type: none"><li>• Entirely blocked sidewalks</li><li>• Occasional detours w/ difficult access</li></ul> | <ul style="list-style-type: none"><li>• Transportation Network Companies (TNCs): CPUC purview</li><li>• No accessible alternatives for bikes &amp; scooters</li></ul> | <ul style="list-style-type: none"><li>• Poorly-placed signs &amp; items (e.g. trash bins) in PROW.</li><li>• Creates issues for: physical disabilities with obstruction and blind/low vision safety issues</li></ul> |

# SOLUTIONS

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## Curb Cuts

- ADA Transition Plan (Survey in Process)
- Improvements as part of Construction Projects

## Sidewalks

- ADA Transition Plan (Survey in Process)
- Improvements as part of Construction Projects
- 50/50 Program

## Construction Barriers

- Resources for Increased Enforcement with Contractors
- Adoption of the Caltrans Temporary Pedestrian Access Routes Handbook (2020) for work zones

## Shared Mobility

- Transportation Network Companies (TNCs): CPUC purview
- Transportation and Disability Services are discussing providing adapted scooters and bicycles.
- Disability Services and Transportation are discussing adding adaptive driving equipment and wheelchair vans to City Car Share Fleet.

## Sidewalk Obstructions

- City Ordinance reinforcing the 3 ft clear rule in State and Federal law.
- Resources for enforcement, tree removal etc.









Cheryl Davila  
Councilmember  
District 2

ACTION CALENDAR

October 13, 2020

*(Continued from September 22, 2020)*

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Support Community Refrigerators

RECOMMENDATION

1. Adopt a Resolution to create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.

RATIONALE FOR RECOMMENDATION

The City of Berkeley spent \$6.5 million of the general fund to combat homelessness in 2019. The COVID-19 pandemic, the raging fires and smoke in the state of California, the unhoused community is being hit even harder. The economic challenges of businesses closing, financial strains and health concerns increasing leads to increased disparities. It is necessary to support our communities who cannot buy basic necessities for survival such as food. A district fridge would bring together our communities to aid the homeless. Moreover, this is a part of a larger goal to bridge financial inequities in the City of Berkeley.

BACKGROUND

The City of Berkeley spent close to \$20 million on providing homeless services. About \$6.5 million came from its general fund, about \$9.5 million came from regional, state, and federal funds and \$3.9 million were one-time funds from the state's Homeless Emergency Aid Program.

COVID-19 has strained access to money and resources such as food for our homeless communities. The fires and dangerous air quality have also created a need for cooled water. Health disparities increase in times of distress and hit our at-risk communities the hardest.

Implementing an accessible refrigerator program, run by each district and its neighborhoods is a step in the right direction. Several cities across the country such as Los Angeles, Oakland, and New York have already created community fridges. Businesses, organizations, and individuals work together to keep the fridges stocked with prepackaged meals, leftovers, fresh fruits and vegetables, water, and other drinks. Anyone who feels the need to can take anything they need, at any time of day.

This is essential now. Food insecurity is an issue that ravages homeless communities. Yet, in some cities, we dump more than one million tons of food into landfills . Many community fridges are located in areas with high levels of food insecurity, either in “food deserts” (neighborhoods that lack access to fresh, affordable food) or “food swamps” (neighborhoods where there is an overabundance of fast food).

In the City of Oakland, the community group “Town Fridge” has set up refrigerators in publicly accessible locations throughout Oakland. The purpose is to create a mutual aid to address food insecurities in the community. These community refrigerators have donation guidelines posted at their locations, where they accept produce, pantry staples, bottled water, prepared meals but forbid raw meat. They also require: label and dates of all perishables on food containers; placing non-perishables on the shelving outside the fridge; If a fridge is full, they ask donors to not leave the food outside the fridge, but donate the food to a nearby encampment. Many locations have outside shelving for placement of non perishable items.

Residents can also apply to be a “fridge host”, hosting a community refrigerator on their block. Since this program has been established, it is a model for other cities to implement.

Community fridges will allow 24/7 access to fresh foods to the public, while empowering people of our community.

#### FINANCIAL IMPLICATIONS

The estimated price of a low-cost fridge is approximately \$800. Purchasing one for each district of Berkeley amounts to approximately \$8,000 allocated from the budget.

This program can be at no cost to the City as residents replace their refrigerators with newer technology refrigerators, and can donate their old refrigerators to be used as Community Refrigerators.

#### 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)

Sanjita Pamidimukkala  
Eshal Sandhu  
District 2 Intern

#### ATTACHMENTS:

1. Resolution
2. Four Pictures from Deputy City Manager Paul Buddenhagen of Community Fridge at 59th and Marshall

#### REFERENCES:

1. Oakland Town Fridge <https://linktr.ee/townfridge>



# TOWN FRIDGE

Current Locations:

**NORTH OAKLAND**  
+59th Street,  
in between Marshall  
and Fremont

**WEST OAKLAND**  
+Linden Street, Past 30th  
+16th Street and West  
+14th Street and Peralta

**DOWNTOWN**  
+Broadway and 15th  
Street, in the plaza

**OPEN 24/7**

**WE KEEP US FED**

**FREE FOOD**

**THIS ISN'T CHARITY  
THIS IS MUTUAL AID**

**COMIDA GRATIS**

TAKE WHAT YOU NEED - LEAVE WHAT YOU DON'T

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## TOWN FRIDGE DONATION GUIDELINES

**OPEN 24/7**

We Accept:  
Produce  
Pantry Staples  
Bottled Water  
Prepared Meals  
**NO RAW MEAT**

**WE KEEP US FED**

**THIS ISN'T CHARITY THIS IS MUTUAL AID**

Label and date all perishables on the container.  
Put non-perishables on the shelving outside the fridge.  
If a fridge is full, do not leave your donation! Check another fridge location, see if there is a nearby encampment or people who would want the food. If they say no, or you cannot find anyone, please take it home and do not leave it outside the fridge.  
Spread the love! If you have a big donation of the same items, spread it across several fridges.  
Tag @townfridge on Instagram when you make a donation, so we can keep track of donations and give live updates.  
Take what you need, leave what you can.







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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
PROVIDING OUR HOUSELESSNESS COMMUNITY WITH DISTRICT REFRIGERATORS

WHEREAS, The City of Berkeley spent close to \$20 million on providing homeless services. About \$6.5 million came from its general fund, about \$9.5 million came from regional, state, and federal funds and \$3.9 million were one-time funds from the state's Homeless Emergency Aid Program; and

WHEREAS, COVID-19 has strained access to money and resources such as food for our homeless communities. The fires and dangerous air quality have also created a need for cooled water. Health disparities increase in times of distress and hit our at-risk communities the hardest; and

WHEREAS, Implementing an accessible refrigerator program, run by each district and its neighborhoods is a step in the right direction. Several cities across the country such as Los Angeles, Oakland, and New York have already created community fridges. Businesses, organizations, and individuals work together to keep the fridges stocked with prepackaged meals, leftovers, fresh fruits and vegetables, water, and other drinks. Anyone who feels the need to can take anything they need, at any time of day; and

WHEREAS, This is essential now. Food insecurity is an issue that ravages homeless communities. Yet, in some cities, we dump more than one million tons of food into landfills . Many community fridges are located in areas with high levels of food insecurity, either in "food deserts" (neighborhoods that lack access to fresh, affordable food) or "food swamps" (neighborhoods where there is an overabundance of fast food); and

WHEREAS, In the City of Oakland, the community group "Town Fridge" has set up refrigerators in publicly accessible locations throughout Oakland. The purpose is to create a mutual aid to address food insecurities in the community. These community refrigerators have donation guidelines posted at their locations, where they accept produce, pantry staples, bottled water, prepared meals but forbid raw meat. They also require: label and dates of all perishables on food containers; placing non-perishables on the shelving outside the fridge; If a fridge is full, they ask donors to not leave the food outside the fridge, but donate the food to a nearby encampment. Many locations have outside shelving for placement of non perishable items. Residents can also apply to be a "fridge host", hosting a community refrigerator on their block. Since this program has been established, it is a model for other cities to implement; and

WHEREAS, Community fridges will allow 24/7 access to fresh foods to the public, while empowering people of our community; and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley, California supports not only the implementation of district fridges to reduce the amount of food insecurity in the homeless community, but also the reduction of financial inequities in our city. Specifically, the Council of the City of Berkeley calls for:

1. Create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.



Cheryl Davila  
Councilmember  
District 2

ACTION CALENDAR

October 13, 2020

*(Continued from September 22, 2020)*

To: Honorable Mayor and Members of the City Council

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

Subject: Request the United States House of Representatives and/or Senate to introduce  
"The Breathe Act"

RECOMMENDATION

1. Adopt a resolution requesting the United States House of Representatives and Senate to introduce legislation known as "The Breathe Act".
2. Send copies of this resolution to United States Congresswoman Barbara Lee, Alexandria Ocasio-Cortez, Pramila Jayapal, Rashida Tlaib, Ayanna Pressley and Senator Bernie Sanders.

BACKGROUND

The BREATHE Act is proposed legislation by the Movement for Black Lives Electoral Justice Project to get the United States House of Representatives to introduce it in a form of a bill. The proposed legislation contains 4 parts: (1) Divesting Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms; (2) Investing in New Approaches to Community Safety Utilizing Funding Incentives; (3) Allocating New Money to Build Healthy, Sustainable & Equitable Communities for All People; (4) Holding Officials Accountable & Enhancing Self-Determination of Black Communities.

**1. Divesting Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms**

The proposed legislation would eliminate federal programs and agencies used to finance and expand the U.S. criminal-legal system, such as the Department of Defense program, the Edward Byrne-Justice Assistance Grant Program, Community Oriented Policing Services, the Drug Enforcement Administration, and Immigration and Customs Enforcement. The legislation would ensure that non-punitive, non-carceral elements of these programs are identified so that they can be transferred to another funding source. Make recommendations to dramatically reduce the Department of Defense budget. The legislation directly makes changes to the federal criminal-legal system, including changes to the policing, prosecution, sentencing, and jailing practices that have disproportionately criminalized Black and Brown communities, LGBTQIA people, Indigenous people, and disabled people. Specific changes include, but are not limited to:

- Elimination of surveillance tactics that are disproportionately used to target Black, Brown, and Muslim communities by prohibiting predictive policing, racial recognition technologies, drones, and similar tools;
- Eliminating the use of electronic monitoring, including ankle monitors, smartphone applications, and any other tool used to track location;
- Ending civil asset forfeiture;
- Abolishing mandatory minimum sentencing laws;
- Ending like sentences;
- Abolishing the “three strikes” law;
- Developing a time-bound plan to close all federal prisons and immigration detention centers;
- Repealing federal laws that criminalize human movement and border entry;
- Further repealing and replacing the 1994 Violent Crime Control and Law Enforcement Act with non-carceral, non-punitive investments in communities; and
- Decriminalizing and retroactively expunged drug offenses.

## **2. Investing in New Approaches to Community Safety Utilizing Funding Incentives**

The proposed legislation would create federal grant programs that incentivize decarceration and subsidize non-punitive, community-led approaches to public safety. Such grants will:

- Make grants to local jurisdictions so that they can make and implement tailored plans to decarcerate their jails and/or defund their police forces;
- Offer a 50% federal match for projected savings when States and/or local jurisdictions close detention facilities, including (but not limited to) local jails, State prisons, and youth prisons; and
- Incentivize State, tribal, and local governments to make specified changes that shrink their criminal-legal systems and, in return, provide federal funding to make non-punitive, non-carceral, participatory investments in communities.
- State, tribal, and local policy changes incentivized under the grant programs include, but are not limited to, the following:
  - Banning pretextual stops and “consent” searches;
  - Removing police, armed security, metal detectors, and other surveillance equipment from schools and government offices that provide social services;
  - Abolishing State gang databases;
  - Eliminating all fees and surcharges within the criminal-legal system and forgiving outstanding court debt, reducing a financial burden that falls disproportionately on Black women;
  - Decriminalizing and retroactively expunging State drug convictions;
  - Categorically eliminating misdemeanor and “pay only” probation;
  - Until ICE and CBP are fully dismantled, ending State and local police entanglement with Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and all federal immigration enforcement agencies;
  - Repealing all existing State juvenile offenses; and
  - Banning the use of police agencies as tools of political repression.
- States are selected as recipients of the grant programs, funding must be used to fund non-carceral interventions that improve community safety and are

selected through a participatory process. Selected interventions may include, but are not limited to:

- Transformative justice and healing justice programs;
- Violence interruption and intervention, including in domestic violence situations;
- Abuse interruption, intervention, and prevention;
- Park redevelopment, streetlights, and other infrastructure;
- Neighborhood mediation programs;
- Supportive housing;
- New, accessible methods of processing 911 calls that reduce unnecessary contact between law enforcement and community members;
- Safe passage to schools programs;
- Funding for community-based organizations that provide voluntary, non-coercive health services and healing supports for communities so that they can recover from exposure to violence, abuse, and/or harmful interactions with police; and
- Employment opportunities that benefit formerly incarcerated individuals.

### **3. Allocating New Money to Build Healthy, Sustainable & Equitable Communities for All People**

The legislation would establish a grant to promote educational justice, which:

- Incentivizes jurisdictions to make specified equity-focused policy changes, including:
  - Altering their school funding formulas so that there is funding equity between schools;
  - Creating a clear, time-bound plan for closing all youth detention facilities within the jurisdiction and replacing these facilities with community-based, rehabilitation-focused continua of care;
  - Removing police, School Resource Officers (SROs), ICE, probation, armed security, metal detectors, and other surveillance equipment and practices from schools;
  - Creating a clear, time-bound plan for ensuring that all communities have public access to safe, clean water for housing, drinking, and food production;
  - Creating a clear, time-bound plan for ensuring that all communities have access to breathable air within EPA safety limits; and
  - Creating a clear, time-bound plan for meeting 100% of the State power demand using clean, renewable, and zero-emission energy sources.
- Provides resources for programs and investments that include, but are not limited to:
  - Developing curricula that examine the political, economic, and social impacts of colonialism, genocide against indigenous people, and slavery;
  - Providing voluntary, non-coercive wraparound services that meet students' social, emotional, and physical needs;
  - Promoting innovative programming to better support foster youth, as well as the children of incarcerated parents;
  - Providing free, high-quality health services at schools and/or at nearby student- and family-focused centers, which services include reproductive body autonomy;

- Providing full and free access for all people, including those who are undocumented, currently incarcerated, and formerly incarcerated, to a lifetime education;
- Providing free public transportation to students; and
- Modernizing, renovating, or repairing facilities used by public schools.
- Subsidizing community-owned sustainable energy solutions, including projects by community-based nonprofit organizations;
- Funding climate resilience in communities so that they can prepare for climate change-fueled disasters (such as hurricanes, floods, and wildfires) that are exacerbated by human fossil fuel consumption; and
- Funding to support, build, preserve, and restore cultural assets and sacred sites—especially sites and land belonging to the Indigenous community.
- Establish a competitive grant to promote health and family justice, which:
  - Incentivizes jurisdictions to make specified equity-focused policy changes, such as:
    - Expanding Medicaid as offered under the Affordable Care Act without work requirements or any burdensome administrative requirements during enrollment;
    - Creating alternatives to terminating parental rights, including guardianship arrangements, and procedures for reinstating parental rights;
    - Eliminating State laws that bar formerly incarcerated people from serving as guardians to their own children or others in their community; and
    - Ensuring all communities have convenient access to sources of healthy food.
  - Provide resources for programs and investments that include, but are not limited to:
    - Food cooperatives and urban gardens;
    - Paid parental and sick leave;
    - Comprehensive, high-quality child and elder care; and
    - The creation of comprehensive health centers that offer culturally competent services for all people, including services related to reproductive health.
  - Establish a competitive grant to promote economic justice, which incentivizes States to make specified equity-focused policy changes, such as:
    - Valuing the labor of Black and Brown women by extending employment protections for workers—including domestic workers and farm workers—who are in industries that are not appropriately regulated;
    - Establishing the right for workers, in public and private sectors, to organize, especially in “On Demand Economy” jobs; and
    - Establishing a living wage, pegged to inflation, and eliminating the subminimum tipped wage.
  - Provide resources for programs and investments that include, but are not limited to:

- Establishing job programs that specifically target the most economically disadvantaged individuals, including groups that disproportionately include Black cis- and trans women, formerly incarcerated people, undocumented people, and disabled people;
- Pilot programs for universal basic income;
- “Baby bonds” programs, including a preference for communities that were specifically targeted by redlining
- Start-up funds for establishing worker-owned cooperatives and businesses that are being started by individuals who are formerly incarcerated.
- Establish a competitive Housing & Infrastructure Grant Program that:
  - Incentivizes jurisdictions to make specified equity-focused policy changes, such as:
    - Authorizing State funds to expand the affordable housing supply; and
    - Change local zoning laws so as to allow multifamily unit construction and ban exclusionary zoning laws.
  - Provide resources for programs and investments that include, but are not limited to:
    - Modernizing and expanding the stock of affordable housing;
    - Providing quality assisted housing;
    - Creating tax-relief programs to help individuals who are facing potential displacement as the result of rapidly increasing home values (i.e., gentrification); and
    - Supporting the development of Community Land Trusts.
- Make direct federal investments in equity, which include:
  - A federal commission that proposes changes to tax policy, which will dramatically increase racial and economic equity;
  - A universal child allowance;
  - A program that provides assistance with down payments and closing costs—specifically for those households that rent or live in historically redlined communities;
  - Land grant programs in cities experiencing economic decline and/or hyper-vacancies;
  - A program at the United States Department of Agriculture, which will forgive the debt of Black farmers who were impacted by previous United States Department of Agriculture discrimination;
  - Tools to promote environmental justice, including an Equity Impact Mapping Initiative & Equity Screen and a Green Infrastructure Program; and
  - Federal programs to better support successful reentry.

