



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

MONDAY, NOVEMBER 30, 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/82887417316>. 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 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **828 8741 7316**. 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: November 16, 2020**
- 2. Review and Approve Draft Agenda:**
 - a. 12/15/20 – 6:00 p.m. Regular City Council Meeting
- 3. Selection of Item for the Berkeley Considers Online Engagement Portal**
- 4. Adjournments In Memory**

Scheduling

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

Referred Items for Review

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

Referred Items for Review

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: March 1, 2021

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

Referred Items for Review

10. **Implement Protocols for managing the City Council Meetings on Zoom**

From: Councilmember Davila (Author) *(Item contains revised material)*

Referred: October 26, 2020

Due: March 29, 2021

Recommendation: Adopt a Resolution with the following actions:

1. Implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures:
 - A. Gallery view showing the list of all participants and attendees.
 - B. Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking.
 - C. Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded;
 - D. The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order.
 - E. Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off;
 - F. Allow chat and reactions capabilities for attendees and participants.
 - G. The chat should be saved and part of the public record.
 - H. When the Mayor or a Councilmember speak, the timer shall be displayed. The timer countdown shall start when the Mayor or a Councilmember starts speaking, and shall be notified their time has exceeded the allotted time; but will stop when the Mayor or a Councilmember stops speaking. In the event of technical difficulties, the timer will stop and will resume when the Mayor or Councilmember resumes speaking.
2. Designate a third party community organization to host and manage the meeting with neutrality.

Financial Implications: See report

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

Unscheduled Items

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

- 11. 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
- 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

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment – Next Meeting Monday, January 4, 2021

~~~~~

### 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 November 25, 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**

**MONDAY, NOVEMBER 16, 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/82045200899>. 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 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **820 4520 0899**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

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

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

**Public Comment** – 4 speakers

## **Review of Agendas**

**1. Approval of Minutes: November 2, 2020**

**Action:** M/S/C (Wengraf/Hahn) to approve the minutes of 11/2/2020.

**Vote:** All Ayes.

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

a. 12/1/20 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Wengraf/Arreguin) to approve the agenda of 12/1/2020 with the changes noted below.

- *Ceremonial Item: Recognition of Outgoing Councilmembers*
- *Ceremonial Item: Recognition of Pam Grossman, Berkeley Volunteer*
- *Item Added: Street Lighting (Kesarwani) – Mayor Arreguin and Councilmember Bartlett added as co-sponsors*
- *Item Added: T1 Loan (City Manager)*
- *Item Added: Cazadero Lease Ordinance (City Manager)*
- *Item 10 Measure T1 (City Manager) – removed from the agenda by City Manager*
- *Item 19 Endorsement of Ballot Measure (Wengraf) – Vice-Mayor Hahn added as co-sponsor*
- *Item 22 Nuclear Weapons (Arreguin) – Scheduled for 12/1/20 Consent Calendar; Councilmembers Hahn and Wengraf added as co-sponsors*
- *Item 23 Food Delivery Services (Kesarwani) – Revised item submitted; scheduled for 12/1/20 Consent Calendar; Councilmember Hahn added as a co-sponsor*
- *Item 24 Adopt an Unhoused Community (Davila) – Councilmember Harrison added as a co-sponsor; referred to Health, Life Enrichment, Equity & Community Committee*
- *Item 25 Property Deed Covenants (Davila) - Scheduled for 12/1/20 Consent Calendar; Councilmembers Kesarwani and Harrison added as co-sponsors*
- *Item 26 Personal Liability (Hahn) - Scheduled for 12/1/20 Consent Calendar; Councilmember Wengraf added as a co-sponsor*
- *Item 27 School Renaming (Hahn) - Scheduled for 12/1/20 Consent Calendar; revised recommendation*
- *Item 28 Commission Stipends (Robinson) - Scheduled for 12/1/20 Consent Calendar*
- *Item 30 Measure T1 Update (City Manager) – Item removed by the City Manager*

**Vote:** All Ayes.

### Order of Items on the Action Calendar

Item 21 Fee Increases

Item 20 Zoning Ordinance

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

- None selected

**4. Adjournments In Memory**

- Dr. Steven Rader, Berkeley Resident



## Scheduling

### 5. Council Worksessions Schedule

- Cancelled the January 12, 2021 Worksession. Requested staff to poll the Council for January 19, 2021 at 4:00 p.m.

### 6. Council Referrals to Agenda Committee for Scheduling

- Item 3 Security Cameras (Kesarwani) – item withdrawn by author
- Item 4 Gun Buyback (Kesarwani) – scheduled for 12/1 Consent Calendar
- Item 6 Surveillance Technology Report (City Manager) – scheduled for 12/1 Consent Calendar

**Action:** M/S/C (Arreguin/Hahn) to schedule Item 4 and Item 6 for the 12/1/2020 Consent Calendar.

**Vote:** All Ayes.

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

## Referred Items for Review

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

**Action:** 3 speakers. Discussion held.

## Referred Items for Review

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

**Action:** Scheduled for Action Calendar at next meeting. M/S/C (Arreguin/Wengraf) to extend the deadline for Item 9 to March 1, 2021 at the request of the Author.

**Vote:** All Ayes.

## Referred Items for Review

### 10. **Implement Protocols for managing the City Council Meetings on Zoom**

**From: Councilmember Davila (Author)**

**Referred: October 26, 2020**

**Due: March 29, 2021**

**Recommendation:** Adopt a Resolution with the following actions:

1. Implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures: A) Gallery view showing the list of all participants and attendees; B) Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking; C) Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded; D) The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order; E) Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off; F) Allow chat and reactions capabilities for attendees and participants; G) The chat should be saved and part of the public record.

2. Designate a third party community organization to host and manage the meeting with neutrality.

**Financial Implications:** See report

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

**Action:** Revised item submitted. Scheduled for Action Calendar at next meeting.

## Unscheduled Items

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

### 11. **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

**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

## Items for Future Agendas

- None

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 3:50 p.m.

~~~~~  
I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on November 16, 2020.

Mark Numainville
City Clerk

Communications

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

DRAFT AGENDA



BERKELEY CITY COUNCIL MEETING

Tuesday, December 15, 2020
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

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

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place 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.

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) 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.*

1. Swearing in of newly elected officials

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. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**
From: City Manager
Recommendation: Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020 and November 17, 2020.
Financial Implications: See report
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 2. 1444 Fifth Street, LLC v. City of Berkeley, Case No. RG19032434**
From: City Manager
Recommendation: Adopt a Resolution approving the settlement of the action entitled 1444 Fifth Street, LLC v. City of Berkeley, Case No. RG19032434.
Financial Implications: See report
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 3. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the council meetings of November 2, 2020 (closed), November 10, 2020 (closed and regular), November 16, 2020 (closed) and November 17, 2020 (closed and regular).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 4. Contract No. 31900009 Amendment: Building Opportunities for Self-Sufficiency (BOSS) for McKinley House (2111 McKinley Avenue, Berkeley, CA 94703)**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900009 with Building Opportunities for Self-Sufficiency (BOSS) through November 1, 2021, adding \$120,000 for a total contract Not to Exceed (NTE) of \$370,000, to fund Mental Health clients living at 2111 McKinley Avenue in Berkeley. This will extend the contract by one year.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

- 5. Contract No. 32000232 Amendment: Worldwide Travel Staffing for Nurse Registry Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000232 with Worldwide Travel Staffing for nurse registry services. The total not to exceed limit will be \$1,272,580 and the contract end date will be extended to June 30, 2025. The contract will serve the needs of the Health, Housing and Community Services Department, providing fill-in nursing services as necessary at the Mental Health Clinic, Berkeley High School Health Center, COVID-19 Disease Containment Unit, the Public Health Emergency Preparedness' COVID-19 vaccine readiness planning, and the Berkeley Respite Program's nursing services.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 6. Revenue: Federal COVID-19 Funding from HHS CARES Act Provider Relief Fund**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to accept payments from the Health and Human Services (HHS) CARES Act Provider Relief Fund and to execute any resultant revenue agreements and amendments; which enables City Departments to conduct and implement mitigation strategies in response to COVID-19 in the estimated amount of \$181,962 for FY 2021.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400, David Brannigan, Fire, (510) 981-3473
- 7. Kovarus, LLC: Using the California Department of General Services' (DGS) Software Licensing Program (SLP) for Software License Purchases**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to increase spending authority with Kovarus LLC ("Kovarus") for the purchase of Varonis software licenses, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) for an amount not-to-exceed \$165,000, and the period beginning December 16, 2020 through June 30, 2021.
Financial Implications: Cost Allocation Fund - \$165,000
Contact: Savita Chaudhary, Information Technology, (510) 981-6500

Consent Calendar

- 8. Donation: Friends of Berkeley Tuolumne Camp for Berkeley Tuolumne Camp Construction**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation from the Friends of Berkeley Tuolumne Camp up to the amount of \$700,000 for the Berkeley Tuolumne Camp construction.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 9. Joint Use Agreement Between the City of Berkeley and Berkeley Unified School District**
From: City Manager
Recommendation: Adopt a Resolution executing a Joint Use Agreement between the City of Berkeley and the Berkeley Unified School District (BUSD) for use of BUSD playgrounds, pools and buildings and City park facilities.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 10. Recommendations for Implementing Phase 2 of the Measure T1 Infrastructure Bond Program**
From: City Manager
Recommendation: Adopt a Resolution to implement the City Manager, Parks and Waterfront Commission, and Public Works Commission Final List of Projects for phase 2 of the Measure T1 infrastructure bond program.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 11. Amendments to Berkeley Police Department Policy 300, Use of Force**
From: City Manager
Recommendation: Adopt the proposed amendments to Policy 300, in order to comply with state law, to provide additional definitions, and to clarify existing language within Policy 300.
Financial Implications: See report
Contact: Andrew Greenwood, Police, (510) 981-5900

Consent Calendar

- 12. FEMA Hazard Mitigation Grant Application for Seismic Retrofit of the South Berkeley Senior Center**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit a grant application to the Federal Emergency Management Agency for funds in the amount of \$1,875,000 for the seismic retrofit of the South Berkeley Senior Center; authorizing the City Manager to accept the grant; to execute any resultant revenue agreement and amendments; authorizing an amount of \$625,000 in local matching funds; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 13. Receipt of and Funding Agreement Authorization for the Bay Area Air Quality Management District West Oakland Zero-Emission Grant Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to accept \$100,914 in grant funds from the Bay Area Air Quality Management District West Oakland Zero-Emission Grant Program (Project #19RFG23) and to enter into a Funding Agreement in order to support the electrification of the City's fleet vehicles.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 14. Grant Application: COVID-19 Rapid Response Bicycle and Pedestrian Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit a grant application for up to \$52,000 to the Alameda County Transportation Commission COVID-19 Rapid Response Bicycle and Pedestrian Grant Program for the Berkeley Healthy Streets project, and accept the grant awarded, and execute any resultant agreements and amendments.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 15. Extending the Community Workforce Agreement with Building & Construction Trades Council, et al, for Construction Projects Over \$500,000**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment to the Community Workforce Agreement with the Alameda County Building & Construction Trades Council, and twenty-two labor organizations on City capital improvement projects with an estimated value in excess of \$500,000 to extend the agreement through June 30, 2023.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