#### **4. Holding Officials Accountable & Enhancing Self-Determination of Black Communities**

The legislation would require Congress to acknowledge and address the lasting harms that it has caused, specifically through:

- Passing H.R.40 (“Commission to Study Reparation Proposals for African-Americans Act”); and
- Establishing commissions that design reparations for mass criminalization—including the War on Drugs, the criminalization of prostitution, and police

violence; border violence; and the systemic violation of the U.S. Government's treaty obligations to Tribal nations.

- Ensure democratic, fair, and secure voting processes that are free from racial discrimination and voter suppression in every State, specifically through measures that include:
  - Enfranchising all formerly and presently incarcerated people in federal elections;
  - Creating a public financing program for campaigns that are powered by small dollar contributions;
  - Incentivizing States to increase voter turnout;
- Incentivizing States to pass laws that expand voting access, including laws that:
  - Enfranchise all formerly and presently incarcerated people for State and local elections; and
  - Allowing local and State resident voting for undocumented people.
- Increase accountability for federal officials and police officers who have committed harms, specifically by measures that include:
  - Guaranteeing a private right of action for recovering damages when a federal official has committed a constitutional violation; and
  - Creating a grant program that offers States grant dollars if they strengthen mechanisms to hold police officers accountable when they have committed harm.

The legislation has yet to be introduced by a current member of the United States Congress or Senate.

#### FINANCIAL IMPLICATIONS

None.

#### 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. Resolution



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA, REQUESTING THE UNITED STATES HOUSE OF REPRESENTATIVES AND/OR SENATE TO INTRODUCE THE “BREATHE ACT”

WHEREAS, The BREATHE Act is proposed legislation by the Movement for Black Lives Electoral Justice Project to get the United States House of Representatives to introduce it in a form of a bill. The proposed legislation contains 4 parts: (1) Divesting Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms; (2) Investing in New Approaches to Community Safety Utilizing Funding Incentives; (3) Allocating New Money to Build Healthy, Sustainable & Equitable Communities for All People; (4) Holding Officials Accountable & Enhancing Self-Determination of Black Communities.

WHEREAS, The BREATHE Act would divest Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms. The proposed legislation would eliminate federal programs and agencies used to finance and expand the U.S. criminal-legal system, such as the Department of Defense program, the Edward Byrne-Justice Assistance Grant Program, Community Oriented Policing Services, the Drug Enforcement Administration, and Immigration and Customs Enforcement. The legislation would ensure that non-punitive, non-carceral elements of these programs are identified so that they can be transferred to another funding source. Make recommendations to dramatically reduce the Department of Defense budget. The legislation directly makes changes to the federal criminal-legal system, including changes to the policing, prosecution, sentencing, and jailing practices that have disproportionately criminalized Black and Brown communities, LGBTQIA people, Indigenous people, and disabled people. Specific changes include, but are not limited to:

- Elimination of surveillance tactics that are disproportionately used to target Black, Brown, and Muslim communities by prohibiting predictive policing, racial recognition technologies, drones, and similar tools;
- Eliminating the use of electronic monitoring, including ankle monitors, smartphone applications, and any other tool used to track location;
- Ending civil asset forfeiture;
- Abolishing mandatory minimum sentencing laws;
- Ending like sentences;
- Abolishing the “three strikes” law;
- Developing a time-bound plan to close all federal prisons and immigration detention centers;
- Repealing federal laws that criminalize human movement and border entry;
- Further repealing and replacing the 1994 Violent Crime Control and Law Enforcement Act with non-carceral, non-punitive investments in communities; and
- Decriminalizing and retroactively expunged drug offenses.

WHEREAS, The BREATHE Act would invest in New Approaches to Community Safety Utilizing Funding Incentives. The proposed legislation would create federal grant programs that incentivize decarceration and subsidize non-punitive, community-led approaches to public safety. Such grants will:

- Make grants to local jurisdictions so that they can make and implement tailored plans to decarcerate their jails and/or defund their police forces;

- Offer a 50% federal match for projected savings when States and/or local jurisdictions close detention facilities, including (but not limited to) local jails, State prisons, and youth prisons; and
- Incentivize State, tribal, and local governments to make specified changes that shrink their criminal-legal systems and, in return, provide federal funding to make non-punitive, non-carceral, participatory investments in communities.
- State, tribal, and local policy changes incentivized under the grant programs include, but are not limited to, the following:
  - Banning pretextual stops and “consent” searches;
  - Removing police, armed security, metal detectors, and other surveillance equipment from schools and government offices that provide social services;
  - Abolishing State gang databases;
  - Eliminating all fees and surcharges within the criminal-legal system and forgiving outstanding court debt, reducing a financial burden that falls disproportionately on Black women;
  - Decriminalizing and retroactively expunging State drug convictions;
  - Categorically eliminating misdemeanor and “pay only” probation;
  - Until ICE and CBP are fully dismantled, ending State and local police entanglement with Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and all federal immigration enforcement agencies;
  - Repealing all existing State juvenile offenses; and
  - Banning the use of police agencies as tools of political repression.
- States are selected as recipients of the grant programs, funding must be used to fund non-carceral interventions that improve community safety and are selected through a participatory process. Selected interventions may include, but are not limited to:
  - Transformative justice and healing justice programs;
  - Violence interruption and intervention, including in domestic violence situations;
  - Abuse interruption, intervention, and prevention;
  - Park redevelopment, streetlights, and other infrastructure;
  - Neighborhood mediation programs;
  - Supportive housing;
  - New, accessible methods of processing 911 calls that reduce unnecessary contact between law enforcement and community members;
  - Safe passage to schools programs;
  - Funding for community-based organizations that provide voluntary, non-coercive health services and healing supports for communities so that they can recover from exposure to violence, abuse, and/or harmful interactions with police; and
  - Employment opportunities that benefit formerly incarcerated individuals.

WHEREAS, The BREATHE Act allocates new money to build Healthy, Sustainable & Equitable Communities for All People. The proposed legislation would establish a grant to promote educational justice, which:

- Incentivizes jurisdictions to make specified equity-focused policy changes, including:

- Altering their school funding formulas so that there is funding equity between schools;
- Creating a clear, time-bound plan for closing all youth detention facilities within the jurisdiction and replacing these facilities with community-based, rehabilitation-focused continua of care;
- Removing police, School Resource Officers (SROs), ICE, probation, armed security, metal detectors, and other surveillance equipment and practices from schools;
- Creating a clear, time-bound plan for ensuring that all communities have public access to safe, clean water for housing, drinking, and food production;
- Creating a clear, time-bound plan for ensuring that all communities have access to breathable air within EPA safety limits; and
- Creating a clear, time-bound plan for meeting 100% of the State power demand using clean, renewable, and zero-emission energy sources.
- Provides resources for programs and investments that include, but are not limited to:
  - Developing curricula that examine the political, economic, and social impacts of colonialism, genocide against indigenous people, and slavery;
  - Providing voluntary, non-coercive wraparound services that meet students' social, emotional, and physical needs;
  - Promoting innovative programming to better support foster youth, as well as the children of incarcerated parents;
  - Providing free, high-quality health services at schools and/or at nearby student- and family-focused centers, which services include reproductive body autonomy;
  - Providing full and free access for all people, including those who are undocumented, currently incarcerated, and formerly incarcerated, to a lifetime education;
  - Providing free public transportation to students; and
  - Modernizing, renovating, or repairing facilities used by public schools.
  - Subsidizing community-owned sustainable energy solutions, including projects by community-based nonprofit organizations;
  - Funding climate resilience in communities so that they can prepare for climate change-fueled disasters (such as hurricanes, floods, and wildfires) that are exacerbated by human fossil fuel consumption; and
  - Funding to support, build, preserve, and restore cultural assets and sacred sites—especially sites and land belonging to the Indigenous community.
- Establish a competitive grant to promote health and family justice, which:
  - Incentivizes jurisdictions to make specified equity-focused policy changes, such as:
    - Expanding Medicaid as offered under the Affordable Care Act without work requirements or any burdensome administrative requirements during enrollment;
    - Creating alternatives to terminating parental rights, including guardianship arrangements, and procedures for reinstating parental rights;

- Eliminating State laws that bar formerly incarcerated people from serving as guardians to their own children or others in their community; and
  - Ensuring all communities have convenient access to sources of healthy food.
- Provide resources for programs and investments that include, but are not limited to:
  - Food cooperatives and urban gardens;
  - Paid parental and sick leave;
  - Comprehensive, high-quality child and elder care; and
  - The creation of comprehensive health centers that offer culturally competent services for all people, including services related to reproductive health.
- Establish a competitive grant to promote economic justice, which incentivizes States to make specified equity-focused policy changes, such as:
  - Valuing the labor of Black and Brown women by extending employment protections for workers—including domestic workers and farm workers—who are in industries that are not appropriately regulated;
  - Establishing the right for workers, in public and private sectors, to organize, especially in “On Demand Economy” jobs; and
  - Establishing a living wage, pegged to inflation, and eliminating the subminimum tipped wage.
- Provide resources for programs and investments that include, but are not limited to:
  - Establishing job programs that specifically target the most economically disadvantaged individuals, including groups that disproportionately include Black cis- and trans women, formerly incarcerated people, undocumented people, and disabled people;
  - Pilot programs for universal basic income;
  - “Baby bonds” programs, including a preference for communities that were specifically targeted by redlining
  - Start-up funds for establishing worker-owned cooperatives and businesses that are being started by individuals who are formerly incarcerated.
- Establish a competitive Housing & Infrastructure Grant Program that:
  - Incentivizes jurisdictions to make specified equity-focused policy changes, such as:
    - Authorizing State funds to expand the affordable housing supply; and
    - Change local zoning laws so as to allow multifamily unit construction and ban exclusionary zoning laws.
  - Provide resources for programs and investments that include, but are not limited to:
    - Modernizing and expanding the stock of affordable housing;
    - Providing quality assisted housing;

- Creating tax-relief programs to help individuals who are facing potential displacement as the result of rapidly increasing home values (i.e., gentrification); and
  - Supporting the development of Community Land Trusts.
- Make direct federal investments in equity, which include:
  - A federal commission that proposes changes to tax policy, which will dramatically increase racial and economic equity;
  - A universal child allowance;
  - A program that provides assistance with down payments and closing costs—specifically for those households that rent or live in historically redlined communities;
  - Land grant programs in cities experiencing economic decline and/or hyper-vacancies;
  - A program at the United States Department of Agriculture, which will forgive the debt of Black farmers who were impacted by previous United States Department of Agriculture discrimination;
  - Tools to promote environmental justice, including an Equity Impact Mapping Initiative & Equity Screen and a Green Infrastructure Program; and
  - Federal programs to better support successful reentry.

WHEREAS, The BREATHE Act would hold Officials accountable & enhance Self-Determination of Black Communities. The proposed legislation would require Congress to acknowledge and address the lasting harms that it has caused, specifically through:

- Passing H.R.40 (“Commission to Study Reparation Proposals for African-Americans Act”); and
- Establishing commissions that design reparations for mass criminalization—including the War on Drugs, the criminalization of prostitution, and police violence; border violence; and the systemic violation of the U.S. Government’s treaty obligations to Tribal nations.
- Ensure democratic, fair, and secure voting processes that are free from racial discrimination and voter suppression in every State, specifically through measures that include:
  - Enfranchising all formerly and presently incarcerated people in federal elections;
  - Creating a public financing program for campaigns that are powered by small dollar contributions;
  - Incentivizing States to increase voter turnout;
- Incentivizing States to pass laws that expand voting access, including laws that:
  - Enfranchise all formerly and presently incarcerated people for State and local elections; and
  - Allowing local and State resident voting for undocumented people.
- Increase accountability for federal officials and police officers who have committed harms, specifically by measures that include:
  - Guaranteeing a private right of action for recovering damages when a federal official has committed a constitutional violation; and
  - Creating a grant program that offers States grant dollars if they strengthen mechanisms to hold police officers accountable when they have committed harm.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley, California requests the United States House of Representatives and Senate to introduce legislation known as "The Breathe Act".

BE IT FURTHER RESOLVED, copies of this resolution are sent to United States Congresswoman Barbara Lee, Alexandria Ocasio-Cortez, Pramila Jayapal, Rashida Tlaib, Ayanna Pressley and Senator Bernie Sanders.



Homeless Commission

ACTION CALENDAR

October 13, 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.

POLICY COMMITTEE RECOMMENDATION

On August 31, 2020, the Agenda and Rules Committee adopted the following action: M/S/C (Wengraf/Hahn) to send Items 9a and 9b to the City Council with a Qualified Positive Recommendation to adopt the staff item in 9b to explore potential short term solutions and recommend that the commission recommendation be reintroduced to Council after the COVID-19 emergency is lifted. Vote: All Ayes.

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





Cheryl Davila  
Councilmember  
District 2

ACTION CALENDAR  
October 13, 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.

#### POLICY COMMITTEE RECOMMENDATION

On August 31, 2020, the Agenda and Rules Committee adopted the following action: M/S/C (Arreguin/Wengraf) to send Item 10 to the City Council with a Negative Recommendation. Vote: All Ayes.

#### 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.



Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR  
October 13, 2020

TO: Mayor and Council

FROM: Councilmember Rashi Kesarwani (Author), Councilmember Susan Wengraf (Co-Sponsor)

SUBJECT: Authorize Installation of Security Cameras at the Marina and Request an Environmental Safety Assessment

#### RECOMMENDATION

Adopt the following recommendations in order to address the recent dramatic uptick in reported crime incidents at the Berkeley marina:

- Declare that “exigent circumstances” exist at the Berkeley marina;
- Request that the City Manager install security cameras and signage as expeditiously as possible as a long-term safety measure;
- Refer to the City Manager to perform an environmental safety assessment of the Berkeley marina with particular attention to the berther parking areas.

#### FISCAL IMPACT

Approximately \$120,000 for eight security camera locations at seven marina berther lots, including installation, signage, and other supplies.

#### CURRENT SITUATION AND ITS EFFECTS

The past several months have seen a dramatic uptick in reported crime incidents at the Berkeley marina. From March 6, 2020 through September 4, 2020, a total of 156 incidents were reported to the Berkeley Police Department and/or marina staff. The vast majority of the incidents have been reported more recently: since July 1, 2020, a total of 135 incidents were reported, with August alone seeing a total of 86 incidents. These incidents range in severity from disturbances, vandalism, and trespassing to assaults,

Installation of Security Cameras at Berkeley Marina and Safety Assessment

boat theft, auto burglary<sup>1</sup> and vehicle theft<sup>2</sup>. From the second day in August onward, every day of the month saw at least one incident report, with August 23 seeing nine reported incidents, while August 13, 16, 17 and 27 each had five reported incidents per day.

In the table below, we provide a summary of the type and frequency of reported crime incidents that have occurred since early March 2020. We note that the Office of Councilmember Rashi Kesarwani has requested crime statistics for the same period in 2019 and 2018 in order to gain a better understanding of recent crime trends.