- 16. Sole Source Contract Negotiations – Community Conservation Center, Inc. and Ecology Center, Inc.**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to continue sole source negotiations with Ecology Center, Inc. and Community Conservation Centers, Inc.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 17. Contract: Alameda-Contra Costa County Transit District (AC Transit) for EasyPass Program 2021 to 2025**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Alameda-Contra Costa County Transit District (AC Transit) for the EasyPass bus transit pass program for City of Berkeley employees in an amount not to exceed \$774,453 for the five-year period commencing January 1, 2021 through December 31, 2025.
Financial Implications: Payroll Deduction Trust Fund - \$774,453
Contact: Liam Garland, Public Works, (510) 981-6300
- 18. Contract: Benefit Resource, Inc. for Third-Party Administrator of the Employee Commute Benefit Program; Contract No. 8746A Amendment: Edenred USA**
From: City Manager
Recommendation: Adopt two Resolutions authorizing the City Manager to:
1. Execute a contract and any amendments with Benefit Resource, Inc., (BRI) to provide third-party administrator services for the City of Berkeley's Employee Commute Benefit Program for an amount not to exceed \$28,974 for the period of March 1, 2021 through February 28, 2023; and
2. Amend Contract No. 8746A with the City's current third-party administrator, Edenred Commuter Benefit Solutions, a subsidiary of Edenred USA, increasing the contract amount by \$6,000 for a total amount not to exceed \$276,000, and extending the contract period three months through March 31, 2021 to ensure a seamless transition to BRI, the new third-party administrator.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 19. Purchase Order: TYMCO, Inc. for three Model 600X Regenerative Air Sweeper**
From: City Manager
Recommendation: Adopt a Resolution satisfying City Charter Article XI Section 67.2 requirements allowing the City to participate in Houston-Galveston Area Council contact bid procedures, and authorizing the City Manager to execute a purchase order with TYMCO, Inc. for three Model 600X Regenerative Air Sweeper in an amount not to exceed \$962,000.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

20. Purchase Order: Arata Equipment Company for Eleven Side Loader Collection Trucks

From: City Manager

Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcwell (previously NJPA) contract bid procedures, and authorizing the City Manager to execute a purchase order for eleven (11) Side Loader Collection Trucks with Arata Equipment Company in an amount not to exceed \$4,554,575.

Financial Implications: Equipment Replacement Fund - \$4,554,575

Contact: Liam Garland, Public Works, (510) 981-6300

21. Purchase Order: Owen Equipment Sales for One Vactor Combination Sewer Cleaner Truck

From: City Manager

Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcwell (formerly NJPA) contract # 122017-FSC and authorizing the City Manager to execute a purchase order for one Vactor Combination Sewer Cleaner with Owen Equipment Sales in an amount not to exceed \$327,000.

Financial Implications: Various Funds - \$327,000

Contact: Liam Garland, Public Works, (510) 981-6300

22. Prohibition on the Resale of Used Combustion Vehicles in 2040 *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*

From: Community Environmental Advisory Commission

Recommendation: Review and refer to the City Attorney for finalization the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040.

(On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to refer to the City Manager for review of the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040, to the extent legally possible.)

Financial Implications: See report.

Contact: Viviana Garcia, Commission Secretary, (510) 981-7460

23. Rocky Road: Berkeley Streets at Risk and Significantly Underfunded

From: Auditor

Recommendation: We recommend City Council request that the City Manager report back by June 15, 2021, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Public Works Department.

Financial Implications: None

Contact: Jenny Wong, Auditor, (510) 981-6750

Council Consent Items

24. Tenth Annual Martin Luther King Jr. Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund

From: Mayor Arreguin (Author), Councilmember Bartlett (Author)

Recommendation:

1. Adopt a Resolution co-sponsoring the 10th Annual Martin Luther King Jr. Celebration on January 18, 2021.
2. Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Mayor Arreguin, to the Berkeley Rotary Endowment, the fiscal sponsor of the 10th Annual Martin Luther King Jr. celebration, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.

Financial Implications: See report

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

25. Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025 *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*

From: Councilmember Davila (Author)

Recommendation:

1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.
2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.

(On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item as

Council Consent Items

amended by the committee with the following recommendation: Adopt a resolution with the following actions: 1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles. 2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.)

Financial Implications: See report

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

26. Potential Bonding and Funding Opportunities for Improving the PCI of Residential Streets, and Creating a Paving Master Plan *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: Councilmember Harrison (Author)

Recommendation: Refer to the to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee (FITES) to continue working with the Public Works Department and the Commission to explore potential bonding and funding opportunities for improving the PCI of residential streets, create a paving master plan, and consider the Public Works Commission Paving Policy, once complete. *(On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to the City Council requesting that the item be referred back to the Facilities committee for further consideration and to request that Council refer the Paving Plan from the Public Works Commission to the committee when the item comes before Council in January.)*

Financial Implications: See report

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

Council Consent Items

27. The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

From: Councilmember Wengraf (Author)

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$125 per Councilmember, including \$125 from Councilmember Wengraf, to support the Berkeley Baby Book Project, a non-profit, with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf and all other Councilmembers who would like to contribute, will provide books to Berkeley children aged 0-5 years. The books are delivered by USPS and addressed to the child who owns them at no cost to their family. \$125 covers 5 years of monthly delivery costs.

Financial Implications: See report

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

28. Resolution: Support of S. 4571 - 2020 Census Deadline Extensions Act

From: Councilmember Robinson (Author)

Recommendation: Adopt a Resolution supporting S. 4571, the 2020 Census Deadline Extensions Act, which would extend the Census Bureau's statutory deadlines for delivering apportionment and redistricting data to April and July 2021, respectively.

Financial Implications: None

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

29. Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*

From: Councilmember Droste (Author), Mayor Arreguin (Author), Councilmember Robinson (Author), Councilmember Harrison (Co-Sponsor)

Recommendation: Refer to the City Manager to develop a program, and if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status. Consider criteria for transitioning spaces for public vs. private outdoor use: - Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces - Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors. - Consider merchant opt-out vs. opt-in: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the city might reach out to temporary permit holders and offer an opt-in or quick transition program. - Consider fees and potential fee waivers for temporary spaces transitioning to permanent status: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits. - Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible. - Request the Agenda

Council Consent Items

Committee consider sharing this item on Berkeley Considers. - Consider removing the prohibition of parklets on State Highways (Ashby Ave, San Pablo Ave., for example)

(On November 2, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to the City Council with the recommendation language as amended by the committee. The revised recommendation language includes: Refer to the City Manager to develop a program and, if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status. - Consider criteria for transitioning spaces for Public vs. Private outdoor use. - Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces. - Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors. - Consider Merchant opt-out vs. opt-in: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the City might reach out to temporary permit holders and offer an opt-in or quick transition program. - Consider Fees and potential Fee waivers for temporary spaces transitioning to permanent status: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits. - Consider Protocols for transfer of private use parklets if businesses change, turn over, etc. - Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible. - Request the Agenda Committee consider sharing this item on Berkeley Considers.)

Financial Implications: See report

Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

Action Calendar

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

The Presiding Officer will request that persons wishing to speak 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.

**30. Referral Response: Amendments to the Home Occupations Ordinance; Amending BMC Sub-Titles 23C, 23D, 23E, and 23F
From: City Manager**

Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance amending the Zoning Ordinance to streamline the permitting process for Home Occupations and amending Berkeley Municipal Code Chapter 23C.16 Home Occupations, Chapter 23E.84 MU-R Mixed Use-Residential District Provisions, Chapter 23F.04 Definitions, and Use Tables in Applicable Zoning Districts.

Financial Implications: See report

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

Action Calendar – Old Business

31. FY 2020 Year-End Results and FY 2021 First Quarter Budget Update *(Continued from November 17, 2020. Item contains revised material.)*

From: City Manager

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

32. Amendment: FY 2021 Annual Appropriations Ordinance *(Continued from November 17, 2020. Item contains revised material.)*

From: City Manager

Recommendation: Adopt first reading of an Ordinance amending FY 2021 Annual Appropriations Ordinance No. 7,724 - N.S. for fiscal year 2021 based upon recommended re-appropriation of committed FY 2020 funding and other adjustments since July 1, 2020 in the amount of \$184,267,388 (gross) and \$179,848,051 (net).

Financial Implications: See report

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

Action Calendar – New Business

33. Berkeley 2020 Pedestrian Plan

From: City Manager

Recommendation: Adopt a Resolution approving the Berkeley 2020 Pedestrian Plan, and directing the City Manager to pursue implementation of the Plan as funding and staffing permit.

Financial Implications: See report

Contact: Liam Garland, Public Works, (510) 981-6300

Action Calendar – Policy Committee Track Items

34. Appoint Alexandria Thomas-Rodriguez to the Berkeley Housing Authority Board

From: Mayor Arreguin (Author)

Recommendation: Adopt a Resolution appointing Alexandria Thomas-Rodriguez to serve as a tenant Commissioner on the Berkeley Housing Authority Board of Commissioners for a two-year term.

Financial Implications: None

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

35. Establishment of Reimagining Public Safety Task Force

From: Mayor Arreguin (Author), Councilmember Hahn (Author), Councilmember Bartlett (Author), Councilmember Harrison (Author)

Recommendation:

1. Establish a Reimagining Public Safety Task Force, comprised of: one representative appointed by each member of the City Council and Mayor, one representative appointed by the Mental Health, Police Review and Youth Commissions, one representative appointed by the Associated Students of the University of California (ASUC), one representative appointed by the Berkeley Community Safety Coalition (BCSC), and three additional members to be appointed "At Large" by the Task Force. The Task Force will be guided by a professional consultant, and will include the participation of City Staff from the City Manager's Office, Human Resources, Health, Housing and Community Services, Berkeley Fire Department, Berkeley Police Department, and Public Works Department. For visual, see Attachment 1.

2. Appointments to the Task Force should be made by January 31, 2021, and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council's July 14, 2020, commitment to centering the voices of those most impacted in our process of reimagining community safety appointments should be made with the goal of achieving a balance of the following criteria: a. Active Members of Berkeley Community (Required of All)*, b. Representation from Impacted Communities - Formerly incarcerated individuals, - Victims/family members of violent crime - • Immigrant community, - Communities impacted by high crime, over-policing and police violence, - Individuals experiencing homelessness, - Historically marginalized populations, c. Faith-Based Community Leaders, d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention,

Action Calendar – Policy Committee Track Items

and Restorative or Transformative Justice, e. Health/ Public Health Expertise, f. City of Berkeley labor/union representation, g. Law Enforcement Operation Knowledge, h. City Budget Operations/Knowledge, i. Committed to the Goals and Success of The Taskforce (Required of All)

3. The charge of the Task Force is as outlined in the July 14, 2020, City Council Omnibus Action, and should include but is not limited to: I. Building on the work of the City Council, the City Manager, BPD, the PRC and other City commissions and other working groups addressing community health and safety. II. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley. III. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of Reduce, Improve and Reinvest as proposed by the National Institute for Criminal Justice Reform considering, among other things: A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety. B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force. C. Limiting militarized weaponry and equipment. D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration. E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems. F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit.

4. Direct the City Manager to ensure that the working group of City Staff as outlined in her October 28th Off-Agenda Memo is coordinating with the Task Force.

The Task Force's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY 2024-2025 budget processes to ensure that recommended changes will be achieved. The Task Force shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY 2022-23 Budget Process.