**Types and frequency of reported crimes at the Berkeley Marina, March 6 to Sept. 4, 2020**

| Type of Crime           | Number of Incidents |
|-------------------------|---------------------|
| Assault                 | 2                   |
| Attempted Vehicle Theft | 22                  |
| Auto Burglary           | 30                  |
| Disturbances            | 11                  |
| Felony Theft            | 2                   |
| Theft                   | 9                   |
| Trespassing             | 6                   |
| Vandalism               | 14                  |
| Vehicle Theft           | 4                   |
| Weapons Found           | 2                   |

Councilmember Rashi Kesarwani has met with several of the Marina live-aboard community members and berthers (people who pay to dock a boat at our marina) who have reached out to the District 1 Office for assistance. Our constituents have expressed frustration, fear, and dismay at the recent dramatic rise in reported incidents. A 2011 report from The Urban Institute’s Justice Policy Center notes that public

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<sup>1</sup> In this case, according to California Penal Code 459, auto burglary can be defined as: forced entry into a locked automobile with the intent to steal the car or property within it. See: [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PEN&division=&title=13.&part=1.&chapter=2.&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=13.&part=1.&chapter=2.&article=)

<sup>2</sup> Refer to the U.S. Department of Justice Federal Bureau of Investigation Criminal Justice Information Services Division (<https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/property-crime/mvtheftmain>) which notes: “In the FBI’s Uniform Crime Reporting (UCR) Program, motor vehicle theft is defined as the theft or attempted theft of a motor vehicle.”



Installation of Security Cameras at Berkeley Marina and Safety Assessment

surveillance technology is an effective, fiscally prudent tool for preventing crimes and supporting investigations; and installation and maintenance of security cameras is less costly than the associated costs with crimes that take place without them.<sup>3</sup>

This item additionally requests an environmental safety assessment of the parking areas for the Berkeley marina. Because there is a varied nature to the types of crimes committed, a multi-pronged safety approach is necessary to help address the many concerns of the community and reduce the number of incidents. Constituent communications indicate that there is an urgency to addressing these issues using a variety of approaches as deterrents.

BACKGROUND

According to Berkeley Municipal Code Section 2.99.040 on Acquisition and Use of Surveillance Technology, the City Manager may install and use surveillance technology in “exigent circumstances.” In BMC Section 2.99.020(5) “exigent circumstances” are defined as the City Manager’s “good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the Surveillance Technology or the information it provides.” The City Council’s declaration of exigent circumstances at the Berkeley marina authorizes the City Manager to install security cameras at berth parking areas. Once installed, the City Manager must submit a Surveillance Acquisition Report and Surveillance Use Policy within 90 days of installation in order to receive City Council approval of long-term use (BMC 2.99.040(2)). Providing approval to the City Manager for security camera installation accelerates this process.

ENVIRONMENTAL SUSTAINABILITY

This item has no impact on environmental sustainability.

CONTACT

Councilmember Rashi Kesarwani, District 1 (510) 981-7110

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<sup>3</sup> See La Vigne, Lowry, Markman and Dwyer’s 2011 report: “Evaluating the Use of Public Surveillance Cameras for Crime Control and Prevention” [https://www.urban.org/sites/default/files/publication/27556/412403-evaluating-the-use-of-public-surveillance-cameras-for-crime-control-and-prevention\\_1.pdf](https://www.urban.org/sites/default/files/publication/27556/412403-evaluating-the-use-of-public-surveillance-cameras-for-crime-control-and-prevention_1.pdf)





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Introduce an Ordinance permanently banning the use of less lethal weaponry, chemical irritants, smoke projectiles, acoustic weapons, directed energy weapons, water cannons, disorientation devices and ultrasonic cannons used by the police on civilians.

RECOMMENDATION

Direct the City Manager and City Attorney to prepare the attached ordinance: "Prohibition On The Use Of Certain Munitions Ordinance" for first reading for the October 27, 2020 Regular City Council Meeting.

BACKGROUND

At the June 9, 2020 City Council Special Meeting, the Council considered an [Urgency Item: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic](#). The item was to establish an official City of Berkeley policy prohibiting the use of tear gas (CS gas), pepper spray, or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition. The Council voted to prohibit the use of tear gas (CS) permanently.

Police officers in Berkeley and other jurisdictions use other chemicals and munitions against civilians such as: less-lethal weaponry (e.g. hard foam, rubber bullets, and pepper spray), chemical irritants, smoke projectiles, acoustic weapons, directed energy weapons, water cannons, disorientation devices, ultrasonic cannons, or any other device that is designed to be used on multiple individuals for crowd control and is designed to cause pain or discomfort.

The 1993 Chemical Weapons Convention banned international militaries from using riot control agents, and chemical weapons, on each other during war. It is unethical for police to use an outlawed chemical weapon on its own civilians. The police should not have the ability to use chemicals that can create life-threatening health consequences on fellow Americans, especially innocent civilians.

The proposed ordinance "Prohibition On The Use Of Certain Munitions" contains the following provisions:

**Definitions:**

1. "City" means the City of Berkeley, California.
2. "Prohibited Munitions" means less-lethal weaponry, chemical irritants, smoke projectiles, acoustic weapons, directed energy weapons, water cannons, disorientation devices, and ultrasonic cannons.

**Prohibition On The Use Of Certain Munitions:**

It shall be a violation of this Ordinance for any City staff to use Prohibited Munitions on any individual.

**Enforcement:**

- A. Any violation of 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.
- B. Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (b) above, for a violation that is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the City shall be liable for a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider prior violations of this ordinance by the City department that committed the violation.
- C. Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs.

FINANCIAL IMPLICATIONS

By banning the use of chemicals and less-lethal weaponry, this resolution would avoid future legal costs to the city.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSONS

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Councilmember District 2  
510.981.7120  
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Eshal Sandhu  
Jovi Tseng  
Sanjita Pamidimukkala  
District 2 Interns

ATTACHMENTS:

1. Ordinance
2. City Inventory of less than lethal weapons and munitions

REFERENCES:

1. [Urgency Item: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic](#)
2. City Inventory of less than lethal weapons and munitions

[https://www.cityofberkeley.info/uploadedFiles/Police\\_Review\\_Commission/Commissions/2016/PRC%20Pkt.%2004-27-16.pdf](https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Commissions/2016/PRC%20Pkt.%2004-27-16.pdf)

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA, TO PERMANENTLY BAN THE USE OF LESS LETHAL WEAPONRY, CHEMICAL IRRITANTS, SMOKE PROJECTILES, ACOUSTIC WEAPONS, DIRECTED ENERGY WEAPONS, WATER CANNONS, DISORIENTATION DEVICES AND ULTRASONIC CANNONS USED BY THE POLICE ON CIVILIANS.

WHEREAS, At the June 9, 2020 City Council Special Meeting, the Council considered an [Urgency Item: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic](#) . The item was to establish an official City of Berkeley policy prohibiting the use of tear gas (CS gas), pepper spray, or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition. The Council voted to prohibit the use of tear gas (CS) permanently.

WHEREAS, Police officers in Berkeley and other jurisdictions use other chemicals and munitions against civilians such as: less-lethal weaponry (e.g. hard foam, rubber bullets, and pepper spray), chemical irritants, smoke projectiles, acoustic weapons, directed energy weapons, water cannons, disorientation devices, ultrasonic cannons, or any other device that is designed to be used on multiple individuals for crowd control and is designed to cause pain or discomfort.

WHEREAS, The 1993 Chemical Weapons Convention banned international militaries from using riot control agents, and chemical weapons, on each other during war. It is unethical for police to use an outlawed chemical weapon on its own civilians. The police should not have the ability to use chemicals that can create life-threatening health consequences on fellow Americans, especially innocent civilians.

NOW, THEREFORE, the Council of the City of Berkeley does ordain as follows:

**Section 1. Title**

This ordinance shall be known as the Prohibition On The Use Of Certain Munitions Ordinance.

**Section 2. Definitions**

1. "City" means the City of Berkeley, California.
2. "Prohibited Munitions" means less-lethal weaponry, chemical irritants, smoke projectiles, acoustic weapons, directed energy weapons, water cannons, disorientation devices, and ultrasonic cannons.

**Section 3. Prohibition On The Use Of Certain Munitions**

It shall be a violation of this Ordinance for any City staff to use Prohibited Munitions on any individual.

**Section 4. Enforcement**

- A. Any violation of 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.
- B. Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (b) above, for a violation that is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the City shall be

liable for a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider prior violations of this ordinance by the City department that committed the violation.

- C. Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs.

**Section 5. Severability**

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

**Section 6. Construction**

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

**Section 7. Effective Date**

This Ordinance shall take effect on [DATE].

ATTACHMENT 2:

City Inventory of less than lethal weapons and munitions



Police Department

March 15, 2016

To: Katherine J. Lee, PRC Officer

From: Michael Meehan, Chief of Police

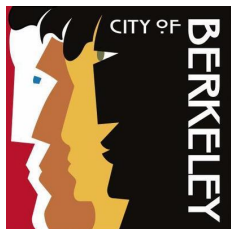
Re: Inventory of Less-than-lethal Weapons and Munitions

The Berkeley Police Department conducted an inventory of less-than-lethal weapons and munitions on February 19, 2016. The 37 mm launchers have smooth bores and are currently used for training purposes only. One 40 mm launcher is out of service while being repaired. An estimate of when it may be back in service is not available.

| MAKE       | MODEL  | Caliber | Type                             | Year      | Comments                               | #   |
|------------|--------|---------|----------------------------------|-----------|----------------------------------------|-----|
| CTS        | 4300   | 40 mm   | Liquid Barricade/Training Rounds | 2008      |                                        | 3   |
| CTS        | 4300   | 40 mm   | Liquid Barricade/Training Rounds | 2010      |                                        | 17  |
| CTS        | 4330   | 40 mm   | Liquid CS Barricade Rounds       | 2008      |                                        | 31  |
| CTS        | 4330   | 40 mm   | Liquid CS Barricade Rounds       | 2010      |                                        | 8   |
| CTS        | 3230   | 37 mm   | Riot CS Smoke Projectile         | 2003      | Training only                          | 11  |
| CTS        | 4230   | 40 mm   | Riot CS Smoke Projectile         | 2010      |                                        | 6   |
| CTS        | 3233   | 37 mm   | Riot CS Smoke Multi-Projectile   | 2003      | Training only                          | 11  |
| CTS        | 4210   | 40 mm   | White Smoke Projectile           | 2008      |                                        | 24  |
| CTS        | 4210   | 40 mm   | White Smoke Projectile           | 2010      |                                        | 5   |
| CTS        | 4630   | 40 mm   | Riot CS Powder, Muzzle Blast     | 2010      |                                        | 16  |
| CTS        | 4630   | 40 mm   | Riot CS Powder, Muzzle Blast     | 2014      |                                        | 15  |
| CTS        | 4557   | 40 mm   | Foam Baton                       | 2014/2015 |                                        | 191 |
| CTS        | T4557  | 40 mm   | Training, reloadable Foam Baton  | n/a       |                                        | 75  |
| Fed Labs   |        | 37 mm   | single round launcher            |           | Training only                          | 7   |
| Penn Arms  | GL1    | 40 mm   | single round launcher            |           |                                        | 5   |
| Penn Arms  | PGL65  | 40 mm   | multi-round launcher             |           | *1 launcher out of service for repairs | 2*  |
| FN Herstal | FN-303 | 18 mm   | multi-round launcher             |           |                                        | 2   |

cc: Firearm and Tactics Unit, Specialty Weapons Coordinator





Councilmember Ben Bartlett  
City of Berkeley, District 3

CONSENT CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett (Author), Councilmember Rashi Kesarwani (Co-Sponsor), Councilmember Susan Wengraf (Co-Sponsor) and Mayor Jesse Arreguín (Co-Sponsor)

Subject: “Step Up Housing” Initiative: Allocation of Measure P Funds to Lease and Operate a New Permanent Supportive Housing Project at 1367 University Avenue

RECOMMENDATION

Adopt a resolution allocating approximately \$900,000 per year for 10 years, as well as a one-time allocation of approximately \$32,975 from Measure P transfer tax receipts to support the lease and operation of a new permanent supportive housing project for the homeless at 1367 University Avenue. This resolution is put forward out of consideration that the City Council has already approved in its FY 2020-21 budget—on June 30, 2020—an allocation of \$2.5 million for permanent housing subsidy, a portion of which is available to be spent on the 1367 University Avenue project.

Refer to the next meeting of the Budget and Finance Policy Committee to confirm the availability of requested funding for the 1367 University project and to set priorities for other Measure P-funded programs and services as part of the mid-year budget process.

CURRENT SITUATION

Homelessness is increasing in the City of Berkeley and throughout the Bay Area. Berkeley currently has 1,108 homeless residents, of whom 813 were living on the street as of a point-in-time count in January 2019. This represents a 14% increase in two years.

To help address the need for supportive housing, Building Opportunities for Self-Sufficiency (BOSS) has proposed to operate the Step Up Housing initiative, a new permanent supportive housing project for individuals experiencing homelessness. BOSS is a 501c3 nonprofit organization that will serve as the master tenant and provide supportive services to the residents of the project at 1367 University Avenue.

BOSS has partnered with Panoramic Interests to develop the new permanent housing project, which was unanimously approved by the Berkeley Zoning Adjustments Board on July 9, 2020 and can be built on an accelerated 16-week timeline. As a result, the project will result in huge savings both for costs of and time of development. While Panoramic Interests will be responsible for obtaining building permits, financing construction, and building the project, BOSS will be responsible for all operations and property management.

The project will include 39 fully furnished studio apartments, private bathrooms for each studio, a 400-square-foot community room, a community kitchen, two offices for support staff and services, permanent on-site property management, and 24/7 security. The building will be constructed with modular units built around an approximately 615-square-foot private central courtyard.

BOSS will provide services for Step-Up Supportive Housing including connecting residents to mental health resources, substance abuse recovery services, employment, education, and legal services and will accompany them to service providers when appropriate. The program will ensure participants obtain health insurance coverage and connect them to primary care providers. Opportunities for socialization and peer support will be provided through the organization of on-site support groups, learning workshops, social activities, community meals, and service visits by outside providers. BOSS will also manage an on-site food pantry in collaboration with Alameda County Community Food Bank. These services will help residents maintain stable housing, improve mental and physical health, and decrease social isolation. On-site service hours will be provided Monday-Friday, 9 am-5 pm, but the case manager or another designated staff member will be on-call as needed at all times.

The program will be staffed by a number of employees, including a program manager, housing manager, property manager, cook, maintenance worker, and overnight monitor. Roughly two-thirds of the expenses are related to program operations and delivering supportive services for the residents. The balance of the expense is for housing. The total operating budget is \$1,844,515 annually. This resolution would cover \$900,000 of the annual operating costs over a 10-year period and a one-time \$32,975 allocation for start-up costs, including purchasing household items for the units, kitchen supplies, groceries, office furniture, security cameras, etc.

The remaining \$944,515 is being requested from the County of Alameda. The City's commitment is contingent upon the funding of the balance of the project.

## BACKGROUND

California has the highest real world poverty rate of any state, 17.2% over the previous three years and much higher than the national rate.<sup>1</sup> A major contributing factor to the state's high poverty indices is that many California residents spend much of their income on housing due to high construction costs.<sup>2</sup> Throughout the state, many affordable housing development projects are stalled, burdened, and have incurred higher than the median costs for development.

For example, in Alameda, CA, Everett Commons, which is a low-income development that provides housing for only 20 families, costs \$947,000 per unit.<sup>3</sup> The notoriously high price of land and the rising cost of construction materials are contributing factors. On the other hand, the Step Up Housing Initiative uses an efficient and cost-effective modular construction model that provides 39 individuals with not only stable housing, but a safe and supportive environment where they can access critical employment, health, substance abuse, and community resources and services. Berkeley can help address the shortage of homes and effectively alleviate the City's homelessness crisis through this innovative and practical project.

## REVIEW OF EXISTING POLICIES AND PLANS

Berkeley voters overwhelmingly passed Measure P in November 2018 with 72% of the vote. The Measure raised the transfer tax on property sales over \$1.5 million from 1.5% to 2%, which is expected to generate approximately \$6-8 million annually. These funds were intended to be allocated towards various homeless services, including permanent housing, supportive services, and navigation centers.

Measure P also created an independent commission, the Homeless Services Panel of Experts, to provide recommendations on funding allocations to the City Council. In December 2019, the Homeless Services Panel of Experts published its first set of recommendations for initial investments from the General Fund to address homelessness in Berkeley. The Panel's recommendations prioritized certain categories of activities and set forth a percentage of funding for each category. Permanent housing was listed as the top priority, with 30% of the funds recommended to be allocated towards such projects. The remainder was recommended to be allocated towards shelter and temporary accommodations, immediate street conditions and hygiene, supportive services, flexible housing subsidies, and infrastructure. The City Council approved on June 30, 2020 Measure P allocations for FY 2020-21 that included \$2.5 million for permanent housing subsidy.

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<sup>1</sup> <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-272.pdf>

<sup>2</sup> <https://www.sacbee.com/article245815115.html>

<sup>3</sup> <https://www.latimes.com/homeless-housing/story/2020-04-09/california-low-income-housing-expensive-apartment-coronavirus>

In 2017, the City Council also referred staff to create a 1000 Person Plan, which seeks to end homelessness for 1000 people in Berkeley. In 2019, City staff responded to this referral and concluded that the Council needed to provide up-front investments in targeted homelessness prevention, light-touching housing problem-solving, rapid rehousing, and permanent subsidies. This proposal to lease and operate the Step Up Housing initiative at 1367 University would help move forward the 1000 Person Plan and also accomplish the Homeless Services Panel's top priority of providing stable and permanent supportive housing for individuals experiencing homelessness.

In addition, this project also fulfills the goals of Councilmember Bartlett's original Step Up Housing initiative, which passed unanimously on February 14, 2017. See Attachment 3 for the original item.

#### CONSULTATION/OUTREACH OVERVIEW

Councilmember Bartlett's office collaborated with BOSS and Panoramic Interests to ensure the long-term success of this new permanent supportive housing project, the Step Up Housing initiative. By bringing together BOSS's expertise in the field of supportive services and Panoramic's efficient modular construction model, this project can be operational and begin providing stable housing to 39 individuals within twelve months of receiving this funding commitment, resulting in dramatic savings in costs and delivery time.

BOSS was founded in Berkeley in 1971 to serve severe and persistent mentally ill homeless individuals and their families, and has since expanded to serve over 3,000 families and individuals per year across Alameda County, including persons experiencing homelessness, mental illness, former incarceration/justice system involvement, domestic or community violence, unemployment, and other crises. BOSS has 49 years of experience serving the target population, and 45 years of experience operating emergency, transitional, and permanent housing programs.

Panoramic Interests has been building high density infill development projects in the Bay Area since 1990. Its work in downtown Berkeley and San Francisco includes 15 projects, adding more than 1,000 new units of housing, and 100,000 square feet of commercial space. From 1998-2004, Panoramic built seven new mixed-use apartment buildings in downtown Berkeley. During this time, Panoramic housed more than 80 Section 8 tenants, making it the largest private provider of Section 8 housing in the City.

This collaborative effort between the City, the service provider, and the developer can serve as a regional model for future permanent supportive housing projects in Berkeley and throughout the Bay Area.

### RATIONALE FOR RECOMMENDATION

The City's funding commitment will help address the homelessness crisis by allowing for the long-term and stable housing of 39 individuals experiencing homelessness as well as the provision of on-site services to help those individuals retain housing, improve their mental and physical health, connect with employment and education opportunities, and decrease social isolation. This Step Up Housing initiative not only will result in huge cost savings through its streamlined processes, but also it can be operational within twelve months of receiving this funding commitment. In addition, this project will serve as a regional model for other jurisdictions to consider when dealing with the homelessness crisis in their cities.

### FISCAL IMPACTS

The new permanent supportive housing project, known as the Step Up Housing initiative, at 1367 University is requesting a one-time \$32,975 allocation for start-up costs and \$900,000 annually for 10 years from Measure P transfer tax receipts. The remaining \$944,515, to cover the annual \$1,844,515 operating budget, is being requested from the County of Alameda. The supportive housing model will have dramatic savings of cost and delivery time.

### ENVIRONMENTAL SUSTAINABILITY

The project itself was determined by the Planning Department to be categorically exempt from the provisions of the California Environmental Quality Act pursuant to Section 15332 (In-Fill Development Projects) of the CEQA Guidelines.

### CONTACT PERSON

Councilmember Ben Bartlett:  
Katie Ly  
James Chang

510-981-7130  
[kly@cityofberkeley.info](mailto:kly@cityofberkeley.info)  
[jchang@cityofberkeley.info](mailto:jchang@cityofberkeley.info)

### ATTACHMENTS AND MATERIALS

1. Resolution
2. Project Summary Sheet
3. Step Up Housing Council Item from February 14, 2017: "Direction to City Manager: "Step Up Housing" Initiative – Supportive Housing for Homeless and Very Low-Income People"

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

ALLOCATING APPROXIMATELY \$900,000 ANNUALLY FOR 10 YEARS AND A ONE-TIME AMOUNT OF APPROXIMATELY \$32,975 OF MEASURE P FUNDS TO LEASE AND OPERATE THE NEW PERMANENT SUPPORTIVE HOUSING PROJECT FOR THE HOMELESS AT 1367 UNIVERSITY AVE.

WHEREAS, the City Council passed unanimously the original Step Up Housing Initiative introduced by Councilmember Bartlett on February 14, 2017; and

WHEREAS, Measure P was passed by Berkeley voters in November 2018 to raise the transfer tax on roughly the top-third of properties from 1.5% to 2% and allocate those funds towards various homeless services, including permanent housing, supportive services, and navigation centers; and

WHEREAS, Measure P designated the Homeless Services Panel of Experts to advise the Council on expenditures for homeless services; and

WHEREAS, in December 2019 the Homeless Services Panel of Experts published their recommendations for initial allocations under Measure P, including highlighting permanent housing as the City's top priority and recommending 30% of Measure P funds be allocated to permanent housing; and

WHEREAS, the City Council approved on June 30, 2020 Measure P allocations for FY 2020-21 that included \$2.5 million for permanent housing subsidy; and

WHEREAS, the Berkeley Zoning Adjustments Board approved the permanent supportive housing development project at 1367 University on July 9, 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it approves the following for the project at 1367 University Ave:

- A reservation of approximately \$32,975 in Measure P funds for start-up costs associated with the project.
- A reservation of approximately \$900,000 in ongoing funds annually for 10 years for the leasing and operation of the proposed project.

- In the event BOSS is unable to perform its function as the service provider, an alternative qualified service provider may operate the project with the review and approval of the City Manager, or her designee.
- Further, the City's commitment is contingent upon the funding of the balance of the project.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements, and any amendments will be kept on file in the Office of the City Clerk.



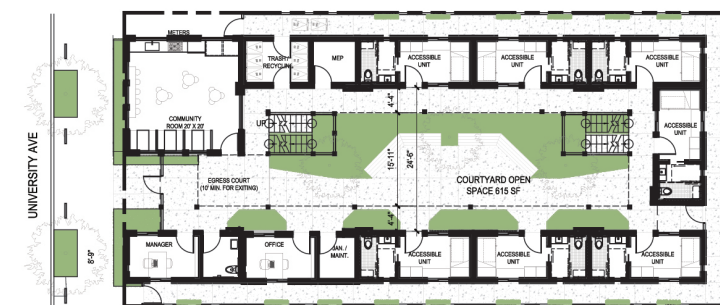
# Step-Up Housing, 1367 University Ave. Berkeley (39 studios, community room, two offices)



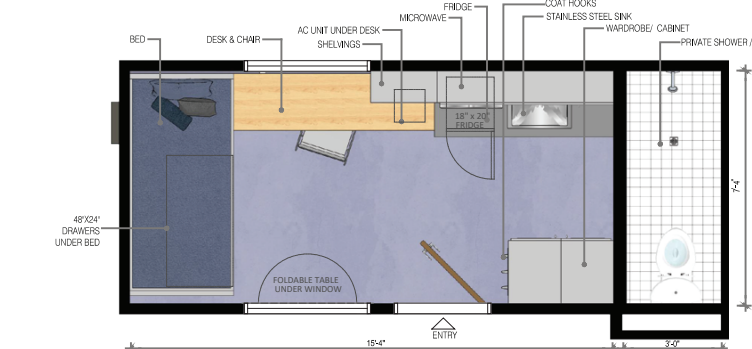
1367 University Ave. entrance



Interior courtyard and community space



Ground floor plan, with offices and community room



Typical studio

## PROJECT SUMMARY

- Name & Location: Step-Up Housing, 1367 University Ave. (at Acton)
- Target Population: Homeless, low-income, single adults
- Number of Units: 39 studios, with community room, and mgmt. offices
- Service Provider: BOSS 24/7 presence on-site
- Services: Case management, health/mental health/employment referrals. On-site peer support/socialization and life-skills activities.

## GOALS/SERVICES

- Get 39 individuals off the streets and into stable housing
- Provide safe and supportive environment for training & assistance
- Improve participants overall health by connecting them to primary care, mental health resources, substance abuse recovery services and socialization/peer support
- Reduce participant hospitalizations and use of emergency response systems
- Improve participant mental health status and daily functioning
- Support participants in increasing income and managing finances
- Support participants to obtain employment
- Increase meaningful activity and decrease social isolation among participants
- Organize on-site support groups, learning workshops, social activities, community meals and service visits by outside providers
- Manage an on-site food pantry in collaboration with Alameda County Community Food Bank

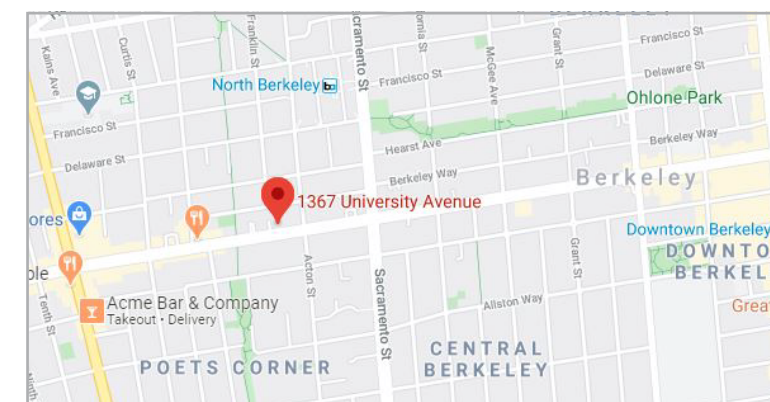
## LOCATION

The Step-Up Housing project by BOSS is centrally located, close to stores, offices, and transit. It has a Walkscore of 90/100 ("Walker's Paradise") and a Bikescore of 98 ("Biker's Paradise"). Residents will not need a car for daily errands, and will have easy access to BART and AC Transit.

## THE HOUSING

The Step-Up Housing will consist individual studios, community space, outdoor areas, and management offices for BOSS. The project will include:

- 39 individual studios, fully furnished
- Private bath and showers for each studio
- Engineered soundproofing and HVAC for all spaces
- Direct access in each unit to outdoor space
- Private outdoor courtyard and community space
- Community kitchen, laundry, and social space
- Two private offices for support staff and client services
- Permanent on-site property management and support staff (BOSS)
- Secured entrance and 24/7 security
- Modular units. Construction time: 16 weeks



Project Location: 1367 University Ave. Berkeley (at Acton)

## FOR FURTHER INFORMATION

Donald Frazier  
BOSS  
510.649.1930 x 1012  
dfrazier@self-sufficiency.org

Patrick Kennedy  
Panoramic Interests  
415.701.7001  
Patrick@panoramic.com





Councilmember Ben Bartlett  
District 3

CONSENT CALENDAR  
~~January 24~~February 14, 2017

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett & Councilmember Linda Maio & Councilmember Lori Droste

Subject: ~~Referral Direction~~ to City Manager: “Step Up Housing” Initiative ~~–Micro Units to House–~~ Supportive Housing for Homeless and Very Low-Income People

RECOMMENDATION

~~Refer Direct to the City Manager~~Ad-Hoc subcommittee to discuss and facilitate implementing the following actions:

1. Identify parcels of City owned land for siting assisted-living buildings.
2. Amend the permitting and approvals process to facilitate the rapid creation of below market housing.
3. Issue requests for proposals through a competitive bidding process for a development of up to 100 units of housing. ~~Expedite the process of inviting proposals through the competitive bidding process and begin the process as soon as possible. in an expedited manner. For-profit and non-profit developers can be included in the bidding process. The proposal should demonstrate partnerships with a housing non-profit and a service provider.~~
- ~~4. Assist the selected developer with obtaining zoning approval and a building permit in an expedited manner.~~
- ~~4. Select a housing non-profit to partner with. Identify potential obstacles in creating prefabricated micro-units in a timely fashion. Recommend courses of action to remove those obstacles.~~
5. The housing non-profit ~~partner, in partnership with Federally Qualified Healthcare Centers,~~ will be responsible for managing and operating the building. ~~The tenants will be required~~ Request the non-profit to work with employ a cooperative model in managing the housing non-profit to maintain and operate the building property.
6. Establish criteria for selecting individuals and determining eligibility. These need-based criteria will take into account seniors, people with disabilities, and former Berkeley natives residents who have become homeless.
7. This project shall be ~~considered a public works project and be~~ subject to the terms of athe community workforce agreement with existing prevailing wage requirements.

8. Priority consideration will be given to: (i) Proposals that most quickly provide the maximum number of units for the least amount of cost, and (ii) proposals that include locally sourced materials and construction.

### FINANCIAL IMPLICATIONS

~~Minimal costs and staff~~ Staff time.

### BACKGROUND

On January 14, Laura Jadwin, a homeless resident of Berkeley, was found dead of exposure. ~~This was one of several deaths~~ Deaths of homeless individuals ~~in recent weeks are tragic and preventable~~. Our City is experiencing a homelessness and housing affordability crisis. City staff estimates that there are currently between 900 and 1200 homeless people living in Berkeley. Due to high housing costs, numerous low-income members of the Berkeley community are at risk of homelessness. Furthermore, the Trump administration's anticipated funding cuts ~~will~~ may cause the City's homeless population to multiply exponentially. This is a health and safety emergency that has cost lives and degraded standards of living for all residents.

~~Councilmember Bartlett sees~~ We see this crisis as an opportunity for innovation. This item referral seeks to jumpstart innovative financing and development models for assisted and low-income housing that emphasize speed, durability, and cost efficiency.

~~Conventionally built buildings cost the City an average of \$429,400<sup>1</sup> per unit. This high price results from expensive land costs, costs associated with a slow and complex permitting system, and high costs of development and execution. This item~~ This referral will reduce costs by constructing the building above City owned land and by empowering the City to speed up its permitting and approvals process. Additionally, this item seeks to mitigate prohibitively high building costs by encouraging prospective. Prospective developers are encouraged to design present innovative financing and construction solutions which will result in a large number for the rapid creation of homeless individuals housed quickly for scalable assisted living models at reduced costs.

Step Up housing will foster human resiliency, leverage scarce resources, and rationalize the regulatory process. Given the urgency of the homeless crisis, the City must immediately ~~initiate the bidding process and begin exploring~~ identify and implement solutions.

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<sup>1</sup>City of Berkeley Affordable Housing Nexus Study  
[http://www.cityofberkeley.info/Clerk/City\\_Council/2015/07\\_Jul/City\\_Council\\_\\_07-14-2015\\_\\_Special\\_Meeting\\_Agenda.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2015/07_Jul/City_Council__07-14-2015__Special_Meeting_Agenda.aspx)

The City Council, just like all local governments, has a duty to ensure the welfare of its people. Berkeley's Step Up Housing Initiative will provide a road map for future supportive housing developments that can be replicated in other affected communities.

ENVIRONMENTAL SUSTAINABILITY

This item will result in a positive environmental impact on the community. Increasing local access to low-income housing reduces automobile dependence and tailpipe emissions.