Financial Implications: See report

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

Action Calendar – Policy Committee Track Items

- 36. Adopt a Resolution Advocating for More Effective Methods of Traffic Enforcement**
From: Mayor Arreguin (Author), Councilmember Droste (Author), Councilmember Robinson (Author)
Recommendation: Adopt a Resolution supporting the California State Legislature to enact legislation that would give municipalities greater flexibility to enforce speeding and vehicle code enforcement laws and send copies of the resolution to Governor Gavin Newsom, Senator Nancy Skinner and Assemblymember Buffy Wicks
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 37. Support the Installation of a Plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2**
From: Councilmember Davila (Author)
Recommendation: Adopt a Resolution supporting the installation of a plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2, and refer to the City Manager to start the process.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 38. Requesting the California State Legislature to introduce actions to value human life and to condemn racial injustice and police brutality**
From: Councilmember Davila (Author)
Recommendation:
1. Adopt a resolution requesting the California State Legislature to introduce legislation incorporating recommendations from the community to value human life and to condemn racial injustice and police brutality.
2. Send copies of this resolution to State Assemblymember Buffy Wicks, State Senator Nancy Skinner, and Governor Gavin Newsom.
Financial Implications: None
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 39. Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities**
From: Councilmember Davila (Author)
Recommendation: Adopt a Resolution calling upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Action Calendar – Policy Committee Track Items

40. Support Affirming the Right to Boycott as a Tactic for Social and Political Change

From: Councilmember Davila (Author)

Recommendation: Adopt a Resolution with the following actions: 1. Support Affirming the Right to Boycott as a Tactic for Social and Political Change, and celebrate the People of Berkeley for their commitment to Peace, Justice and Equity; 2. The City of Berkeley affirms the right of all people to participate in boycotts of any entity when they have conscientious concerns with the entity’s policies or actions; 3. The City of Berkeley condemns attempts by governments to infringe upon the right to peaceful boycotts by criminalizing that participation, denying participants state contracts, or otherwise impeding the freedom of advocacy for all; 4. The City Council encourages City Commissions to recommend boycott policies to the City Council when appropriate, so that the City Council may be well informed in its oversight of City resources 5. Send a copy of this resolution to Governor Gavin Newsom, Attorney General Xavier Becerra, State Assemblymember Buffy Wicks, State Senator Nancy Skinner, United States Senators Bernie Sanders, Kamala Harris, Dianne Feinstein, and United States Congressional Representatives Barbara Lee, Ro Khanna, Alexandria Ocasio-Cortez, Ilhan Omar, Ayanna Pressley, Rashida Harbi Tlaib, and Pramila Jayapal.

Financial Implications: None

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

41. Support Loan Forgiveness to Berkeley Youth Alternatives

From: Councilmember Davila (Author)

Recommendation: Adopt a Resolution supporting the forgiveness of the City’s \$100,000 loan to Berkeley Youth Alternatives (BYA), and direct the City Manager or her designee to process the loan forgiveness to BYA and release the deed of trust.

Financial Implications: \$100,000

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

42. Earmarking \$2.5M in Housing Trust Funds to the Small Sites Program

From: Councilmember Hahn (Author), Mayor Arreguin (Author)

Recommendation: Adopt a Resolution earmarking \$2.5 million in Housing Trust Funds for the Small Sites Program.