CONTACT PERSON

Councilmember Ben Bartlett, 510-981-7130

Councilmember Linda Maio, 510-981-7110

Councilmember Lori Droste, 510-981-7180



Councilmember Ben Bartlett  
District 3

CONSENT CALENDAR  
February 14, 2017

To: Honorable Mayor and Members of the City Council  
From: Councilmember Ben Bartlett & Councilmember Linda Maio & Councilmember Lori Droste  
Subject: Direction to City Manager: “Step Up Housing” Initiative – Supportive Housing for Homeless and Very Low-Income People

RECOMMENDATION

Direct the Ad-Hoc subcommittee to discuss and facilitate implementing the following actions:

1. Identify parcels of City owned land for siting assisted-living buildings.
2. Amend the permitting and approvals process to facilitate the rapid creation of below market housing.
3. Issue requests for proposals through a competitive bidding process for a development of up to 100 units of housing in an expedited manner. For-profit and non-profit developers can be included in the bidding process. The proposal should demonstrate partnerships with a housing non-profit and a service provider.
4. Identify potential obstacles in creating prefabricated micro-units in a timely fashion. Recommend courses of action to remove those obstacles.
5. The housing non-profit, in partnership with Federally Qualified Healthcare Centers, will be responsible for managing and operating the building. Request the non-profit to employ a cooperative model in managing the property.
6. Establish criteria for selecting individuals and determining eligibility. These need-based criteria will take into account seniors, people with disabilities, and former Berkeley residents who have become homeless.
7. This project shall be subject to the terms of the community workforce agreement with existing prevailing wage requirements.
8. Priority consideration will be given to: (i) Proposals that most quickly provide the maximum number of units for the least amount of cost, and (ii) proposals that include locally sourced materials and construction.

FINANCIAL IMPLICATIONS

Staff time.

## BACKGROUND

On January 14, Laura Jadwin, a homeless resident of Berkeley, was found dead of exposure. Deaths of homeless individuals are tragic and preventable. Our City is experiencing a homelessness and housing affordability crisis. City staff estimates that there are currently between 900 and 1200 homeless people living in Berkeley. Due to high housing costs, numerous low-income members of the Berkeley community are at risk of homelessness. Furthermore, the Trump administration's anticipated funding cuts may cause the City's homeless population to multiply exponentially. This is a health and safety emergency that has cost lives and degraded standards of living for all residents.

We see this crisis as an opportunity for innovation. This item referral seeks to jumpstart innovative financing and development models for assisted and low-income housing that emphasize speed, durability, and cost efficiency.

This referral will reduce costs by constructing the building above City owned land and by empowering the City to speed up its permitting and approvals process. Additionally, this item seeks to mitigate prohibitively high building costs. Prospective developers are encouraged to present innovative financing and construction solutions for the rapid creation of scalable assisted living models at reduced costs.

Step Up housing will foster human resiliency, leverage scarce resources, and rationalize the regulatory process. Given the urgency of the homeless crisis, the City must immediately identify and implement solutions.

The City Council, just like all local governments, has a duty to ensure the welfare of its people. Berkeley's Step Up Housing Initiative will provide a road map for future supportive housing developments that can be replicated in other affected communities.

## ENVIRONMENTAL SUSTAINABILITY

This item will result in a positive environmental impact on the community. Increasing local access to low-income housing reduces automobile dependence and tailpipe emissions.

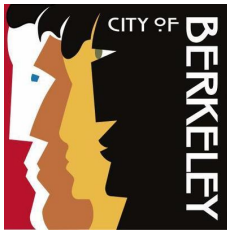
## CONTACT PERSON

Councilmember Ben Bartlett, 510-981-7130

Councilmember Linda Maio, 510-981-7110

Councilmember Lori Droste, 510-981-7180





Councilmember Ben Bartlett  
City of Berkeley, District 3

CONSENT CALENDAR  
October 13, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Ben Bartlett  
Subject: Removal of Traffic Bollards on the Intersection at Fairview and California St.

RECOMMENDATIONS

Refer to the Public Works Department to remove the traffic bollards at the intersection at Fairview and California St. for the following reasons:

1. To allow residents, emergency responders, street cleaning and garbage disposal services, and delivery vehicles ease of access to enter and exit Fairview Street;
2. To allow residents of the 1600 block of Fairview St. access to additional parking spots because the current capacity is inadequate; and
3. To decrease illegal dumping that has been incentivized by the traffic bollards and eliminate the harborage of junk, debris, and garbage.

CURRENT SITUATION

Traffic bollards on the intersection at Fairview and California Street have created many issues for residents on the 1600 block of Fairview Street. Since the road was never intended to be a cul-de-sac, it was not designed to allow drivers to conveniently exit when one entrance is blocked off. Instead, drivers are either forced to make a u-turn, which is difficult to do because of the narrow road, or they must drive onto an empty driveway to exit the street. However, exiting the street is made especially difficult as a result of the multitude of cars that line the street. In addition, some residents block off their driveway with trash cans to prevent cars from touching their property.

The bollards have also created barriers for those who need quick access to the street, such as large delivery trucks, emergency responders, street cleaning vehicles, and other vehicles. Many of these trucks must reverse their vehicle for long stretches of the road in order to exit the street. However, as stated previously, this is no easy task.

Making matters worse, the traffic bollards have incentivized illegal dumping. Mattresses, dressers, and other furniture have been found littered in front of the bollards. Because the dumpings do not “block” the road, local authorities do not prioritize its clean up. Not only is this aesthetically displeasing, but it can also be a potential hazard.

In response to these frustrations, people frequently and illegally move the bollards to allow their cars to pass through. It is important to note that these actions have not resulted in any reported accidents or speeding violations. It has become clear that the

bollards no longer serve a use on this street and are merely a hindrance to the community.

### BACKGROUND

The traffic bollards were put in place through council resolution (No. 54,046 and No. 54,046) and as a result, removal of the bollards requires City Council action. In 2019, a constituent issued a neighborhood petition among residents on the 1600 block of Fairview St., demonstrating that up to 53% (depending on conflicting address records) of the households on the block support the removal of the traffic bollards (refer to Attachment 1). Of the people who opened their doors to sign the petition, however, 77% responded in favor of removing the bollards.

Those that signed the petition believe that the need for these bollards is long gone. In response to speeding, permanent traffic circles have been installed both at the intersection of California and Fairview Street and throughout the surrounding neighborhoods. Hence, removing the bollards would not result in a substantial increase in traffic nor would it incentivize speeding because the traffic circles already serve as deterrents. In addition, the area is no longer a hot-bed for crime, which was the reason that the bollards were implemented in the first place. Instead, the bollards have done nothing except attract illegal dumping and cause inconvenience to drivers in the neighborhood.

In November 2019, City staff sent a letter to the Fairview Street residents to inform them of the petition and that this item will be brought to Council in 2020. See Attachment 2. The plan was to bring this item to the Transportation Commission followed by City Council this year. However, the item was pushed off as a result of the COVID-19 pandemic and was never introduced because the Transportation Commission has not continued their regular meetings.

The Council should refer to the Public Works Department to remove the traffic bollards at the Fairview and California Street intersection. If this item passes, the Department should move forward with this request once the department has addressed its immediate priorities.

### FISCAL IMPACTS

Total costs would only include the cost of relocation. This is because the bollards can be reused since they are still in good condition.

### ENVIRONMENTAL IMPACTS

Not only are illegal dumpings an eyesore, but they also increase the chance that chemicals from waste and certain appliances can pollute the soil and waterways. In addition, many of the appliances that are dumped are highly flammable, and, unless properly disposed of, could act as kindling for a fire.



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ATTACHMENTS

1. Neighborhood Petition
2. Fairview Street Outreach Letter

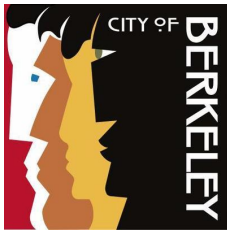


Attachment  
Not Received

This attachment has not been received from the  
submitting office.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**The City of Berkeley, City Council's Web site:**  
<http://www.cityofberkeley.info/citycouncil/>



Councilmember Ben Bartlett  
City of Berkeley, District 3

CONSENT CALENDAR

October 13th, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett

Subject: Enforce Bi-Weekly Residential Cleaning Measures to Address Encampments and Promote Clean Streets in Berkeley

RECOMMENDATION

Refer to the Public Works Department to promote equitable street cleaning practices and require biweekly cleanings of populated encampment sites in Berkeley and adjacent residential neighborhoods. In order to determine where City Staff should prioritize residential cleaning services, the Public Works Department should establish a radius around the campsites. When encampments are on non-City owned property, such as Caltrans, the City should bill the appropriate agency for the cost of staff and materials.

BACKGROUND

Residential cleaning is a City service that beautifies our community by removing litter and debris from our streets. In doing so, it protects our environment by reducing pollutants that can clog storm drain systems and reach waterways. Clean sidewalks with little to no litter would also ensure access and safety for pedestrians and people with disabilities. Such residential cleaning would promote an aesthetically pleasing neighborhood for residential and commercial spheres.

The City of Berkeley currently mandates residential cleaning once a month and follows a sweeping schedule according to the street name. Residents are encouraged to rake their leaves for composting and avoid sweeping materials into streets or curbsides where debris could impede people's ability to safely travel along the sidewalks. While street cleaning is not required for some exceptions, such as holidays, streets are usually swept on a regular basis based on the schedule. However, our current sweeping schedule has not been sufficient in addressing issues of littering, illegally dumped materials, and encampments in certain areas throughout Berkeley, especially in the South Berkeley neighborhood. As a result, the City should promote equitable street cleaning practices by requiring biweekly residential cleanings of not only the camps themselves but also adjacent neighborhoods to these encampment sites.

### CURRENT SITUATION

According to the 2019 report conducted by the nonprofit EveryOneHome, the City of Berkeley has counted 1,108 homeless people, which is an 11 percent increase since 2017.<sup>1</sup> Due to the lack of affordable housing, encampments have increased on the Caltrans property under the Interstate 880 overpass at University Ave in Berkeley as well as in certain areas in South Berkeley<sup>2</sup>.

According to South Berkeley residents, their neighborhood has been littered with trash, which has become a safety and sanitary concern. Reports of discarded clothing and illegally dumped materials, such as couches and televisions, are common in South Berkeley, especially along the block of Martin Luther King Jr. Way in the corner between Alcatraz Avenue and 62nd Street. Other encampments, trash, and debris have also been located in the BART-owned area, and this resultant litter violates the 1971 agreement between the City of Berkeley and BART in which the City holds responsibility in maintaining and cleaning the sidewalks along the BART tracks in South Berkeley.

The littering issue has expanded to the “Here There” site that runs on the east side of Adeline Street, starting at Alcatraz Avenue and ending at 62nd Street below the BART overpass. While the “Here There” artwork has been intended to welcome visitors to the Berkeley community and commercial districts, encampments at this site populate the sidewalks. These sites have formed as a result of the BART fence, which prevents these encampments from moving onto the lawn around the sculpture and impedes the access and safety of the sidewalks due to the absence of an established clearance.

To promote health, safety, and cleanliness in Berkeley, the City should provide more frequent residential cleaning services for neighborhoods with a higher population of encampments, such as South Berkeley. In addition to the neighborhoods, the proposed biweekly cleaning services should help clean the camps as well. These neighborhoods should also include non-City owned property, such as Caltrans. However, in these cases, the City should have the authority to bill the appropriate agency for the cost of staff and materials.

### RATIONALE FOR RECOMMENDATION

Debris has spread over the intersections, sidewalks, and yards throughout Berkeley, especially in District 3. Such debris contaminates the residential and commercial areas

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<sup>1</sup> <https://www.sfchronicle.com/bayarea/article/Sanctioned-homeless-encampments-Oakland-and-15058546.php>

<sup>2</sup> <https://www.sfchronicle.com/bayarea/article/Sanctioned-homeless-encampments-Oakland-and-15058546.php>

and poses a safety risk to pedestrians and motorists. In addition, dumping illegal trash along the sidewalks only attracts more littering. In effect, the trash exacerbates the safety, sanitary, and environmental issues of the community. To protect the safety and health of Berkeley residents, residential cleaning of the camps and the adjacent neighborhoods of the encampments in the city should be conducted at least once every two weeks.

The Public Works Department should determine the radius around the encampments in Berkeley so that City Staff can focus their efforts on areas that receive a considerable and frequent amount of litter due to the growing issue of encampments. The current schedule of one street cleaning per month is not satisfactory in eliminating waste and litter among the streets or in addressing the growing issue of encampments in Berkeley. Equitable residential cleaning services would ensure that Berkeley residents, especially those in South Berkeley, have safe and sanitary areas for residential and commercial purposes.

#### ACTIONS/ALTERNATIVES CONSIDERED

The City could enforce fines on those who dispose of trash along the sidewalks or on residents whose property contains illegally discarded trash. However, fining residents in possession of illegally discarded trash is an inequitable practice because they may not have been the one who disposed of the trash, nor do they have the resources to properly dispose of the detriment. In addition, this could have the unwanted effect of criminalizing poverty and would be inefficient because it would require police, or another authority, to monitor and patrol the neighborhoods. This would increase police focus on non-criminal matters when their services are better used elsewhere.

An alternative is to set up a system where community organizations and members of the public can volunteer to dispose of the litter. Another option is the City could mandate more residential cleaning across all of Berkeley. However, this practice would ignore the fact that areas with more encampments require more attention and residential cleaning due to the ongoing aforementioned issues.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time. More resources would also be necessary to fund more frequent street cleaning services regarding the City staff who would sweep the Berkeley streets and clean the camps. For encampments on non-City owned property, the City would save on financial resources by billing the appropriate agency for the cost of staff and materials. With greater accessibility, safety, and sanitation, cleaner streets could attract more people in the commercial areas, supporting local businesses and boosting the economy.

ENVIRONMENTAL SUSTAINABILITY

Bi-weekly residential cleanings would remove the litter populating the camps and streets, which would reduce the risk of trash clogging storm drain systems or polluting the waterways. Litter can also carry unsanitary germs and thus, increase the ability to contract diseases. These issues must be prevented and mitigated, especially during a time when people are vulnerable to becoming infected with coronavirus.

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Landmarks Preservation Commission

## INFORMATION CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council  
 From: Landmarks Preservation Commission (LPC)  
 Submitted by: Christopher Adams, Chairperson, Landmarks Preservation Commission  
 Subject: LPC Annual Report to City Council for the period May 2019 to May 2020

### INTRODUCTION

The LPC has prepared a report on its activities during the period May 2019 through May 2020; see Attachment 1, "LPC Annual Report to the City Council." Reports on the Commission's activities are required on an annual basis, in accordance with Berkeley Municipal Code Chapter 3.24.090 (*Annual report required*).

### CURRENT SITUATION AND ITS EFFECTS

On July 2, 2020, the Commission voted to adopt the attached report and forward it to City Council (Vote: 7-0-2-0; Yes: Adams, Allen, Crandall, Finacom, Johnson, Montgomery, Schwartz; No: none; Abstain: Abranches Da Silva, Enchill; Absent: none).

The Commissioners' Manual (2019) requires that the Commission Secretary submit the Commission's report to City Council agenda process within three weeks of receiving the final document; however, due to an internal oversight, this transmittal was delayed.

### BACKGROUND

On July 2, 2020, Chairperson Finacom prepared and presented a draft of the report to the LPC and the Commission voted to adopt the final version of the report and to forward it to City Council.

Among the Commission's accomplishments during the reporting period, the Executive Summary of Attachment 1 (see page 1) highlights the following Commission activities:

- Designated a total of five properties as City Landmarks or Structures of Merit;
- Granted seven requests for Structural Alteration of existing properties on the City's register;
- Studied and then recommended City Council approval of three Mills Act contracts for repair and rehabilitation of existing City Landmarks;
- Reviewed thirteen demolition referrals of non-residential buildings over forty years old and took no action to initiate these properties; and
- Hosted and participated in an on-line historic preservation training, to which the public was invited.

The report describes these and other accomplishments in detail, and it identifies issues the Commission would like to consider in the coming year(s).

ENVIRONMENTAL SUSTAINABILITY

Historic preservation practices encourage the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

Other reports on the City's historic preservation-related activities, such as a copy of the City's Certified Local Government (CLG) annual report to the State Historic Preservation Office (SHPO), could be forwarded to Council on an annual basis, in accordance with Berkeley Municipal Code Chapter 3.24.090 (*Annual report required*).

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no financial impacts associated with reporting this information to City Council.

CONTACT PERSON

Fatema Crane, Commission Secretary, Department of Planning and Development,  
(510) 981-7410

Attachment:

- 1: Landmarks Preservation Commission Report to City Council on Commission Activities, adopted July 2, 2020



**FINAL DRAFT**  
**REVIEWED BY COMMISSION AT JULY 2 2019 MEETING**

Landmarks Preservation Commission Annual Report to the City Council for the period May 2019 to May 2020.