Financial Implications: See report

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

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.*

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

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.

~~~~~



Community Environmental  
Advisory Commission

CONSENT CALENDAR  
December 15, 2020

To: Honorable Mayor and Members of the City Council  
 From: Community Environmental Advisory Commission  
 Submitted by: Ben Gould, Chairperson, Community Environmental Advisory Commission  
 Subject: Prohibition on the Resale of Used Combustion Vehicles in 2040

RECOMMENDATION

Review and refer to the City Attorney for finalization the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040.

POLICY COMMITTEE

On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to refer to the City Manager for review of the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040, to the extent legally possible. Vote: Ayes - Davila, Robinson; Noes – None; Abstain – None; Absent – Harrison.

SUMMARY

Prohibiting the resale of used combustion vehicles is likely to increase the availability of non-combustion alternatives. This policy is important to help address environmental inequities, reduce greenhouse gas emissions, and improve public health; however, it may also raise the price of used vehicles and programs will be required to ensure that low-income and disadvantaged communities are able to benefit. This is an application of local police power which is not preempted by state or federal law.

FISCAL IMPACTS OF RECOMMENDATION

Some staff time for review and finalization of the ordinance. Adoption of the ordinance itself may expose the City to potential fiscal impacts, including risk of a lawsuit and, if ultimately enforced, additional fiscal impacts from impacts to sales, property, and other tax or fee revenues.

CURRENT SITUATION AND ITS EFFECTS

On June 12, 2018, Berkeley City Council unanimously declared a Climate Emergency, which called for “a just citywide emergency mobilization effort to end citywide greenhouse gas emissions as quickly as possible.” Berkeley also set a goal of being a Fossil Fuel Free city and becoming a net carbon sink, as well as becoming carbon neutral by 2045.

Berkeley's Climate Action Plan also sets the goal of an 80% reduction in greenhouse gas emissions by 2050, and Berkeley's Strategic Plan sets the goal of being a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

Citywide, transportation powered by internal combustion engines makes up 60% of the city's greenhouse gas emissions. Unfortunately, this share – and total level of emissions – is only expected to grow. In order to achieve its emission reduction goals, Berkeley needs a strategy that will phase out the use of combustion vehicles, including ensuring a wide availability of used non-combustion vehicles for the broader market which cannot afford new vehicles, while ensuring compliance with all applicable state and federal laws.

At a regular meeting on Thursday, November 14, 2019, the Community Environmental Advisory Commission approved a motion to send the *Prohibition of resale of Used Combustion Vehicles on city streets by 2040* recommendation to City Council. (M/S/C) Gould, Hetzel. Ayes: Simmons, Varnhagen, Hetzel, Goldhaber, Gould. Abstained: De Leon. Absent: Ticconi.

### BACKGROUND

Berkeley is home to, and a route for, tens of thousands of combustion-powered automobiles, trucks, and other vehicles which annually emit roughly 360,000 metric tons of greenhouse gases (GHGs). There are an estimated 46,000 vehicles registered within the City of Berkeley, of which only about 1,400 (3%) are electric or plug-in hybrid vehicles.

Berkeley has declared a Climate Emergency, set the goal of becoming a fossil-fuel free city, and aims to achieve carbon neutrality by 2045. City staff are working aggressively to develop a comprehensive action-based Electric Vehicle (EV) roadmap to find opportunities to increase equitable access to EV's within Berkeley's diverse community.

Most local, regional, and state efforts around expanding EV uptake is focused on increasing and enabling purchases of new EVs, whether through incentives and support for consumers (such as tax deductions or public chargers) or state- and federal-level mandates for manufacturers to sell clean vehicles.

Since most vehicles eventually break down and reach a point where it is not economic to continue maintaining them, targeting new vehicles can be expected to ultimately drive an eventual transition to non-combustion vehicles. However, even if no new combustion



vehicles were sold in California, it would take roughly 15 years<sup>1</sup> to transition all remaining, existing vehicles to non-combustion alternatives – likely longer.

Regulations on new vehicle emission and fuel economy standards are set by the federal (and state) government under existing federal law, such as the Clean Air Act (CAA) and the Energy Policy Conservation Act (EPCA). The CAA and EPCA expressly preempt local authorities from enacting regulations on new vehicles. However, they deliberately omit any imposition of regulations on existing vehicles, thereby leaving that application of police power to the states and local jurisdictions.

In California, roughly two-thirds of all vehicle sales are used, existing vehicles<sup>2</sup>. The state has not extensively regulated in this market – used vehicles, as all vehicles, are required to meet smog checks certifying the vehicle meets the emission standards it was manufactured to, but no more. As the Legislature appears to have no intent or interest in further regulating used vehicles, it falls to local governments to address used combustion vehicle sales.

In the face of federal inaction on zero-emission mandates, local jurisdictions can and should act to incentivize a timely, equitable, and just transition to zero-emission transportation. This is a matter of municipal concern, because the continued availability of used combustion vehicles adversely effects city's ability to achieve carbon neutrality and meet its greenhouse gas reduction goals.

Prohibiting the resale of used combustion vehicles creates two incentives that support non-combustion alternatives. Firstly, by making it more difficult for consumers to get rid of an unwanted, used combustion vehicle, individuals will be encouraged to choose non-combustion vehicles when purchasing new vehicles. Consumers often plan to keep vehicles for 5, 10, or even 15 years or longer, enacting this policy as soon as possible will ensure it has the greatest possible impact. Because this acts as an indirect incentive on the purchase of new vehicles, and not as any standard or mandate (consumers can still purchase and use combustion vehicles, sell them before January 1<sup>st</sup>, 2040, resell them outside of Berkeley after January 1<sup>st</sup>, 2040, or scrap them), it complies with the Clean Air Act.

Secondly, removing combustion vehicles from the resale market effectively constrains the supply of used vehicles, and can be expected to drive up the price of the remaining used vehicles – all non-combustion. This would therefore incentivize existing non-

---

<sup>1</sup> Based upon DMV data on roughly 30 million registered automobiles and light trucks (<https://www.dmv.ca.gov/portal/wcm/connect/5aa16cd3-39a5-402f-9453-0d353706cc9a/official.pdf?MOD=AJPERES>), and CNCDA data on roughly 2 million new vehicle sales annually (above), the time to replace every vehicle in California is roughly 15 years.

<sup>2</sup> *California Auto Outlook Covering Second Quarter 2019*, California New Car Dealers Association <https://www.cncda.org/wp-content/uploads/Cal-Covering-2Q-19.pdf>. Accessed September 2019.

combustion vehicle owners to sell their vehicles, expanding the supply of available used non-combustion vehicles.

Unfortunately, this latter incentive acts as a double-edged sword from an equity perspective. While expanding the availability of non-combustion vehicles helps ensure low-income and disadvantaged consumers find alternatives to purchase, which may be particularly necessary if other policies (such as a combustion vehicle operation ban) are enacted, raising the price simultaneously makes it more difficult for these consumers to afford the vehicles they need. In addition, low-income and disadvantaged consumers are most likely to still own or be using combustion vehicles by the time any ban or restrictions would take effect, and would therefore be faced with the greatest burden in getting rid of any such vehicle when they chose to do so.

Local, regional, and state governments will likely need to address this equity issue through non-combustion vehicle purchase incentives and subsidies, and potentially combustion vehicle buyback programs, targeted for low-income households. These programs are already beginning to be enacted for low-income individuals to purchase new EVs, and so it is likely they will continue to be further developed and in place in the time frame proposed in this policy.

While these financial inequities are important and must be planned for and addressed, the proposed policy still addresses several other equity issues which cannot be addressed through any means but with technological change. For decades, our low-income communities have disproportionately borne the brunt of air pollution and noise from the operation of combustion vehicles; the fact that these communities have simultaneously relied upon the oldest, cheapest, and therefore dirtiest vehicles only compounds the issue. In the long run, these communities are also the communities most vulnerable to, and threatened by, climate change. Driving an aggressive transition to non-combustion vehicles may create some short-term economic issues that can and must be planned for and addressed. These issues should not obstruct resolving the greater injustice of air pollution and climate change.

#### ENVIRONMENTAL SUSTAINABILITY

Banning the resale of used combustion vehicles will ensure they are phased out and will incentivize businesses to further promote the sale of electric vehicles.

#### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed policy is categorically exempt from CEQA under CEQA Guidelines Sections 15307 and 15308.

#### RATIONALE FOR RECOMMENDATION

Berkeley is extremely unlikely to meet its carbon reduction and fossil-free goals without aggressive action on transportation decarbonization. While working to drive EV uptake helps, CEAC believes that setting dates beyond which combustion vehicles will not be supported under City policy will help further.

Prohibiting the resale of used combustion vehicles will doubly incentivize consumers to choose non-combustion alternatives – for those looking to purchase new vehicles, knowing they must go outside of city limits to resell their vehicle adds an additional barrier and is an incentive to choose a non-combustion alternative. For those purchasing used vehicles, removing combustion vehicles from the used market ensures greater availability and choice of non-combustion alternatives. This may, however, drive up prices for used vehicles, and this must be addressed through additional programs as the police comes into force.

The federal government currently lacks the jurisdiction to prohibit the resale of used combustion vehicles, and there is no evidence the state government will choose to do so. As a result, if the sale of used combustion vehicles is to be restricted, Berkeley must take action.

Setting 2040 as a phase-out date for the sale of used combustion vehicles will help ensure vehicle owners in Berkeley can more readily transition to non-combustion alternatives by 2045, when Berkeley aims to be carbon-neutral.

#### ALTERNATIVE ACTIONS CONSIDERED

CEAC considered taking no action, but determined that was not an effective approach to addressing Berkeley’s declared Climate Emergency, becoming a fossil fuel free city, or achieving carbon neutrality.

CEAC considered an earlier phase-out date, such as 2030 or 2035, but determined it was unclear that there would be adequate availability of used vehicles by that time. While there may still not be enough in 2040, CEAC determined that there needed to be some transition time to support any 2045 phase-out policies in place.

CEAC considered providing an expanded exemption to allow vehicles which are newer than a certain number of years to be resold. CEAC decided there did not appear to be any compelling reason to do so, and that any potential benefits were likely not to accrue to disadvantaged communities.

#### CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission’s Report.

#### CONTACT PERSON

Ben Gould, Chair, Community Environmental Advisory Commission, 510-725-9176

Attachments:  
1: Ordinance

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 9 TO PROHIBIT THE SALE OF COMBUSTION VEHICLES.

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

Section 1. That the Berkeley Municipal Code Chapter 9.97 is added to read as follows:

**Chapter 9.97  
RESALE OF USED COMBUSTION VEHICLES**

Sections:

9.97.010 Findings  
9.97.020 Purpose  
9.97.030 Definitions  
9.97.040 Prohibition  
9.97.050 Exemptions

9.97.010 Findings

A. Berkeley aims to become carbon neutral by 2045, reduce greenhouse gas emissions by 80%, and become a fossil fuel free city.

B. Over 60% of greenhouse gas emissions in Berkeley result from transportation.

C. Transitioning 100% of new vehicle sales to non-combustion vehicles by 2030 would dramatically improve Berkeley's ability to achieve carbon neutrality by 2045.

D. The Clean Air Act and the Energy Policy Conservation Act prohibit states and cities from setting emission or fuel economy standards for new vehicles, without restricting their authority to set regulations for used vehicles.

E. Roughly two-thirds of all vehicle sales in California are in the used car market.

F. Disadvantaged and low-income communities disproportionately rely upon the used car market and are disproportionately impacted by air pollution and climate change driven by used combustion vehicles.

G. Berkeley can support availability of used non-combustion vehicles and nourish a used car market for non-combustion vehicles through restricting the resale of used combustion vehicles and developing programs to support low-income residents in transitioning to non-combustion alternatives.

#### 9.97.020 Purpose

The purpose of this chapter is to promote the health and safety of Berkeley residents and visitors, to address environmental impacts, and to address environmental justice.

#### 9.97.030 Definitions

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

A. "Combustion vehicle" shall mean any on-road land motor vehicle which uses the combustion or oxidation of any carbon-based fuel to provide power or propulsion.

B. "New motor vehicle" shall have the same definition as set forth under the Clean Air Act, 42 US Code § 7550(3).

#### 9.97.040 Prohibition

Beginning January 1<sup>st</sup>, 2040, it shall be unlawful to sell, resell, trade, or distribute any combustion vehicle with a model year of more than three (3) years old by any means anywhere within the City of Berkeley.

#### 9.97.050 Exemption

This prohibition shall not apply to the sale of new motor vehicles which are subject to regulation under the Clean Air Act.



CONSENT CALENDAR

December 15, 2020

**To:** Honorable Mayor and Members of the City Council

**From:** Jenny Wong, City Auditor *JW*

**Subject:** Rocky Road: Berkeley Streets at Risk and Significantly Underfunded

RECOMMENDATION

We recommend City Council request that the City Manager report back by June 15, 2021, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Public Works Department.

CURRENT SITUATION AND ITS EFFECTS

Without significant additional funding, Berkeley streets will continue to deteriorate and deferred maintenance costs will increase. Continuing with the current level of funding, the Paving Conditions Index (PCI) will move from 59 in 2018 and reach an estimated low of 52 by 2023. In addition, if the City simply maintains the current level of funding, the deferred maintenance costs will increase to an estimated \$328 million by 2023. This estimate represents just the cost for paving streets, it does not include the additional 15-25 percent needed to implement the City's Complete Streets Policy. Our report notes that this is one area of concern as prior paving cost projections have not included Complete Streets costs yet paving funds have been spent to implement Complete Streets. In 2018, a City contractor estimated the City would need an average of \$17.3 million annually to maintain the current PCI or an average of \$27.3 million annually to increase PCI by five points in five years. Revenue decreases from COVID-19 may contribute to further declines in street condition.

The Streets Rehabilitation and Repair Policy has not been updated since 2009. Public Works is no longer following the policy to guide annual updates to the Five-Year paving plan. For example, from 2014 to 2020, on average, collector streets were significantly underfunded according to the policy. Furthermore, Council decisions such as prioritizing bikeways are also not reflected in the current policy. Decision makers must balance a myriad of considerations in making complex decisions about street paving. Equity is currently not defined in the policy. Additionally, the policy is not guided by clear goals or performance measures. Without a clear and updated policy, Public Works and City Council are not able to make fully informed or transparent decisions regarding annual street paving. This may lead to inefficiencies and inequities in street paving.

BACKGROUND

Berkeley streets have an asset replacement value of approximately \$777,567,000, and deferred maintenance needs of streets exceeded \$251 million in 2019. It is the responsibility of the City

to maintain Berkeley's infrastructure for residents, and it is the goal of the Street Rehabilitation Program to maintain a safe street surface for vehicles, bicycles, transit, and pedestrians.

Berkeley has the 15<sup>th</sup> worst Pavement Condition Index (PCI) out of 101 cities in the nine county jurisdiction covered by Metropolitan Transportation Commission (MTC) with a score of 57 in 2017.

ENVIRONMENTAL SUSTAINABILITY

While they are beyond the scope of our audit, there are environmental impacts associated with deteriorating street conditions.

RATIONALE FOR RECOMMENDATION

Implementing our recommendations will increase transparency of how paving decisions are made, and enable decision makers to make efficient, effective, and equitable paving decisions.

CONTACT PERSON

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

Attachments:

- 1: Audit Report: Rocky Road: Berkeley Streets at Risk and Significantly Underfunded



Audit Report  
November 19, 2020

# Rocky Road: Berkeley Streets at Risk and Significantly Underfunded



BERKELEY CITY AUDITOR



# Rocky Road: Berkeley Streets at Risk and Significantly Underfunded

## Report Highlights

November 19, 2020



### Findings

1. Without significant additional funding, Berkeley streets will continue to deteriorate and deferred maintenance costs will increase. In 2018, Berkeley had a Pavement Condition Index (PCI) rating of 59 out of 100. Continuing with the current level of funding, the PCI will reach an estimated low of 52 by 2023. In addition, the current level of funding would also increase deferred maintenance costs to an estimated \$328 million by 2023. In 2018, a City contractor estimated the City would need an average of \$17.3 million annually to maintain the current PCI or an average of \$27.3 million annually to increase PCI by five points in five years. Revenue decreases from COVID-19 may contribute to further declines in street condition.
2. The Streets Rehabilitation and Repair Policy has not been updated since 2009. Public Works is no longer following the policy to guide annual updates to the Five-Year Street Rehabilitation Plan and there is no mention of equity in the policy. Additionally, the policy is not guided by clear goals or performance measures. Without a clear and updated policy, Public Works and City Council are not able to make fully informed or transparent decisions regarding annual street paving. This may lead to inefficiencies and inequities in street paving.

### Objectives

1. Are there sufficient resources for maintaining Berkeley's streets?
2. Are there clear policies and processes to guide street paving decisions?

### Why This Audit Is Important

Berkeley streets have an asset replacement value of approximately \$777.6 million, and deferred maintenance needs of streets exceeded \$251 million in 2019. It is the responsibility of the City to maintain Berkeley's infrastructure for residents, and it is the goal of the Street Rehabilitation Program to maintain a safe street surface for vehicles, bicycles, transit, and pedestrians. Berkeley has the 15<sup>th</sup> worst Pavement Condition Index (PCI) out of 101 cities in the nine county jurisdiction covered by Metropolitan Transportation Commission in 2017.



### Recommendations

We recommend that the Public Works Department regularly calculates how much money is needed to address the goals of the Streets Rehabilitation Program and identify funding sources to meet those goals. We also recommend that the Public Works Department updates the Street Rehabilitation and Repair Policy with goals and performance measures, and an accurate prioritization of funding.



BERKELEY CITY AUDITOR

For the full report, visit:  
<http://www.cityofberkeley.info/auditor>

## Table of Contents

|         |                                                                                                                                                |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Page 3  | Introduction; Objectives, Scope, and Methodology                                                                                               |
| Page 4  | Background                                                                                                                                     |
| Page 8  | Finding 1: Without significant additional funding, Berkeley streets will continue to deteriorate and deferred maintenance costs will increase. |
| Page 17 | Finding 2: The Streets Rehabilitation and Repair Policy is out-of-date and Public Works is not following it.                                   |
| Page 25 | Appendix I — Methodology and Statement of Compliance                                                                                           |
| Page 27 | Appendix II — Recommendations and Management Response                                                                                          |

## Introduction

We identified the City’s aging infrastructure as an immediate concern to City operations, safety, and strategic planning in our 2020 Audit Plan. Berkeley streets have an asset replacement value of approximately \$777.6 million. The City failed to pave any streets in 2018 after sending out construction bids late, even though the City had set aside \$8.6 million for repairs. The City went out to bid again to complete the 2018 street rehabilitation projects in 2019. The total impact of the delay of paving in 2018 on street condition and deferred maintenance costs is unclear. However, any delay of paving means that the condition of Berkeley’s streets, which are not very good to begin with, will deteriorate further. Ultimately, the longer the City takes to repair streets, the more costly the repairs become. We, therefore, included a performance audit of the City’s Street Rehabilitation Program in our 2020 Audit Plan.

Berkeley streets are used by cars, buses, bicyclists, pedestrians, and others. The deterioration of pavement also has economic costs for users of the road. Potholes can cause damage to car tires, wheels, and suspensions. Hitting a pothole or making a quick decision to avoid a pothole can also lead to a collision resulting in more costly damage, personal injuries, or worse. According to TRIP, a national transportation research group, the additional average annual vehicle operating costs of driving on roads in need of repair in the San Francisco-Oakland area is approximately \$1,049. This includes vehicle repair costs, accelerated vehicle deterioration and depreciation, increased maintenance costs, and additional fuel consumption. Furthermore, people with disabilities often have unique transportation needs and may be more impacted by streets in poor condition. People with disabilities represent 15 percent of Berkeley’s residents and visitors.<sup>1</sup>