**Background:** The Landmarks Preservation Ordinance mandates (BMC Section 3.24.090) that *“The commission shall report its actions annually to the City Council not later than June 30.”* This report covers the reporting period implied by that provision. Because of this ordinance requirement this reports meets the Governor’s standards for conducting of *“legally mandated business”* during the COVID-19 crisis.

**Executive Summary:** During the reporting period the Commission:

1. held eight regular Commission meetings and some subcommittee meetings. Two regularly scheduled meetings were cancelled because of the COVID-19 crisis and Shelter-in-Place orders;
2. approved five Landmark designations;
3. had under consideration two other Landmark nominations;
4. reviewed for historic significance thirteen demolition referrals of buildings over 40 years old. Considered, and took no action to initiate these properties;
5. approved three Mills Act contracts and sent them forward to the Council;
6. reviewed seven Structural Alteration Permits for existing Landmark properties. They were approved generally as proposed, with appropriate conditions;
7. placed one property on the Commission’s “Potential Initiations” list for possible Landmark consideration in the future.

These actions and activities are summarized in more detail at the end of this report.

The Commission also has several issues to raise for, and recommendations to make to, the Council as part of this report. The following pages summarize these items. Most of these are items previously raised by the Commission with the Council and most of them reflect the same wording as last year’s report. The Commission continues to believe it would be helpful, when circumstances permit, for the Council to eventually have a work session with the Commission to discuss some of these items.

**Religious Exemptions:** The Commission once again encourages the Council to seek changes at the State level that would clarify and reform the conditions under which a religious property owner can claim hardship exemption from landmark designation. Changes might include a requirement that the owners detail and demonstrate in writing the economic circumstances they believe would cause hardship, and that they hold the mandated public meeting to consider asserting the hardship claim in the actual community where the proposed landmark is designated. (In Berkeley’s case, owners of a religious property held the required “public meeting” in Thousand Oaks, California.)

**Ordinance Review:** In 2017 the City of Berkeley was sued by the owners of a recently designated Landmark building. The City prevailed in court, although the decision has been appealed. The trial judge did suggest that Berkeley should clarify some terminology in the Landmarks Preservation Ordinance. The Commission's Policies and Procedures subcommittee has been working on a suggested set of revisions but this work has been interrupted by the loss of one Commissioner who was a member of the subcommittee as well as the COVID-19 crisis.

**Mills Act Fees:** The Mills Act is a State law which allows designated Landmark property owners, under City review, to re-allocate a portion of their property taxes (typically the taxes that would go to the County) to a targeted program of investment in rehabilitation of their historic property. The Commission notes that all Landmark property owners who apply for State Mills Act contracts are currently charged the same, substantial, fees by the City, regardless of size or use of the property. In some cases the fees charged may exceed the property tax benefit to the owners of smaller properties such as many single family homes, while owners of large commercial properties may reap substantial benefits. The City should consider more equitable, graduated, fee levels to permit use of the Mills Act and promote preservation, particularly by owners of limited means.

Some members of the Commission also believe that the City should place a moratorium on the granting of Mills Act applications until the city has an opportunity to study the financial impact of Mills Act applications that are already in force and assess whether from a financial standpoint Mills Acts should be continued. They believe a study should evaluate the fiscal impact on the budget of the City, the School District, and other government entities.

The process for monitoring Mills Act contracts should also be reviewed and clarified to ensure that property owners follow their obligations under the Mills Act and that the City has the means to effectively monitor the contracts. The process of acting on possible violations of Mills Act contracts is not clear to the Commission.

**Historic Districts:** Commission members and community members have periodically noted the desirability of Berkeley updating and improving its process for creating historic overlays / districts that would provide preservation safeguards for geographically and historically related groups of buildings or sites. Many other cities with good preservation programs utilize a system of historic overlays / districts for historic neighborhoods. The Commission would like to explore this issue with the Council and seek ways to create a workable historic overlay / district program.

It is particularly important to note this year that Berkeley is deficient in historic studies identifying places, neighborhoods, and themes associated with the history of People of Color in Berkeley, including the history of Berkeley's African-American community and the history of Indigenous Peoples associated with the Berkeley area. In order to redress this, the City and Commission should work towards a program of community engagement and identification of key sites associated with this under-represented area of local history and formal Landmark designation.

**Potential View Ordinance:** During discussion of the Campanile Way landmark application in 2017/18, Planning Staff suggested the Commission consider proposing a view ordinance that would specifically address the protection and preservation of historic views, particularly those that are public in nature. We again urge this work be undertaken.

**Certified Local Government Grant Application:** The State provides annual grants (recently averaging \$40,000) to Certified Local Governments to pursue specific preservation initiatives and projects, such as neighborhood surveys. For two years Berkeley was unable to apply for this grant because a source of local matching funds has not been confirmed early enough in the application process. This year the Council had, at the request of the Vice-Chair, set aside matching funds to back a grant application. The Commission was working towards an application for the 2020/21 Fiscal Year, but the work was interrupted by the COVID-19 shutdown and crisis and the filing deadline was missed. This was understandable and, in some respects, unavoidable.

Staff and Council support will be needed for preparation and submission of an application in Spring, 2021 for the 2021/22 year. To facilitate this, we recommend the Council set aside in the budget for that year an amount equal to matching funds for one of these grants (approximately \$27,000). This money would not be committed until the Council reviewed and approved a specific grant application. Some of the matching funds might also be raised by cash or in-kind contributions from community groups or associations such as Business Improvement Districts.

The proposed 2020 application theme adopted by the Commission would have focused on a study of historic resources along two of Berkeley's major commercial avenues, San Pablo Avenue and University Avenue. These are parts of Berkeley where development pressure is intense and all parties—the City, property owners, developers, businesses, and adjacent neighborhoods—would benefit from a clear identification of potential historic resources along those streets.

**Measure T-1 Properties:** Measure T-1 bond funding is affecting numerous designated City Landmark properties and potential historic resources. The Commission has established a subcommittee and good working relationship with Parks & Recreation and Public Works leadership. This year is crucial as several Landmark properties, particularly those in the Civic Center, undergo Measure T studies. It remains important that the City plan comprehensively and intelligently for the future of the Civic Center historic district and all the historic designated properties in that area, especially those that are partially vacant or in need of substantial rehabilitation (including the Veterans Memorial, Maudelle Shirek Building / City Hall, and Main Berkeley Post Office). However, we are not sure at present how Measure T-1 and the scheduling of projects will be affected by the ongoing COVID-19 and associated financial and economic crisis.

**Archaeological Resources:** We reiterate our past recommendation that the City should review and discuss currently ambiguous procedures for identification,

documentation, management and protection of historic era and pre-historic archaeological resources in Berkeley. The City should identify and review State laws pertaining to archaeological resources and ensure that the City is in compliance; otherwise, Berkeley's CLG status could be endangered. The City should also ask the State Legislature to clarify the wording of new state laws that have created ambiguities in the definition of local historic resources and needless conflict and confusion.

**Relations with Exempt Property Owners:** The Commission has continued to work with owners of properties exempt from direct City regulation (including the University of California, and Berkeley Unified School District) to bring their projects involving historic properties to the Commission for courtesy reviews and comment. This process should be continued and strengthened. It is noted that the University has not come to the Commission in the past year, despite the fact that the University has announced plans to demolish and/or purchase a number of prominent City of Berkeley Landmarks.

**Inclusion in Landmark Designation:** Earlier in 2019 the Commission approved a proposal from the Chair that the LPC hold one or more community listening sessions or workshops to hear from the public, and discuss, what types of historic resources or areas of Berkeley's architectural or cultural history are under-represented in landmark designations to date. This did not take place, and further action is understandably complicated by the ongoing COVID-19 crisis. Still, we hope to pursue some form of community engagement in the coming year.

**Processing of Landmark Appeals:** In 2018 the Commission wrote to the Council regarding the improper processing of two appeal petitions submitted to the City. Both were appeals of landmark designations submitted by parties with no standing under the BMC to make appeals of landmark designations. The Council has made no response to this letter so we reiterate the issues in this year's report.

Those who have standing under the Ordinance to make an appeal are 50 or more residents of Berkeley, the Civic Arts Commission, the Planning Commission, or the owner of the property that is under consideration for Landmark designation. This is more restrictive than the appeal process for ZAB decisions. The City Council may also independently set a landmark designation for appeal.

Relevant excerpt from the LPO:

***3.24.300 Appeals--Procedures required--City Council authority.***

*A. 1. An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.*

Despite the fact that one appeal was filed by one individual who stated he represented an Oakland-based organization and did not submit any resident petition, and the other

appeal was filed by a resident petition that was apparently not verified before acceptance, the City Clerk nonetheless accepted both appeals and the Council held public hearings and took action on them (sustaining one landmark designation, and overturning another).

We later asked the City Council to address the flawed processing of these appeals. No Council consideration was undertaken and no further information was formally received by the Commission from the Council or City staff. We renew this request. Improper processing of landmark issues endangers the City's valued CLG status with the State of California since being a Certified Local Government means, in part, that the City is expected to adhere to the rules of its preservation ordinance.

### **Commission Meetings:**

During the reporting period the Commission conducted a full schedule of monthly meetings from June 2019 through March, 2020, with the exception of a January 2020 recess. The COVID-19 crisis and Shelter in Place orders paused Commission meetings in April and May; they resumed in June in limited form.

There were eight regular Commission meetings held in the twelve month review period.

The Commission has a practice of establishing subcommittees to address some specific projects and issues. Most subcommittees have been formed to provide flexibility so a few members of the Commission with special interest or expertise in a particular building or preservation issue can go review a proposed project's details on-site, rather than having the full commission undertake the review. The subcommittee reports its actions or recommendations back to the full Commission. Subcommittee meetings are publicly noticed and open to the public. This has proved to be an effective way of evaluating project details, especially when site visits are made. Subcommittees are typically disbanded when review of a particular project is finished.

There is ambiguity of the status of subcommittees under the Shelter in Place orders. In addition, LPC staff have stated they do not have the resources to schedule or staff subcommittee meetings at this time. We ask for clarification from the City Council on whether and when subcommittees can resume operation.

### **Commission Membership:**

During the reporting period the nine member Commission saw two Commission vacancies filled by new appointees. Another long-time Commissioner was removed by their appointer and a replacement was appointed. The Commission currently has no vacancies (as of June, 2020).

The Commission once again encourages Councilmembers undertaking appointment of new Commissioners to give the current appointees the courtesy of informing them of that they are being replaced, well in advance of Commission meetings. In the two

previous reporting years there were two occasions when a long-time Commissioner has arrived at a LPC meeting ready to routinely participate, only to find a replacement appointee already seated. This practice of not informing Commissioners in advance that they have been replaced is discourteous to volunteers who have been serving the City with their time and expertise on commissions, and the responsibility rests with individual Councilmembers.

### **Landmark Initiations and Designations:**

A primary charge of the LPC is to consider and, if appropriate, designate, City of Berkeley landmarks, Structures of Merit and Historic Districts. During the past year the Commission received seven requests to designate new Landmarks.

Landmark consideration begins with “initiation” that can take place in a variety of ways including a letter from a property owner or member of the public, a petition signed by 50 or more Berkeley residents, or a request from an individual Commissioner or the Commission as a whole.

Of the five landmark initiation proposals received in 2019/20:

1. one was initiated by the property owner who also was supported by a public petition, and considered and approved for designation by the Commission;
2. two were initiated by public petition with the support of the property owners, and approved for designation by the Commission;
3. one was initiated by residents of the building and approved by the Commission without support of the property owner;
4. one was initiated by public petition, without the support of the property owner, but the property owner ultimately supported a modified form of the landmark designation;

Of the two pending landmark initiation proposals received in 2019/20:

1. one was initiated by public petition and is pending commission review;
2. one was initiated by the Commission and is pending receipt of landmark application.

As stated in our previous report for 2018-19, it should be noted that the Landmarks Commission has a long standing tradition of Commissioners researching and preparing landmark applications. This is consistent with the Commission mandate in the Landmark Preservation Ordinance that the Commission shall “*establish and maintain a list of structures, sites and areas deemed deserving of official recognition, although not yet designated as landmarks, historic districts or structures of merit, and take appropriate measures of recognition*” and also shall “*carry out, assist and collaborate in studies and programs designed to identify and evaluate structures, sites and areas worthy of preservation.*” However, during this review year no Commissioner-authored landmark applications have been submitted. One building has been initiated at the request of a Commission member.

The table below shows the number and pace of landmark designations over the past 12 years.

As we noted in our Annual Reports during the two previous years, the total designations represent only a very small fraction of total properties in Berkeley. There less than 340 designated Landmarks or Structures of Merit in Berkeley, representing only about 1 out of every 140 properties in the city. There is about one landmark, on average, for every three city blocks, although most areas of the City have less density of landmarks.

| CALENDER YEAR                             | NUMBER OF LANDMARKS DESIGNATED                    |
|-------------------------------------------|---------------------------------------------------|
| 2020                                      | 2 to date (in addition to 2 pending applications) |
| 2019                                      | 3                                                 |
| 2018                                      | 5                                                 |
| 2017                                      | 4                                                 |
| 2016                                      | 2                                                 |
| 2015                                      | 2                                                 |
| 2014                                      | 6                                                 |
| 2013                                      | 1                                                 |
| 2012                                      | 3                                                 |
| 2011                                      | 2                                                 |
| 2010                                      | 2                                                 |
| 2009                                      | 5                                                 |
| 2008                                      | 2                                                 |
| Twelve year total<br>(through June, 2019) | 39 total designations, averaging 3.25 per year.   |

### Commission Staffing:

The Planning Department assigns two planners to the LPC; one acts as Commission Secretary. Current staff are Fatema Crane (Commission Secretary) and Alison Lenci. As in the past the Commission appreciates the staff support and, in particular, the ability of the staff to maintain poise in the face of difficult and often stressful circumstances including the COVID-19 crisis, tight deadlines and complex workloads. In addition to their visible services at Commission meetings, the LPC staff do a great deal of work processing materials related to individual landmark properties.

The Commission notes once again to the Council that while the assigned level of staff support is sufficient for the Commission's basic operations, no Planning staff time is assigned to assist the Commission with initiatives beyond those basic operations. During the life of the Ordinance almost all historic research and Landmark applications have been done by Commission or community members on a volunteer basis. This means that the City of Berkeley does not really have a historic preservation *program*; instead, it only has assigned staff resources for the processing of externally generated proposals and permits for specific existing or potential historic resources. This places Berkeley in a position of being largely reactive, not proactive, on historic preservation issues, contrary to our ordinance and State expectations of CLG governments. Berkeley would and should be more engaged with historic resources through the provision of more staff time to support preservation work and initiatives beyond basic permit and application processing and reviews.

As we noted in our previous two reports, the lack of staff time for broader initiatives limits the ability of the Commission to pursue initiatives and programs called for in the Landmarks Preservation Ordinance. For example, the Landmarks Commission is given the following powers and duties by the Landmarks Preservation Ordinance. Powers and duties A, C, D, and F in particular are difficult to pursue with only the volunteer time / labor of individual Commissioners.

3.24.070 Powers and duties generally. In connection with the foregoing power and authority, the commission may:

- A. Establish and maintain a list of structures, sites and areas deemed deserving of official recognition, although not yet designated as landmarks, historic districts or structures of merit, and take appropriate measures of recognition, as more fully set forth in Section 3.24.330 below;
- B. Carry out, assist and collaborate in studies and programs designed to identify and evaluate structures, sites and areas worthy of preservation, and establish archives where pictorial evidence of the structures and their architectural plans, if any, may be preserved and maintained;
- C. Consult with and consider the ideas and recommendations of civic groups, public agencies and citizens interested in historic preservation;
- D. Inspect structures, sites and areas which it has reason to believe worthy of preservation with the permission of the owner or the owner's agent;
- E. Disseminate information to the public concerning those structures, sites and areas deemed worthy of preservation, and may encourage and advise property owners and members of the community generally in the protection, enhancement, perpetuation and use of landmarks, property in historic districts and other officially recognized



property of historical or architectural interests;

F. Consider methods other than those provided for in this chapter for encouraging and achieving historical or architectural preservation;

G. Establish such policies, rules and regulations as it deems necessary to administer and enforce this chapter, subject to the approval of the City Council. (Ord. 5686-NS § 1 (part), 1985; Ord. 4694-NS § 2(i), 1974)

### **Summary of details of Commission Actions during Reporting Period**

The Commission took these specific actions during the reporting year.

#### **Landmark Nominations Approved:**

- 1399 Queens Road (mid-century Modern hillside cottage)
- 2043 Lincoln Street (1880s Victorian house, residence of two notable early Berkeley families)
- 1440 Hawthorne Terrace (Marsh House) (designed by notable architect and part of “family compound” with 1450 Hawthorne Terrace.)
- 1450 Hawthorne Terrace (Sperry-McLaughlin House) (designed by notable architect, residence of two families important in national environmental / conservation history)
- 1619 Walnut (Las Casitas Apartment Building) (unusual 1920s apartment building with many period architectural details.)

#### **Landmark Nominations Received and in process of review:**

- 2328 Channing (Luttrell House). (19th century Victorian, rare survivor in College Homestead Tract.)
- 2300 Ellsworth (1920s commercial building designed by notable local firm and almost entirely intact on exterior).

#### **Mills Act Contracts for Landmark properties Reviewed / Recommended to Council:**

- 1730 Spruce Street (The Lording House)
- 2524 Dwight Way (The Stuart House)
- 2526 Hawthorne Terrace (Blood Residences)

#### **Demolition referrals of buildings over 40 years old:**

Considered and took no action to initiate these buildings for any further landmark consideration:

- 3000-3006 San Pablo / Ashby
- 2590 Bancroft
- 2650 Telegraph
- 2000 Dwight (six buildings)
- 2099 M.L. King, Jr. Way
- 999 Anthony Street
- 910 Ashby

- 1035 Heinz Avenue

**Signage or other exterior alteration reviews on Landmark structures:**

2133 University Avenue (signage for Acheson Commons complex).  
2018-30 University Avenue (UC Theater. Alterations to storefronts).  
1911 Fourth Street (Spenger's Fish Grotto. Alterations).  
1120 Second Street (wireless / telecommunications installation)  
2234 Haste (alterations to rear residence of two-building landmark property)  
1581 Le Roy Avenue (Hillside School)  
2200 Piedmont Avenue (access alterations to front approaches to International House across public right of way)  
Final Design Review: 2211 Harold War (item was continued, then application was later withdrawn so no final commission action.)

**Courtesy reviews of projects at historic resources exempt from LPC oversight:**

- none.

**Other reviews and actions:**

- Had Measure T-1 update from City Staff.
- Approved annual Certified Local Government (CLG) report prepared by Commission staff.
- Added to Potential Initiations list, 1631-33 Walnut Street.
- Reviewed Adeline Corridor Specific Plan.
- Commented on Section 106 review: 1601 Oxford Street and 2012 Berkeley Way.
- Reviewed programmatic agreement with the State Historic Resources Commission on Health, Housing and Community Service referral.
- Appointed Commission member to participate in Shattuck Avenue Naming Advisory Committee.

| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                          |
|-------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| Scheduled Dates                                                               |                                                                          |
| Sept. 29                                                                      | 1. Vision 2050                                                           |
| Oct. 20                                                                       | 1. Update: Berkeley's 2020 Vision<br>2. Undergrounding Task Force Update |
| Jan. 12                                                                       | 1. Update: Zero Waste Priorities<br>2.                                   |
| Feb. 16                                                                       | 1. BMASP/Berkeley Pier-WETA Ferry<br>2.                                  |
| March 16                                                                      | 1.<br>2.                                                                 |

| Unscheduled Workshops                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> <li>2. Presentation from StopWaste on SB 1383</li> <li>3. Berkeley Police Department Hiring Practices (referred by the Public Safety Committee)</li> </ol> |

| Unscheduled Presentations (City Manager)                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Systems Realignment</li> <li>2. Digital Strategic Plan/FUND\$ Replacement/Website Update</li> </ol> |

|    | <b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <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) (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<br/> Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140<br/> <i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>                                                                                                                                                                                                                                                                                                                                                                                        |
| 2. | <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) (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<br/> Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140<br/> <i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p> |
| 3. | <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<br/> Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000<br/> <i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 4. | <p><b>Vote of No Confidence in the Police Chief</b></p> <p><b>From: Councilmember Davila (Author)</b></p> <p><b>Recommendation:</b> Adopt a resolution taking a Vote of No Confidence in the Police Chief.</p> <p><b>Financial Implications:</b> See report<br/> Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120<br/> <i>Note: Item referred to the Agenda &amp; Rules Committee as unfinished business from the 9/15/2020 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 11/14/20.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

| CITY CLERK DEPARTMENT                                                       |                      |                       |                                         |                   |
|-----------------------------------------------------------------------------|----------------------|-----------------------|-----------------------------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br>BEFORE THE CITY COUNCIL |                      |                       |                                         |                   |
| Address                                                                     | Board/<br>Commission | Appeal Period<br>Ends | Determination<br>on Appeal<br>Submitted | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                                            |                      |                       |                                         |                   |
| 1229 Neilson St (single-family dwelling)                                    | ZAB                  | 9/29/2020             |                                         |                   |
| 2000 Dwight Way (construct Community Care Facility)                         | ZAB                  | 9/29/2020             |                                         |                   |
| 2523-2525 Tenth St (legalize dwelling unit)                                 | ZAB                  | 9/29/2020             |                                         |                   |
| 12 Indian Rock Path (single-family residence)                               | ZAB                  | 10/6/2020             |                                         |                   |
| <b>Public Hearings Scheduled</b>                                            |                      |                       |                                         |                   |
| 1346 Ordway St (legalize additions)                                         | ZAB                  |                       |                                         | 10/13/2020        |
| 0 (2435) San Pablo Ave (construct mixed-use building)                       | ZAB                  |                       |                                         | TBD               |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                                         |                   |
| <b>Notes</b>                                                                |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |

9/22/2020





Office of the City Manager

May 6, 2020

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Subject: **Resumption of certain Board and Commission meetings**

As you are aware, on March 12, 2020, I directed that most board and commission meetings be suspended for at least 60 days in order to help minimize the spread of COVID-19. Exceptions can be made if a board or commission has time-sensitive, legally mandated business to complete, subject to approval by the City Manager and Health Officer. On April 13, 2020, the City Council Agenda & Rules Committee recommended that this action remain in effect until it is determined by the City Manager, as the Director of Emergency Services, and the Health Officer that conditions are appropriate to resume meetings, while maintaining the health and safety of the community.

The purpose of this memo is to notify you that as of today, the Health Officer and I are authorizing certain board and commission meetings to resume with a virtual meeting format. In-person board/commission meetings are not authorized until further notice. Board/commission meetings will be held via Zoom, similar to the format being used by the City Council and City Council policy committees that have resumed meetings during the Shelter-in-Place Order.

Resuming certain board/commission meetings is necessary at this time to enable action on a range of time-sensitive issues. Examples include pending land use permit applications (some of which carry legal mandates for action within set time frames), land use policy efforts which are time-sensitive to address the acute housing crisis, and input required for pending tax decisions, such as to the Disaster and Fire Safety Commission regarding tax rates under Measure GG.

Board and commission meetings will be scheduled with enough lead time to allow agendas to be finalized, applicants and interested parties to be contacted, and public hearing notices to be posted. Staff are contacting board members/commissioners to let them know that certain boards/commissions are resuming. Members of the public may also reach out to commission secretaries (contact information is included on each commission webpage) to inquire about dates of future board/commission meetings.

Depending on the board/commission, initial virtual meetings will be scheduled in late May and June. Some commission meetings will take longer than others to schedule, as some of the same staff who are responsible for preparing commission meeting packets and notices are also serving as Disaster Service Workers. We appreciate everyone's patience as we move forward with next steps.

Boards/commissions that are authorized to resume meeting remotely are:

- Ashby and North Berkeley BART Station Zoning Standards Community Advisory Group
- Design Review Committee
- Disaster & Fire Safety Commission
- Fair Campaign Practices Commission
- Homeless Services Panel of Experts
- Housing Advisory Commission (limited to quasi-judicial activities)
- Joint Subcommittee on the Implementation of State Housing Laws
- Landmarks Preservation Commission
- Open Government Commission
- Personnel Board
- Planning Commission
- Police Review Commission
- Zoning Adjustments Board

I will consider authorizing additional boards/commissions to resume meeting on a case-by-case basis.

Web-based platforms allow board members/commissioners, staff, applicants, and members of the public to participate from their respective shelter-in-place locations. Commissioners who do not have access to a computer or internet will be provided with hard copies of all materials and can participate via phone.

Departments are organizing training on online meeting facilitation for staff and commission chairs, and we will hold practice runs to test out the technology.

Please contact me directly with any questions or concerns.

cc: Senior Leadership Team



RESOLUTION NO. 69,331-N.S.

RATIFYING THE RECOMMENDATIONS ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES AND THE PUBLIC HEALTH OFFICER REGARDING MEETINGS OF BERKELEY LEGISLATIVE BODIES IN RESPONSE TO THE COVID-19 (NOVEL CORONAVIRUS) PANDEMIC

WHEREAS, on March 3, 2020, pursuant to Berkeley Municipal Code section 2.88.040, the City Manager, serving as the Director of Emergency Services, proclaimed the existence of a local emergency; and

WHEREAS, the proclamation was warranted by virtue of the extreme peril to the safety of persons and property in the City caused by pandemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus ("COVID-19"), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, the proclamation of the Director of Emergency Services was ratified by the City Council on March 10, 2020; and

WHEREAS, the continued spread of COVID-19 and increase in community transmission cases in surrounding counties warrant further measures be taken by the City to protect the community; and

WHEREAS, the Public Health Officer has issued guidelines for limiting mass gatherings; and

WHEREAS, certain limitations on the meetings of legislative bodies in the City of Berkeley is warranted; and

WHEREAS, the continued essential functions of the City and certain legislative bodies must continue for time-sensitive, legally mandated actions; and

WHEREAS, the Director of Emergency Services presented recommendations to the Agenda & Rules Committee on March 12, 2020 regarding the meetings of legislative bodies; and

WHEREAS, the Agenda & Rules Committee recommended that said recommendations be forwarded to the City Council for acknowledgement and ratification.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following recommendations issued by the Director of Emergency Services and the Public Health Officer regarding limitations and practices for legislative bodies of the City of Berkeley are hereby acknowledged and ratified:

## Section 1. Boards and Commissions

Commissions listed below may continue to meet only if they have time-sensitive, legally mandated business to complete, as determined by the Director of Emergency Services. The City may consider teleconferencing for these commissions, if feasible.

Design Review Committee  
Fair Campaign Practices Commission  
Housing Advisory Commission (limited to quasi-judicial activities)  
Joint Subcommittee on the Implementation of State Housing Laws  
Landmarks Preservation Commission  
Open Government Commission  
Personnel Board  
Planning Commission  
Police Review Commission  
Zoning Adjustments Board

Commissions in Category B shall not meet for a period of 60 days. This will be re-evaluated at the Agenda & Rules Committee meeting on April 13, 2020. A Commission in Category B may convene a meeting if it has time-sensitive, legally-mandated business to complete, as determined by the Director of Emergency Services.

### Category B

Animal Care Commission  
Cannabis Commission  
Civic Arts Commission  
Children, Youth, and Recreation Commission  
Commission on Aging  
Commission on Disability  
Commission on Labor  
Commission on the Status of Women  
Community Environmental Advisory Commission  
Community Health Commission  
Disaster and Fire Safety Commission  
Elmwood Business Improvement District Advisory Board  
Energy Commission  
Homeless Commission  
Homeless Services Panel of Experts  
Housing Advisory Commission  
Human Welfare and Community Action Commission  
Measure O Bond Oversight Committee  
Mental Health Commission  
Parks and Waterfront Commission  
Peace and Justice Commission  
Public Works Commission  
Solano Avenue Business Improvement District Advisory Board  
Sugar-Sweetened Beverage Product Panel of Experts

Transportation Commission  
Youth Commission  
Zero Waste Commission  
Loan Administration Board

Section 2. City Council Policy Committees

The Agenda & Rules Committee and the Budget & Finance Committee may continue to meet to fulfill their legislative and advisory responsibilities. All other Policy Committees (Facilities, Infrastructure, Transportation, Environment & Sustainability, Public Safety, Land Use, Housing & Economic Development, and Health, Life Enrichment Equity & Community) are suspended indefinitely. The 120-day deadline to consider an item will be tolled during the suspension of business.

Section 3. City Council


For City Council meetings, the City will continue to advise and implement social distancing by limiting the capacity of the Council Chambers, providing an overflow room, attempting to limit the duration of the meeting, only conducting essential business, and limiting or suspending ceremonial items. The City will adhere to and implement the provisions of the Governor's Executive Order #N-25-20 related to the Brown Act and the utilization of technology to facilitate participation.

The foregoing Resolution was adopted by the Berkeley City Council on March 17, 2020 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numalville, City Clerk





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.

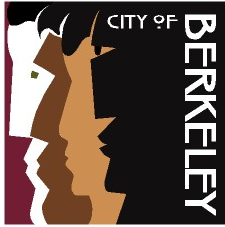
**RATIONALE FOR RECOMMENDATION**

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.



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

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

**Meeting Date:** February 4, 2020

**Item Number:** 2

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

**Submitted by:** Councilmember Hahn

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

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



**SOPHIE HAHN**

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

ACTION CALENDAR

February 4, 2020

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

RECOMMENDATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

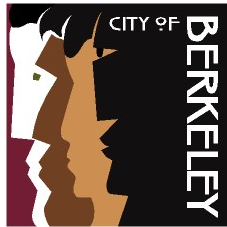
By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of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

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

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

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



Fair Campaign Practices Commission

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

**Meeting Date:** February 4, 2020

**Item Number:** 2

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

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

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





Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

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

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

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

CONCLUSION:

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

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

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

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.

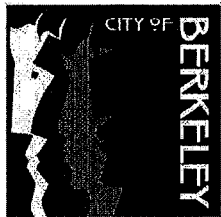
However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since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

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

Attachment

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



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

## MEMORANDUM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

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

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

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

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

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

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

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

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

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

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

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

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

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

### A. Authorized Activities.

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

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

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

### B. Unauthorized Expenses

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

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

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

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

**C. Particular Types of Authorized Expenditures Defined**

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

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

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

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

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

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

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

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

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

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

**F. Audits of Expense Reports**

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

**G. Reports**

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

**H. Compliance with Laws**

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

**I. Violation of This Policy**

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

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

\*\*\*\*\*

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

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

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

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#### **PURPOSE**

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

#### **POLICY**

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

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

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

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

### PROCEDURE

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

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

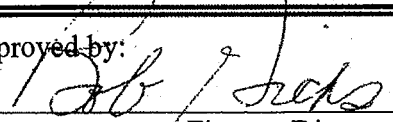
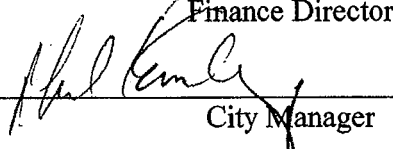
### DEFINITIONS

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

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

**Attachments:**

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

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

ATTACHMENT 1

ORDINANCE NO. 6,875-N.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

\*\*\*\*\*

ATTACHMENT 2

ORDINANCE NO: 7,035-N.S.

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

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

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

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

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

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

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

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

Noes: Spring and Worthington.

Absent: None.

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

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

Noes: Spring and Worthington.

Absent: None.

ATTEST: [Signature] Deanna Despain, Deputy City Clerk

[Signature] Tom Bates, Mayor

Date signed: [Signature]

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**

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## PURPOSE

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

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

## POLICY

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

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## I. APPROVALS

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

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

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

## II. EXPENDITURES BASICS

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

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

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

In addition:

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

See item V. Advance Payments and Reconciliation.

### III. ALLOWABLE EXPENSES

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

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



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

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

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

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

#### IV. PAYMENTS BY CHECK USING A PURCHASE ORDER

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

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

#### V. ADVANCE PAYMENTS & RECONCILIATION

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

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In addition:

- Registration or meals, and other transportation expenses may not be advanced to any employee.
- Advances to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- Departments must maintain a Tracking Worksheet that documents employees' advance requests and reconciliations. These Worksheets must be submitted to the Auditor's Office by the 10<sup>th</sup> working day of each calendar quarter (January, April, July, October), along with copies of correspondence to those employees who have advance reconciliations outstanding. The Auditor's Office will review departmental travel advance worksheets on a sample basis.
- If an advance is issued to an employee and the employee does not attend the event, whether due to personal circumstances, the event being cancelled, or the City intervened to cancel the employee's attendance, the employee must seek recovery of charges and remit the full refunded amount to the City.