## Objectives, Scope, and Methodology

Our objectives were to determine:

1. Are there sufficient resources for maintaining Berkeley’s streets?
2. Are there clear policies and processes to guide street paving decisions?

<sup>1</sup> In October 2020, the Commission on Disability presented a framework to City Council to guide the City’s decision-making in order to create a fully navigable, inclusive city for people with disabilities. [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/10\\_Oct/Documents/2020-10-20\\_Special\\_Item\\_01\\_Proposed\\_Navigable\\_Cities\\_Framework\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-20_Special_Item_01_Proposed_Navigable_Cities_Framework_pdf.aspx)

We examined the Berkeley’s Street Rehabilitation Program for fiscal years (FY) 2014 through 2020. We assessed funding levels and pavement condition index (PCI), and evaluated policies and plans. We specifically assessed internal controls relative to the audit objectives. This included a review of selected policies and procedures, as well as interviews with staff from the Public Works Department. In performing our work, we identified concerns about the program’s outdated policies, and insufficient resources, planning, and communication to ensure that Berkeley’s streets are appropriately paved and maintained. While we assessed the fiscal impact of pavement condition, our analysis did not include the external costs on vehicles or safety associated with street condition. For more information, see p. 26.

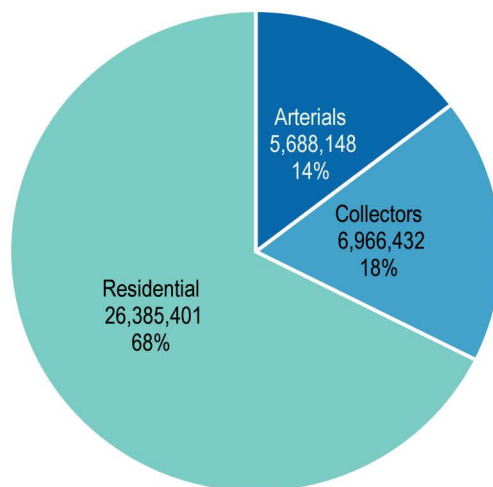
## Background

Berkeley maintains approximately 215 centerline miles of paved streets within the city limits, which include:

- **Arterials**, which carry the most car, truck, and bus traffic, and typically provide an outlet onto state highways and freeways; they also function as alternatives to highways and freeways to relieve traffic congestion;
- **Collectors**, which serve to “collect” traffic from the residential streets and deposit them onto arterials; and
- **Residential** streets and roads that run through neighborhoods and carry few buses or trucks, other than refuse vehicles.

Figure 1. Most of Berkeley’s Paved Streets Are Residential

Area of Pavement, by Street Type (square feet)



Source: Pavement Engineering Inc. 2018 Report

Berkeley’s Streets and Utilities Division of the Public Works Department maintains and repairs the City’s streets, curbs, sidewalks, sewers, and storm water infrastructure. The purpose of the Street’s Rehabilitation Program is to maintain a safe street surface for vehicles, bicycles, transit, and pedestrians. Funding for Streets Rehabilitation is allocated as part of the City’s Capital Improvement Program budgeting process.

## Pavement Condition Index

The Metropolitan Transportation Commission (MTC) is the federally designated metropolitan planning organization for the nine-county San Francisco Bay Area. MTC and local jurisdictions use the Pavement Condition Index (PCI) as a measure that rates segments of paved roadways on a scale of 0 to 100 with condition categories ranging from a low of “failed” to a high of “excellent”.

Figure 2. Examples of Berkeley Streets by Pavement Condition Index (PCI) Classification

| Very Good-Excellent (100-80)                                                                                                                                                                                    | Good (79-70)                                                                                                                                                                                                                                                           | Fair (69-60)                                                                                                                                                                                                                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Pavements are newly constructed or resurfaced and have few if any signs of distress.</p> <p>Photo: PCI 98, Arterial</p>                                                                                      | <p>Pavements require mostly preventive maintenance and have only low levels of distress, such as minor cracks or spalling, which occurs when the top layer of asphalt begins to peel or flake off as a result of water permeation.</p> <p>Photo: PCI 74, Collector</p> | <p>Pavements at the low end of this range have significant levels of distress and may require a combination of rehabilitation and preventive maintenance to keep them from deteriorating rapidly.</p> <p>Photo: PCI 63, Collector</p> |
|                                                                                                                               |                                                                                                                                                                                      |                                                                                                                                                   |
| At Risk (59-50)                                                                                                                                                                                                 | Poor (49-25)                                                                                                                                                                                                                                                           | Failed (24-0)                                                                                                                                                                                                                         |
| <p>Pavements are deteriorated and require immediate attention including rehabilitative work. Ride quality is significantly inferior to better pavement categories.</p> <p>Photo: PCI 50, Residential Street</p> | <p>Pavements have extensive amounts of distress and require major rehabilitation or reconstruction. Pavements in this category affect the speed and flow of traffic significantly.</p> <p>Photo: PCI 39, Residential Street</p>                                        | <p>Pavements need reconstruction and are extremely rough and difficult to drive.</p> <p>Photo: PCI 20, Residential/Bike Boulevard</p>                                                                                                 |
|                                                                                                                              |                                                                                                                                                                                     |                                                                                                                                                  |

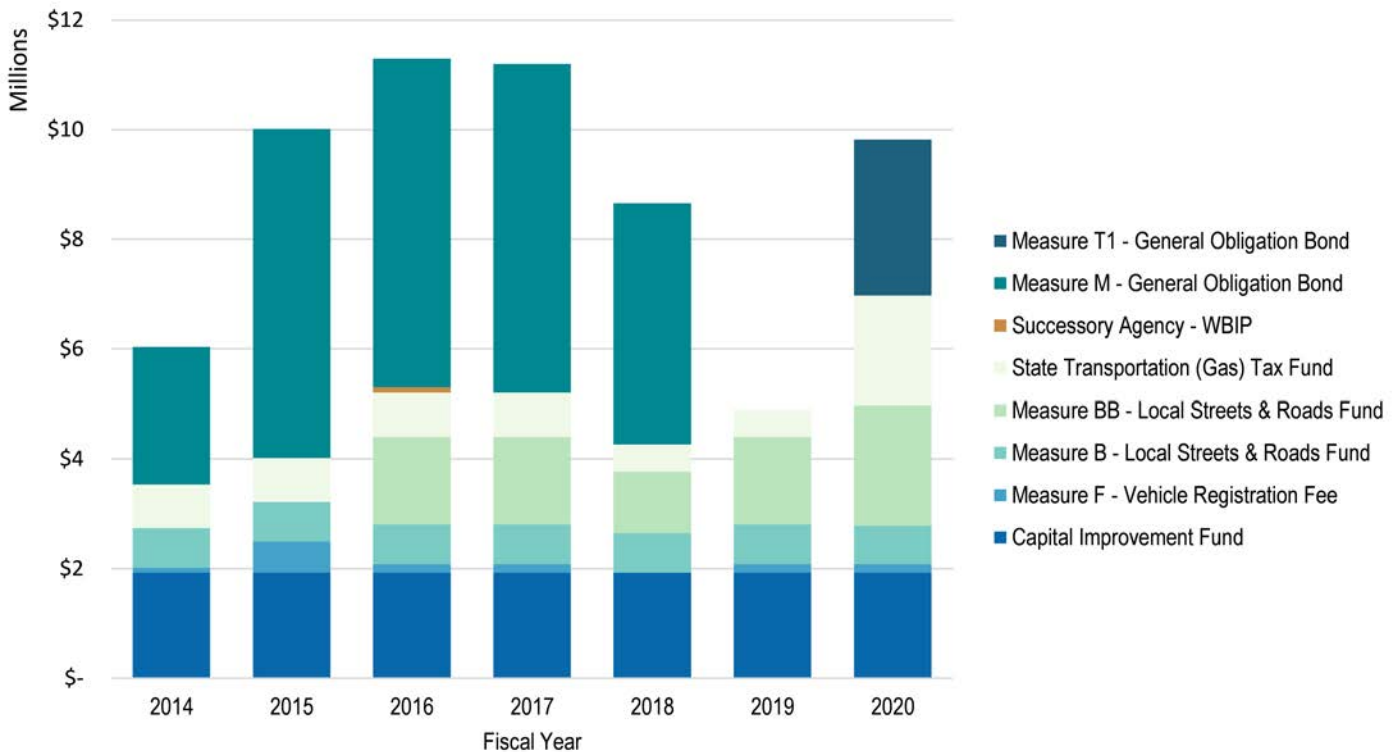
Sources: Metropolitan Transportation Commission and Auditor analysis of StreetSaver data. Photos by audit staff, Anne Pardee (poor condition), and Seena Hawley (failed condition).

## Funding

Funding for Berkeley’s Street Rehabilitation Program comes from a combination of federal, state, and local sources. The Street Rehabilitation Program is funded by:

- State Transportation (Gas) Taxes,
- Road Repair and Accountability Act of 2017 (SB1),
- Measure B – Local Streets and Roads Fund,
- Measure BB – Local Streets and Roads Fund,
- Measure F – Vehicle Registration Fee,
- General obligation bonds, and
- The City’s Capital Improvement Fund.<sup>2</sup>

Figure 3. Berkeley’s Street Rehabilitation Program Funded by State and Local Sources



Source: Berkeley Capital Improvement Programs FY 2014-15, 2016-17, 2018-19, and 2020-21

Note: The Capital Improvement Fund is the City’s General Fund allocation to the Capital Program.

The revenue streams that fund the Street Rehabilitation Program are also used to fund the City’s transportation improvements, traffic calming, Complete Streets projects, signal maintenance and improvements, transit area improvements, sidewalk maintenance and capital improvements, and storm drainage and green infrastructure improvements.

<sup>2</sup> The Capital Improvement Fund is the City’s allocation of General Fund money to the Capital Program. This funding supports and supplements the capital improvements that do not have other funding sources regularly available.

## Policy

The Streets Program is governed by the Streets Rehabilitation and Repair Policy. The policy states that the City must establish a Five-Year Street Rehabilitation Plan (Paving Plan) to be adopted by Council that makes use of available funding and sets priorities for streets in accordance with their use. Additionally, there are other City plans that have objectives related to street use and design including Berkeley's Strategic Transportation Plan, Climate Action Plan, Local Hazard Mitigation Plan, Vision 2050, Vision Zero, and the Pedestrian and Bike Plans that can impact when streets are paved.

## Without significant additional funding, Berkeley streets will continue to deteriorate and deferred maintenance costs will increase.

Berkeley’s street pavement condition is in “at risk” condition with a PCI rating of 59. According to the planned Capital Improvement Program streets budget for FY 2021-2024, the City estimates that recurring funding will remain around \$7 million per year and there will be no increase in Capital Improvement Funding. Continuing with the current level of funding will cause street condition to decline even further, with PCI reaching an estimated low of 52 by 2023. In addition to the continued deterioration of pavement condition, the current level of funding would also increase deferred maintenance costs to an estimated \$328 million by 2023. In 2018, a City contractor estimated the City would need \$17.3 million annually to maintain the current PCI or \$27.3 million annually to increase PCI by five points in five years. Revenue decreases due to COVID-19 may contribute to further declines in street condition.

### Berkeley’s pavement condition is well below the regional goal of 75.

According to 2018 updates to StreetSaver, the City’s pavement management system, Berkeley’s overall PCI was 59. Pavement in this condition is past the point where condition can be improved with preventative maintenance and more costly rehabilitation work is needed. As part of the Transportation 2035 Plan, MTC adopted the regional performance objective to maintain a PCI of 75 or greater for local streets and roads. Berkeley has the 15<sup>th</sup> worst PCI out of the 101 cities in the nine county jurisdiction covered by MTC.<sup>3</sup> Over 19 percent of Berkeley’s streets are in a failed condition.

### The City has not invested more recurring funding in street paving, even as PCI remains low and deferred maintenance costs increase.

While the City has secured general obligation bonds to improve aging infrastructure throughout Berkeley, the City has not invested more recurring local dollars in street paving. Actions taken by voters in recent


 “At risk” is a classification of pavement condition

that means pavements are deteriorated and require immediate attention including rehabilitative work. Streets in this classification are past the point where condition can be improved with preventative maintenance. Ride quality is significantly inferior to better pavement categories. (Source: Metropolitan Transportation Commission)

Figure 4. Pavement Condition Index (PCI) of Bay Area Cities Near Berkeley

| City          | 2017 PCI* | Condition |