**A. Requesting an Advance**

1. Requests for an advance must be submitted to Finance – Accounts Payable at least 10 working days before the event start date. Employees are expected to familiarize themselves with any additional internal deadlines or procedures their departments may require.
2. Requests for an advance must include:
3. Approved Attendance and Travel Request, with documentation showing dates and time, and rates offered for travel and accommodations, including meals provided with the event.
4. Completed FN-024 Payment Voucher (current version on Groupware) with required signatures of approval and all specified back-up documentation. See AR 3.14 for details.

**B. Reconciling an Advance**

1. Each travel advance must be reconciled before an employee can request another; employees are not eligible for multiple advances.
2. Attendance must be documented in the form of a receipt, sign in sheet, or certificate of attendance.
3. Employees must submit a Statement of Expense and receipts to appropriate department staff within 60 calendar days of conclusion of the event (30 days for Council/Commission, unless revised). Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred. If an employee fails to reconcile an advance within this timeframe, the City may take disciplinary action.

4. When an advance exceeds the expenses incurred, the employee is responsible for paying the difference by cash or check payable to the City of Berkeley for the balance at the time of reconciliation. Payment is submitted to the City Treasury and a copy of the CR edit report must be attached to the employee's Statement of Expense, in addition to all required original receipts.
5. When an advance is less than the expenses incurred, departments submit an FN-024 Payment Voucher payable to the employee for the difference, along with the employee's Statement of Expense and original receipts for expenses incurred.

## VI. EXPENSE REIMBURSEMENT

See Allowable Expenses, above, for expenses that qualify for reimbursement, and the acceptable rates and limitations for those expenses. To obtain reimbursement of approved expenses incurred:

- A. Employees must submit a completed FN-024 Payment Voucher, and Statement of Expense, and receipts to appropriate department staff within 60 calendar days after conclusion of the event. Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred.
- B. Reimbursements to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- C. Tips, except where documented, are not reimbursable.
- D. Reimbursements are processed by FN-024 Payment Voucher (see AR 3.14) and must include:
  1. Authorized signature/s (see AR 3.12).
  2. Attendance and Travel Request approved by Supervisor &/or Department Director.
  3. Documentation of attendance at the event or meeting (receipt, certificate, sign-in sheet).
  4. Statement of Expense, completed with all required original receipts.
  5. Auto Record for Mileage Reimbursement, if use of a private vehicle was authorized (see AR 7.2 for details and instructions) and these are the only expenses for reimbursement associated with the event.

## VII. OTHER EXCEPTIONS

Any exception not already identified within other sections of this AR must be submitted to, and approved by the employee's Department Director. For Mayor, Council, Legislative Assistants, Rent Stabilization Board or Board of Library Trustees, exceptions must be approved as set forth in the appropriate Resolution.

Employees may request an exception to the reimbursement rules when original receipts, or other proof of payment such as a canceled check, cannot be provided to verify expenses. The Supervisor and Department Director (or designee) must approve requests for an exception that require the "Approval of Payment Exception" portion of the Statement of Expense and state the necessity for the exception. In addition, the Finance Director must also approve any payment exceptions.

**VIII. DEFINITIONS** (related to Attendance at Conferences, Workshops, Training, Seminars, Meetings)

**Advance:** Payment to an employee with an approved Attendance & Travel Request to purchase air/train travel and qualifying lodging reservations and incur expenses associated with attending the forthcoming event or meeting. See procedures for Requesting an Advance, and Reconciling an Advance.

**Event: Conference:** A gathering of persons associated with a professional, membership or support organization for discussing matters of common concern, which may include presentations, programs and exhibits related to municipal government &/or related functions.

**Event: Workshop, Training Session, or Seminar:** A usually brief intensive educational program for a relatively small group of people that focuses on techniques and skills in a particular field.

**Meeting: Non-Routine Meeting:** A formally arranged gathering for a common purpose that the City will derive a specific benefit from staff attendance.

**Meeting: Routine or Recurring Meeting:** A gathering that occurs in predictable intervals for a common purpose, where attendance is part of the employee's usual role and responsibilities.

**Overnight Stay:** Out-of-town accommodations (room and specified meals) required for an employee to attend an approved event or eligible meeting (see Allowable Expenses for details).

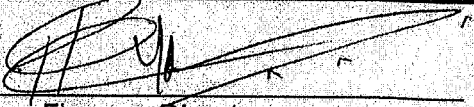
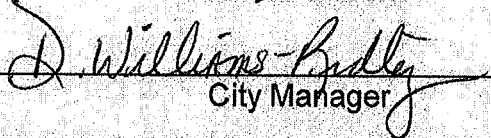
**Payment Documentation:** Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original receipts, cancelled checks (copies of front and back), proof of credit card charge and payment (receipt and copy of statement), and printed online payment confirmation with name and amount. Photocopies of receipts are not acceptable.

**Point of Origin:** Location, if other than Worksite, from which authorized travel may originate or to which travel may conclude, related to attendance at an approved event and calculation of expenses for reimbursement.

**Worksite:** Main office or work location where an employee usually performs her/his regular job duties with the City of Berkeley.

**IX. ATTACHMENTS/LINKS**

- A. Classifications NOT eligible for advances
- B. Resolution 66,295 (Mayor/Council Departments)
- C. Resolution 63,413 (Rent Board/Library Trustees)
- D. Attendance & Travel Request
- E. Statement of Expense
- F. AR 7.2 Use of Private Vehicles & Mileage Reimbursement
- G. Auto Record for Mileage Reimbursement
- H. FN-024 Payment Voucher

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

## Attachment A

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

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



RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

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

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

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

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

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

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

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

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

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

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

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

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

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

### A. Authorized Activities.

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

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

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

### B. Unauthorized Expenses

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

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

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

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

**C. Particular Types of Authorized Expenditures Defined**

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

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

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

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

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

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

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

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

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

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

**F. Audits of Expense Reports**

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

**G. Reports**

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

**H. Compliance with Laws**

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

**I. Violation of This Policy**

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

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

\*\*\*\*\*

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

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

Noes: None.

Absent: None.

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

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

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

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

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

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

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

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

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

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

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

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

Table 1.

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

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



RESOLUTION NO. 63,413-N.S.

ESTABLISHING TRAVEL AND TRAINING REIMBURSEMENT POLICY FOR  
BOARD AND COMMISSION MEMBERS

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

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

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

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

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

**TRAVEL AND TRAINING REIMBURSEMENT FOR BOARDS/COMMISSIONS**

**A. Authorized Activities.**

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

**B. Unauthorized Expenses**

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

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

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

**C. Particular Types of Authorized Expenditures Defined**

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

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


6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business which reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question. Travelers must request government rates, when available. In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the IRS per diem rates for a given area are presumed reasonable and hence reimbursable.
8. **Meals.** Meal expenses and associated gratuities should be moderate, taking into account community standards and the prevailing restaurant costs of the area. A helpful source of guidance is Internal Revenue Service per diem rates for meals and incidental expenses, which include adjustments for higher costs locations (*see* Publication 1542 at [www.irs.gov](http://www.irs.gov) or [www.policyworks.gov/perdiem](http://www.policyworks.gov/perdiem)).
9. **Telephone/Fax/Cellular.** Officials will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.

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

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

Noes: None.

Absent: None.

Attest:   
Sherry M. Kelly, City Clerk

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

CITY OF BERKELEY  
ADMINISTRATIVE REGULATIONS

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

**SUBJECT: FN-024 Voucher Processing**

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**PURPOSE**

This AR establishes criteria and procedures for payments using an FN-024.

**POLICY**

It is the policy of the City Manager that an FN-024 Payment Vouchers (see Groupware – Finance) is limited to making payments for the following purposes.

- A. City Employees, Mayor and Councilmembers, Commissioners<sup>1</sup>, or Library Trustees:
1. Employee travel advances and reimbursements (see AR 3.9 and forms in Groupware – Finance)
  2. Employee reimbursements for authorized use of a private vehicle (see AR 7.2 &/or AR 3.19 in process and form Auto Record for Mileage Reimbursement published in Groupware – Finance)
  3. Mayor and Council reimbursement for authorized expenses<sup>2</sup> (see Resolution 63,412-NS)
  4. Commissioner and Library Trustee<sup>3</sup> payments<sup>Note</sup> (see AR 3.2 for eligibility criteria; and Resolution 63,413-NS)
- B. Refunds
- C. Other Designated Payments:
1. State and Federal taxes
  2. Loan repayment
  3. Various payments associated with payroll and employee benefits
  4. Certain 1-time miscellaneous items under \$5,000
  5. Police Department Special Enforcement Unit Cash Fund (Special Investigative Bureau/SIB)\*

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<sup>1</sup> “Commissioner” includes Rent Stabilization Board Commissioners for reimbursements or other approved payments.

<sup>2</sup> Requires review by the City Auditor; SIB reimbursement payment also requires approval by City Auditor.

<sup>3</sup> These payments to Commissioners (not including Rent Board) and Library Trustees, are for “... authorized payment in lieu of expenses to members of all Council-appointed boards, commissions, committees, task forces and joint subcommittees who meet certain criteria ...” See AR 3.2 for complete details.

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All other goods and services, including subscriptions and membership dues, must be paid by Purchase Order (see AR 3.4 and the online Purchasing Manual). The Director of Finance must approve any exceptions before purchases are made on behalf of the City.

See AR 3.3, Petty Cash Accounts and forms in Groupware – Finance, for reimbursement for purchases \$50 and under.

### **PROCEDURE**

These steps take you through how to make correct entries and complete an FN-024 Payment Voucher; note that WORDS PRINTED LIKE THIS designate a field for your entries on the Voucher form.

- FN-024 Payments
- Payments to City Employees, Elected Officials, or Qualifying Commissioners
- Payments for Refunds
- Other Designated Payments
- Additional Instructions for all FN-024 Payment Vouchers
- Check Printing & Disbursement
- Related items on Groupware – Finance

### **FN-024 Payments**

Use FUNDS\$ GMBA Master Inquiry [FUNDS\$ > 7 > 1 > 2] to confirm all vendor information, including the designated Name on Checks field displayed at the bottom of the FUNDS\$ screen.

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

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

#### **A. Vendor Information**

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

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

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

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

### Payments for Refunds

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

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<sup>4</sup> Including members of the Rent Stabilization Board for reimbursements or other approved payments.

2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for refund is being made.

C. Invoice Information

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

**Other Designated Payments** (see list under Policy on 1<sup>st</sup> page)

A. Vendor Information

**FIRST** – For all FN-024 Payments: follow instructions for the initial procedure, above. Then:

1. VENDOR NAME: enter the payee name as it appears in FUNDS\$ GMBA Master Inquiry.
2. VENDOR NO.: enter the vendor # as it appears in FUNDS\$ GMBA Master Inquiry.
3. ADDRESS: when correct information is confirmed or corrected in GMBA, this can be blank.

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

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

C. Invoice Information

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

**Additional Instructions for all FN-024 Payment Vouchers**

A. Account Codes & Project Code

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

B. Authorized Signatures

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

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

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

### **Check Printing & Disbursement**



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



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**EXCEPTIONS**

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

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

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**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.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

### **Recommendation**

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. ([Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10](#))

#### **Part 8 - OFFICEHOLDER ACCOUNTS**

##### **12.06.810 - Officeholder account prohibited.**

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

#### **2.12.157 Officeholder Account**

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

#### **2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

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

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

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

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

#### ALTERNATIVE ACTIONS CONSIDERED

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

#### CITY MANAGER

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

#### CONTACT PERSON

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

#### Attachments:

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

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

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

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

**BMC 2.12.157 Officeholder account**

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

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

**BMC 2.12.441 Officeholder account prohibited**

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

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




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## GOVERNMENT CODE - GOV

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

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

### ARTICLE 3. Contribution Limitations [85300 - 85321]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 18531.62. Elected State Officeholder Bank Accounts.**

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

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

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

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

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

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

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

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

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

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

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

(d) Prohibitions:

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

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

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

(e) Contributions to the Officeholder Account:

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

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

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

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

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

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

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

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

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

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

(f) Contributions Over the Limits:

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

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

(g) Terminating Officeholder Accounts and Committees.

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

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

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

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

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

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

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

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

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

**HISTORY**

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



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

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

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

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

CONCLUSION:

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

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.



Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE.1. and IILG.

CCM

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

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 30, 2020**.

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

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

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

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

Mark Numainville, City Clerk



Open Government Commission

ACTION CALENDAR
September 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Open Government Commission
 Submitted by: Brad Smith, Chair, Open Government Commission
 Subject: Relinquishments and grants from Councilmembers' office budgets

RECOMMENDATION

Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

FISCAL IMPACT OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The issue of D-13 accounts (Council Budget Funds) being used for purposes other than office expenses has been raised at the OGC. While commission members agree that it is admirable to donate to organizations that serve the City, some members feel the practice of using office budget funds for this purpose and attaching individual Councilmembers' names to the donation may provide unfair advantage to an incumbent.

The two main concerns identified by some commissioners with the current practice are:

1. Councilmembers are able to initiate grants to organizations, at their discretion, which may raise their public profile.
2. Attaching the name of a Councilmember to a grant from the City of Berkeley may confer an advantage for the incumbent over would-be challengers.

The current practice was established in the early 2000's because councilmembers were granting public money to individuals and organizations, without approval of the Council.

This led to a concern about the potential for corruption and favoritism. The City Attorney established the existing system, though because the councilmembers' names are attached to the grants, some concern remains.

From recent discussion at OGC, commissioners are in general agreement that ending the practice of attaching the name of a councilmember to a grant will help to alleviate the main concerns: 1 & 2 above. At the OGC's April 23, 2020 meeting, commissioners unanimously approved forwarding a recommendation to Council to not include the name of an individual councilmember attached to a discretionary grant.

A review of the grants and relinquishment of funds from city council members for 2019 amounts to \$30,130. These are funds that could have been used for office, travel (on city business) and other expenses.

Commission members have discussed recommending to Council for consideration options to address the issue:

1. An amendment requiring that all disbursements from the General Fund be designated as coming from the Council as a whole, without individual names attached to the donations.
2. Create another account specifically for discretionary grants, without reducing the D-13 account budget, to allow Councilmembers to continue recommending a grant or donation to a particular organization, without an individual name attached to the donation.
3. Eliminate discretionary grants.

BACKGROUND

On May 21, 2020, the OGC directed four of its members to draft a proposed recommendation to Council related to relinquishment of Councilmembers' office budget funds.

On June 18, 2020, the OGC voted to present this recommendation to Council.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

RATIONALE FOR RECOMMENDATION

An advisory committee will enable collaborative discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

ALTERNATIVE ACTIONS CONSIDERED

The OGC has discussed recommending removal of councilmember names from office budget relinquishments, banning relinquishments for grants to organizations, and

creating and funding a separate account for donations to organizations that Council would control, but which would not have councilmember names attached to it.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Brad Smith, Chair, Open Government Commission

Attachments:

1: Resolution

RESOLUTION NO. –N.S.

RESOLUTION CREATING A TEMPORARY JOINT ADVISORY COMMITTEE TO
REVIEW COUNCIL OFFICE BUDGET RELINQUISHMENTS AND GRANTS

WHEREAS, pursuant to Berkeley Municipal Code § 2.06.190.A.2, the Open Government Commission (“OGC” or “Commission”) may “advise the City Council as to any . . . action or policy that it deems advisable to enhance open and effective government in Berkeley”; and

WHEREAS, while Commission members agree that it is admirable to donate to organizations that serve the City, some members feel the practice of using office budget funds for this purpose and attaching individual Councilmembers’ names to the donation may raise the public profile of a Councilmember and provide unfair advantage to an incumbent; and

WHEREAS, the Commission has expressed a desire to work collaboratively with the City Council to consider recommendations governing grants made from relinquishments of funds from Councilmembers’ office budgets.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that a temporary joint advisory committee consisting of three (3) members of the City Council and three (3) members of the Open Government Commission is hereby created to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers’ office budgets.

BE IT FURTHER RESOLVED that the City Council and the Open Government Commission each shall, as soon as practicable and by majority vote, appoint three members to the committee created by this resolution.

BE IT FUTHER RESOLVED that the committee created by this resolution shall hold its first meeting within 60 days of passage of this resolution and at that first meeting shall determine the need for any subsequent meetings and shall adopt a schedule for any such subsequent meetings.