|---------------|-----------|-----------|
| El Cerrito    | 84        | Very Good |
| Emeryville    | 77        | Good      |
| Alameda       | 72        | Good      |
| San Francisco | 70        | Good      |
| Richmond      | 62        | Fair      |
| Albany        | 59        | At Risk   |
| Berkeley      | 57        | At Risk   |
| Oakland       | 55        | At Risk   |

\*This is the three-year moving average. Year 2017 is the most recent year available of comparative data.

Source: The Pothole Report: Bay Area Roads at Risk, September 2018 by Metropolitan Transportation Commission (MTC)


<sup>3</sup> The nine counties under MTC jurisdiction are Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.



years have provided an important short-term boost to the resources available for streets:

- In 2012, Berkeley voters passed Measure M to secure \$30 million in bonds to fund street paving and greening infrastructure projects.
- In 2016, Berkeley voters approved \$100 million in general obligation bonds to improve aging City infrastructure through Measure T1. City Council is ultimately responsible for discussing and approving the T1 project plans presented by staff. As of November 2019, approximately \$36.8 million T1 funds were allocated by Council to projects throughout the City. Approximately \$9.9 million of the \$36.8 million T1 funds allocated went to Complete Streets projects. The remaining funds were spent on improvement to facilities and buildings, citywide safety, and green infrastructure projects.

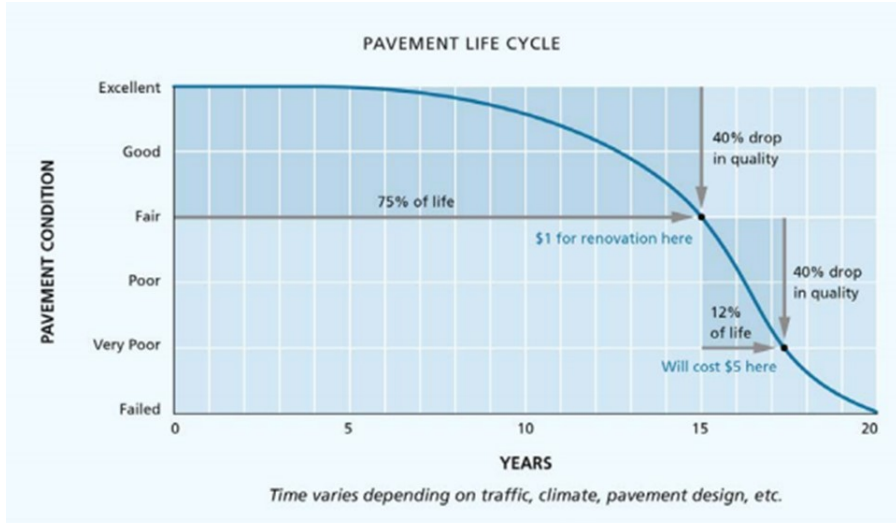
Despite the additional funds from Measure M and T1 going to streets projects, PCI increased only slightly from 58 in 2011 to 59 in 2018 and street infrastructure needs continue to exceed available funds. The minimum deferred maintenance needs in street paving exceeded \$251 million in 2019, up from \$111 million in 2014.<sup>4</sup> We do not know the exact cause of this increase, however, we do know that regular maintenance of roads is five to ten times cheaper than full rehabilitation of pavement after it has fallen below a certain threshold. Based on what we know about the condition of Berkeley streets and the lack of funding, this likely can explain a portion of this significant increase in deferred maintenance over such a short time frame. A complete audit of that estimate was beyond the scope of this report. What is clear is that significant additional funding is needed to address the growing backlog of deteriorating streets.



Complete Streets is a design approach that Council adopted in December 2012 in which improvements to the entire street, from sidewalk to sidewalk, are considered for any transportation project. While there is no standard template for applying this approach, common elements typically include bike lanes, sidewalk bike racks, transit stops, pedestrian signals, street trees, and curb ramps.

<sup>4</sup> According to Pavement Engineering Inc.'s (PEI) 2018 report, an initial investment of \$252 million in 2019 and an average of \$3 million in the following 4 years would have eliminated deferred maintenance and increased the PCI from 59 to 84.

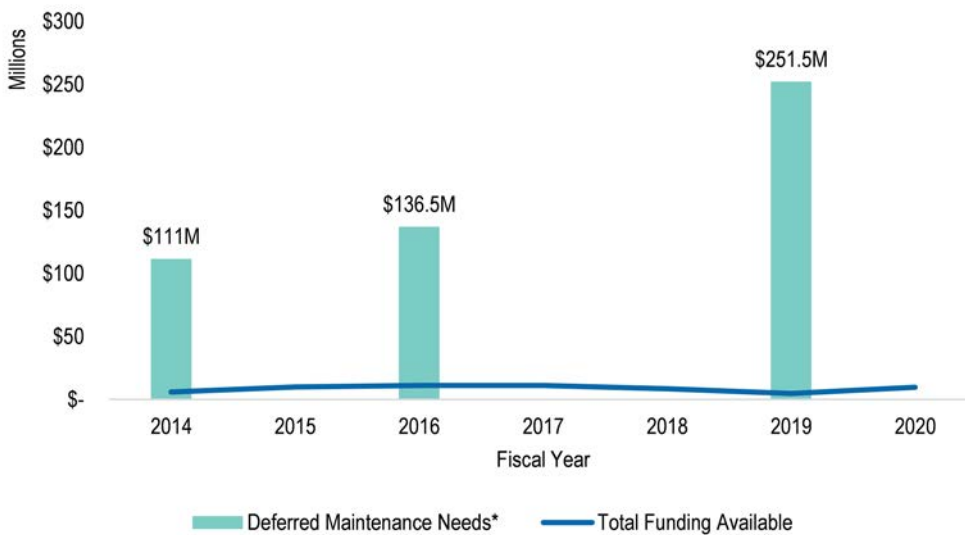
Figure 5. It is Much Cheaper to Maintain Streets than to Rehabilitate Failed Streets



Source: Metropolitan Transportation Commission Pothole Report III 2018

According to MTC, the most cost-effective way to maintain a street is to address cracks in the pavement surface as soon as they appear. Regular maintenance of roads is five to ten times cheaper than allowing roads to fail and then paying for the necessary rehabilitation. Jurisdictions that spend most of their paving budget to fix a few failed streets, instead of proactively maintaining a larger percentage of the street network that is in good condition, are practicing a “worst first” strategy. This approach is cost prohibitive and will allow deferred maintenance on good roads to lead to more costly repairs later on.

Figure 6. Deferred Maintenance Has Grown to Over \$250 Million as Annual Funding Remains Insufficient



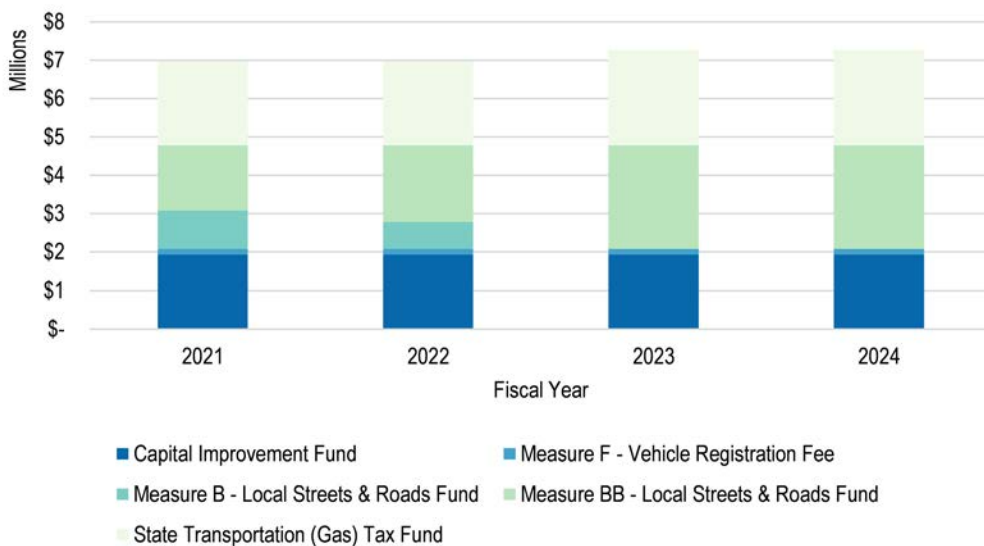
\*Represents the budget required based on the "needs" of the system and assumes all pavements are treated at their optimum timing.

Sources: City of Berkeley Capital Budgets and Pavement Management Certifications

Note: Deferred maintenance needs calculation was not available for all years.

According to the Fiscal Year 2020 Capital Improvement Program, the City estimates that the amount of recurring funding available for the Streets Rehabilitation Program will remain around \$7 million per year, and there will be no increase in Capital Improvement Fund contributions. The City’s contributions of Capital Improvement Funds, which comes from the General Fund, to Street Rehabilitation has remained stagnant at \$1.925 million per year since 2014. This number has not kept pace with inflation. To achieve the same amount of paving in 2020 as 2014, the City would need to have invested \$2.123 million.<sup>5</sup>

Figure 7. Recurring Streets Funding Will Remain Around \$7 Million per Year Through 2024



Source: City of Berkeley Capital Budget FY 2020

Note: This does not include T1 funding.

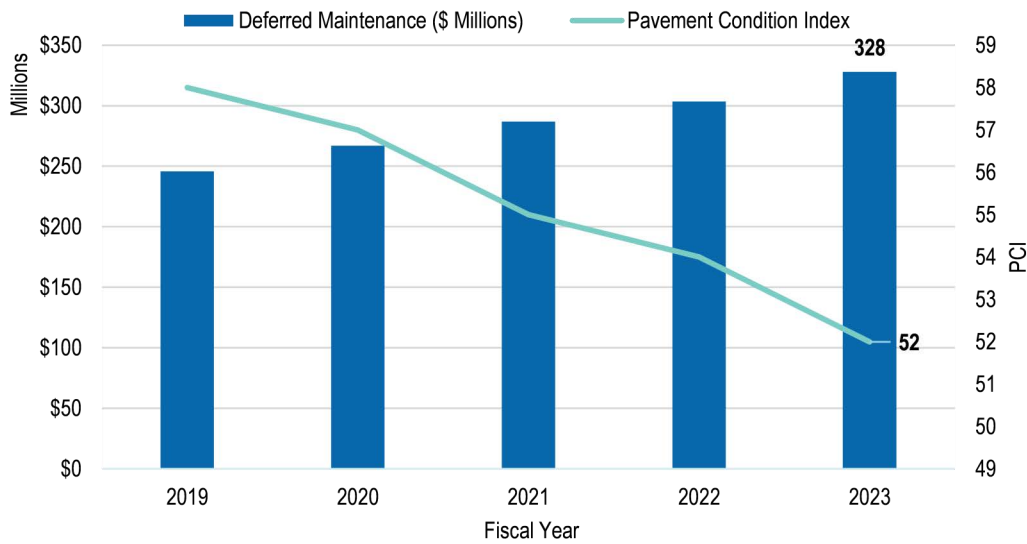
At the current level of funding, streets will continue to deteriorate and the backlog of maintenance will continue to grow. Deferred maintenance of street paving is on track to reach an estimated \$328 million by 2023, and the City’s PCI is estimated to decline to 52.

The City’s contributions of Capital Improvement Funds, which come from the General Fund, to the entire Capital budget decreased from \$5.8 million in FY 2014 to only \$5 million in FY 2020. Due to additional funding sources, the overall Capital budget increased from \$26.3 million in FY 2014 to \$111.3 million in FY 2020.<sup>6</sup> However, there is still a huge funding shortfall to address the City’s infrastructure needs. The City’s Vision 2050 Initiative Report includes an action item for the City Manager to identify resources to double the City’s capital investment.

<sup>5</sup>This calculation was made using the Bureau of Labor Statistics CPI inflation calculator. [https://www.bls.gov/data/inflation\\_calculator.htm#](https://www.bls.gov/data/inflation_calculator.htm#)

<sup>6</sup>The FY 2020 Capital budget includes a \$49.8 million allocation for Tuolumne Camp.

Figure 8. Pavement Condition Index Will Decline and Deferred Maintenance Costs Will Increase at Current Funding Levels



Source: Pavement Engineering Inc. Report September 2018

Note: Deferred Maintenance represents the budget required based on the "needs" of the pavement system. Assumes all pavements are treated at their optimum timing and does not include the costs to conduct Complete Streets projects.

### Streets Rehabilitation Program funding is spent on more than just paving costs.

According to the Public Works Department, approximately 15-20 percent of project funds are spent on personnel and consultant costs for design, project management, and survey. Even though individual paving projects appear in one year on the Five-Year Paving Plan, they actually run on a two year timeline. In the first year, a paving project is designed, and in the second year, the actual construction happens. A significant portion of the construction budget is spent on other street improvements. Between FY 2014-2019, only about 70 percent of construction costs for Annual Street Paving projects were spent directly on paving. The remaining 30 percent was spent on the construction of storm drain and green infrastructure, ADA and traffic-related improvements, retaining walls, and concrete (curbs, gutters, and sidewalks).

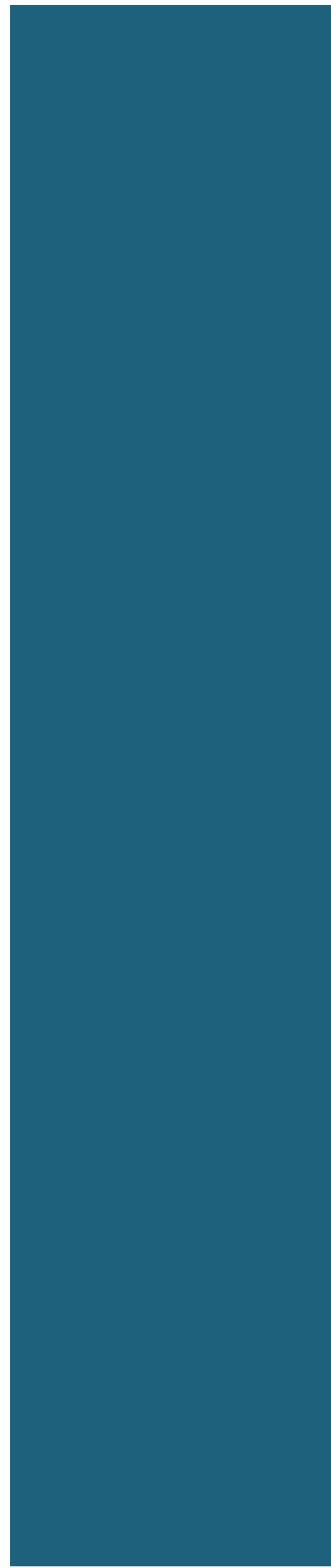
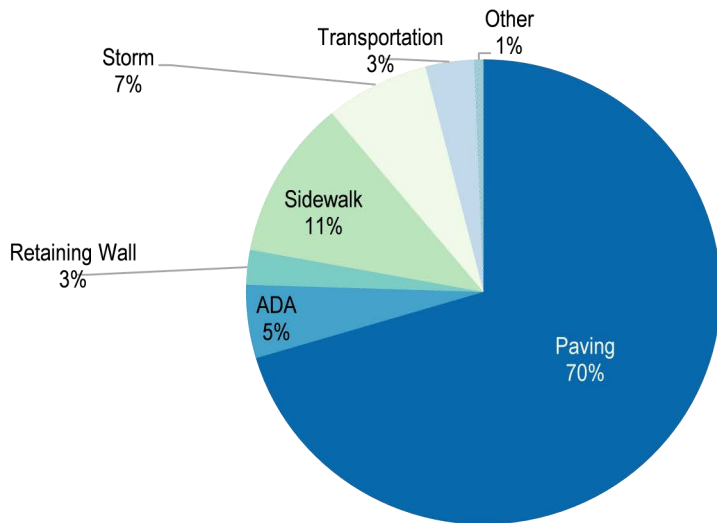


Figure 9. Not All Construction Costs Spent on Paving



Source: Auditor analysis

Berkeley adopted a Complete Streets policy in December 2012. According to the policy, Complete Streets infrastructure should be incorporated into all planning, funding, design, approval, and implementation processes for any streets projects. MTC estimates that a Complete Streets project can average additional costs of 15-25 percent, including pavement and non-pavement costs. The City did not contribute additional Capital Improvement Fund dollars to implement the Complete Streets Policy. In fact, Capital Improvement Fund contributions to streets capital declined from \$2.8 million in FY 2013 to \$1.9 million in FY 2014 and has remained below FY 2013 levels since.

**In 2018, an MTC contractor estimated \$136.5 million were needed to increase PCI by five points.**

If the City wants to address the deferred maintenance needs while also improving the condition of the streets, Pavement Engineering Inc. (PEI) estimated that the City would need to secure Street Rehabilitation Program funding at \$27.3 million per year over five years. With an average investment of \$27.3 million per year, PEI estimated that in five years the City could raise the PCI from 59 to 64 and decrease deferred maintenance by \$16.6 million.<sup>7</sup>

Why was Measure M not enough to fix our streets?

The City asked voters in 2012 for \$30 million in general obligation bonds to address paving needs as well as storm water and green infrastructure improvements. Only a portion of Measure M funds were spent directly on paving costs. It is unclear why the City only went out for \$30 million.

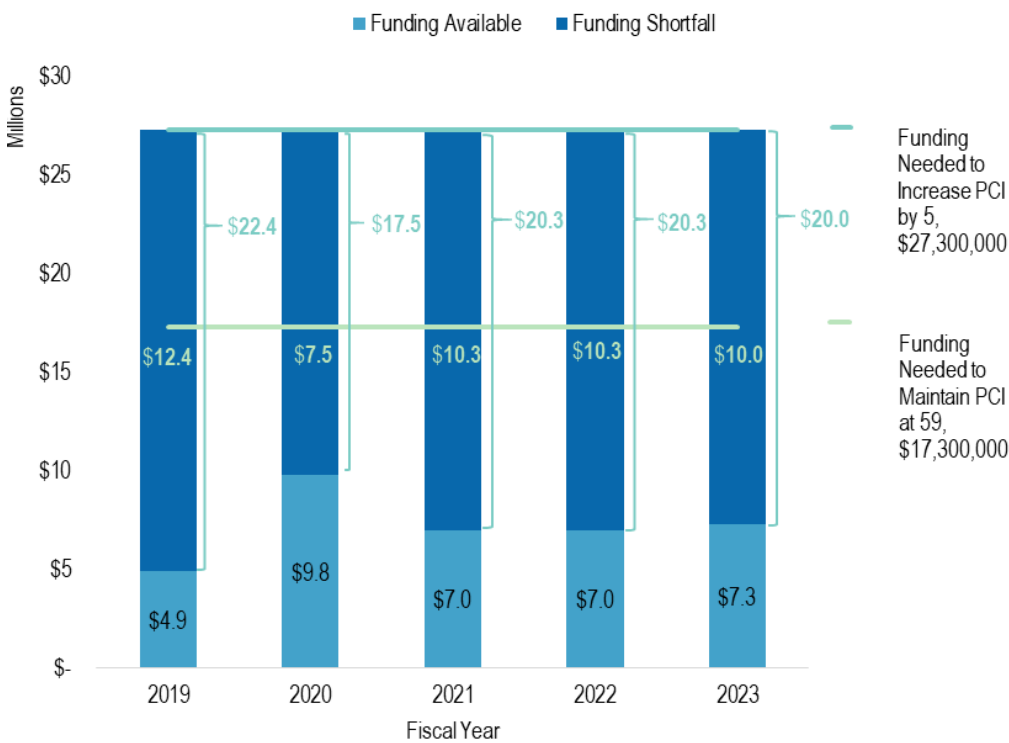
In our 2011 audit of streets, we found that the City needed \$54 million to spend just on paving to improve Berkeley's average street condition from a PCI of 58 to a PCI of 75. This audit work was conducted prior to the adoption of the Complete Streets policy and did not take into account the additional project costs that come with the Complete Streets approach. In addition to the \$54 million, the City would have also needed approximately 15-25 percent or \$8.1-\$13.5 million more to account for Complete Streets project costs. The Auditor warned that the funding of the bond measure along with other available funding would not improve the PCI and the most deteriorated streets would be left to fail.

<sup>7</sup> This does not include the cost to conduct Complete Street projects.

PEI’s budget analysis was based on maintenance and rehabilitation strategies developed by City staff, available funding, and base construction unit prices adjusted to include the financial impact of design, construction management, contingencies, and other relevant construction costs (e.g., ADA ramps, curb and gutters, striping, etc.). This analysis was conducted in 2018 and the estimates would need to be adjusted for any changes that have occurred since then, to provide a more accurate estimate based on current and future needs, funding, and strategies.

To maintain the PCI at 59, PEI estimated that that City will need an average of \$17.3 million in annual funding over five years. Even with \$17.3 million in dedicated funding, streets that are not maintained will continue to deteriorate and the deferred maintenance costs will continue to grow.

Figure 10. An Estimated Additional \$10 Million Needed per Year to Maintain Pavement Condition Index



Source: Auditor analysis of data from City of Berkeley Capital Budgets FY 2014-2020 and Pavement Engineering Inc. Report, September 2018

**A lack of sufficient funding is not unique to Berkeley, but other jurisdictions are doing better.**

MTC reported in 2018, that as Bay Area roads have continued to age and the need for maintenance grows, available funding has decreased, leading to more deferred maintenance and more costly repairs. Money for street rehabilitation

PEI is an MTC consulting partner that was responsible for updating Berkeley’s Pavement Management System, StreetSaver, and identifying maintenance and rehabilitation needs and costs in 2018. The purpose of StreetSaver is to track inventory, store pavement condition history, and produce budget estimates to optimize funding for improving pavement condition. While this tool is useful, it does have limitations. StreetSaver helps the City identify candidate streets for maintenance and repair. It cannot provide detailed designs for street improvements. Additional analysis on a project level can help further optimize the City’s Street Rehabilitation funds.

and maintenance traditionally comes from a range of sources, including state gas tax, county sales tax, and local sources.


In 2017, the state Legislature passed Senate Bill 1 (SB1) establishing a transportation funding package estimated to generate more than \$52 billion for statewide improvements. Half of these funds are dedicated to fixing local streets and transportation infrastructure, and the other half is dedicated to state highway and transportation infrastructure.

This has shown the State’s commitment to improving infrastructure for transportation and specifically the investment in improving roads, after decades of disinvestment. Even with the passage of SB1 in 2017, California’s gas tax has seen a 46 percent drop in purchasing power since 1963. More funding is necessary to reach the MTC goal of “good” PCI, and lack of sufficient funding remains a challenge for MTC and local governments.

While every city in MTC’s jurisdiction has faced the same challenges with funding from the State, some cities have been more successful in securing adequate local funding to improve street condition. El Cerrito, Moraga, and Orinda have all secured additional sales tax revenue through ballot measures to finance street repair and rehabilitation. Since sales taxes disproportionately impact lower income residents, a sales tax may not be the best solution for Berkeley. However, the City does need to secure additional stable funding sources for streets. El Cerrito was able to improve PCI from 48 to 85 in less than five years. Moraga’s three-year moving average PCI score increased 10 points from 58 for 2012-2014 to 68 for 2015-2017. Orinda was able to improve their three-year PCI score from 49 to 60 over the same period.

**COVID-19 will impact available funding for street paving.**

Due to COVID-19 economic impacts, the City is facing a decrease in revenue. Public Works predicts a decrease of \$1.13 million in FY 2020 and \$1.06 million in Fiscal Year 2021 in street funding from state transportation tax, SB1, Measure B, and Measure BB funds. This could impact the Five-Year Paving Plan by decreasing the size of planned rehabilitation projects. However, Public Works will be able to maintain street maintenance operations at the current level.



In 2006, El Cerrito’s streets were in poor condition with a PCI of 48 and deferred maintenance costs of over \$21 million. In less than five years, the city had boosted its PCI to 85. They were able to improve the pavement conditions so much and so quickly with bond proceeds, sales tax revenue, and grant funds. In 2008, voters passed a half-cent sales tax measure to boost the funding of the Street Improvement Program. The biggest impact on the future of El Cerrito’s streets was the city’s ability to reduce deferred maintenance and secure a direct, recurring, local source of revenue through the new sales tax.

## Recommendations

To ensure there are sufficient resources to maintain Berkeley streets, we recommend that the Public Works Department:

- 1.1 Annually, conduct a budget analysis, based on the deferred maintenance needs at that point in time, to determine what level of funding is necessary to achieve the desired goals of the Street Rehabilitation Program. Report findings to City Council. This information will be helpful during updates to the Five-Year Street Rehabilitation Plan and during the budgeting process.
- 1.2 Identify funding sources to achieve and maintain the goals of the Street Rehabilitation Program.



## The Streets Rehabilitation and Repair Policy is out-of-date and Public Works is not following it.

The Streets Rehabilitation and Repair Policy has not been updated since 2009. Public Works is no longer following the policy to guide annual updates to the Five-Year Paving Plan and there is no mention of equity in the policy. Additionally, the policy is not guided by clear goals or performance measures. Without a clear and updated policy, Public Works and City Council are not able to make fully informed or transparent decisions regarding annual street paving. This may lead to inefficiencies and inequities in street paving.

### The Policy has not been updated since 2009.

The Street Rehabilitation and Repair Policy establishes that the City shall have a Five-Year Paving Plan that is adopted by Council. Both the policy and the Five-Year Paving Plan are to be reviewed and updated annually to ensure that they are consistent with each other and with the City's General Plan and Area Plan policies. It is unclear who is responsible for updating the policy. Public Works staff and the Public Works Commission acknowledged that the policy is outdated and expressed the need for updates to help guide the planning process and promote transparency. The Public Works Commission has taken action to begin updating it.

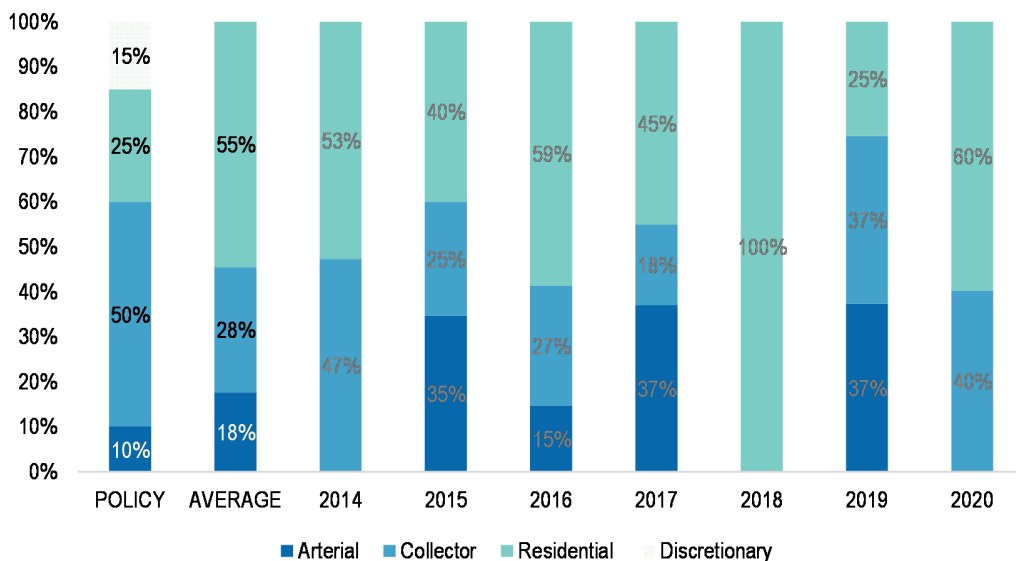
### The City has not allocated funding for paving in accordance with the Policy.

Between fiscal years 2014 to 2020, the planned paving projects did not align with the funding prioritization based on street use established by the City's Street Rehabilitation and Repair Policy. The policy states that the City should prioritize and use all available funding for the rehabilitation of streets in accordance with their use. There are three types of streets according to the policy – arterials, collectors, and residential. All Berkeley Measure B Sales Tax, and new and current gas tax funds shall be used as follows:

- 10 percent for arterials
- 50 percent for collectors
- 25 percent for residential
- 15 percent for discretionary/demonstration projects

Over the course of the seven years, collector streets were significantly underfunded, receiving on average 28 percent of the annual funding when according to the policy, collectors should be funded at 50 percent annually. Residential streets were funded above the minimum funding level every year. In FY 2018, paving projects on residential streets received 100 percent of the annual funding. According to Council reports from Public Works staff and Commission, the redirection of funds towards residential streets was an attempt to address immediate improvement in the citywide PCI. Council only approved the first year of the FY 2018 five year paving plan as recommended by the Public Works Commission.

Figure 11. A Majority of Funds Spent on Residential Streets, Not Aligned With Policy



Source: Auditor analysis

Additionally, Council decisions that directly impact how streets funds are spent have not been incorporated into the policy. For example, in October 2019, Council passed a recommendation to direct the City Manager to establish a paving pilot program to prioritize bikeways and Vision Zero pedestrian high-injury streets. This initiative requires the City to allocate at least 50 percent of the paving budget towards such streets. This new prioritization and allocation of streets funding should be reflected in the policy.

**Public Works staff consider many factors when updating the Paving Plan.**

As the City is determining which street repairs to prioritize, decision makers consider the PCI of streets, plus Council priorities, the volume of traffic,

other scheduled work on streets, the funding available, and the distribution of projects across council districts, bikeways, and street types. The policy states that updates should be made annually to the Five-Year Paving Plan. Between 2014 and 2020, the City made updates annually, except in 2017.

Figure 12. Process for Updating the Five-Year Paving Plan



Source: Public Works

First, Public Works staff create a preliminary list to determine where repairs or more basic maintenance are needed throughout the City based on available funding. One challenge the City can face is having to coordinate with another major project in the area. This could be a City initiated project, or a project from another agency, such as utility companies (e.g., Pacific Gas & Electric and East Bay Municipal Utility District). Public Works staff have told us they would likely wait until a conflicting project is finished before doing repair and maintenance work. That can mean some street paving is delayed. Berkeley established a five-year moratorium on pavement cuts following the paving of streets, but unplanned, emergency issues can also complicate matters and lead to newly repaired streets being dug up.

Then, staff determine what street segments should be on the list based on the cost effectiveness of treatment, volume of traffic, where they can pave contiguous blocks, and the distribution of paving throughout Council districts, to come up with a draft plan. According to MTC, it is more cost effective to maintain streets in good condition and keep them from falling into lower categories, than to spend limited funds on more invasive full rehabilitation of streets that have already fallen into disrepair. This can explain why some roads that do not seem in most need of repairs are on the

paving list. Additionally, it can be more cost effective to pave contiguous street segments.

Decision-makers must balance pavement management best practices with competing interests, and with limited streets funding. In recent years, the City has focused more resources on residential streets in direct response to public complaints. The Public Works Commission and City Council have been in support of this decision, even though it is in contradiction to the policy. The draft plan is presented to the Public Works and Transportation Commissions. Finally, the plan is presented to Council. The presentation is usually accompanied with a recommendation from the City Manager and a separate recommendation from the Public Works Commission. Council may choose to adopt either recommendation, or propose changes to the plan before voting to approve the final plan.

### Equity is not defined in the policy.

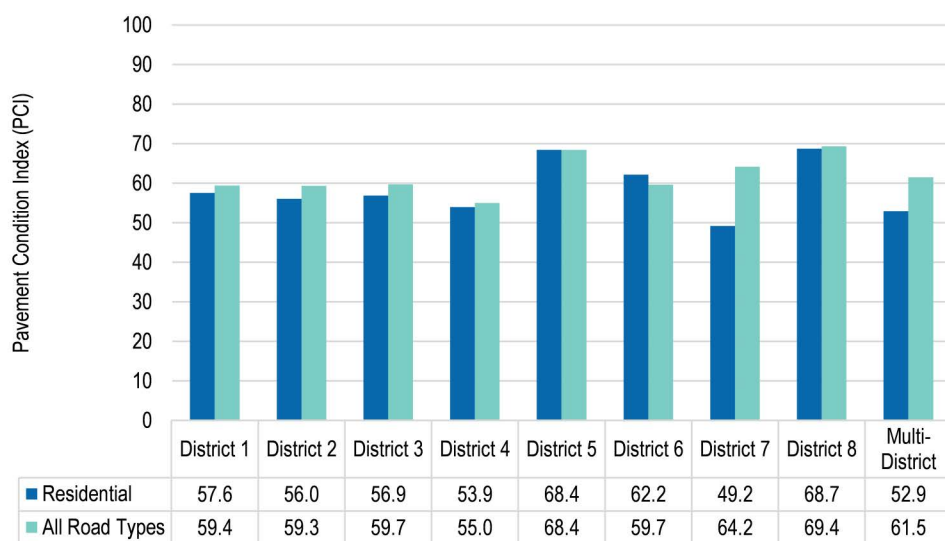
While the word “equity” does not appear in the Streets Rehabilitation and Repair Policy, it is a stated goal of the Public Works Department to take equity into consideration in developing the paving plan. Due to limited resources, Public Works balances equity with cost-effectiveness, including working on contiguous paving projects, rather than small piecemeal projects throughout the City. The mechanism by which Public Works checks for equity is by attempting to ensure an equal split of funds across City Council districts. While this is their practice, staff expressed a desire for more guidance as to how to apply equity into the planning process.

Using equity as criteria to prioritize projects may be most appropriate in the long-term planning of street paving. The City has defined equity and incorporated the definition into the transportation planning processes in the Bike Plan and Vision Zero. The Bike Plan is a long-term plan for building out the bikeway network through 2035. Projects in the plan were evaluated against a set of criteria that prioritize each project based on safety, community support, and equity factors. The equity score was based on whether the project was located in an MTC designated Community of Concern. The definition of Community of Concern include minority population, low-income households, people with limited English proficiency, households with no cars, seniors, people with disabilities, single-parent families, and households with severe rent burden. Additionally, Oakland recently developed a similar prioritization framework for street paving based on equity and additional factors.

Berkeley has voiced its commitment to improving infrastructure and doing so in an equitable way through Vision 2050.<sup>8</sup> The Vision 2050 Task Force recently produced a report detailing a long-term infrastructure plan to address challenges to Berkeley’s aging infrastructure. Berkeley voters supported this initiative with the passage of Measure R in November 2018. The report establishes four core values on which all infrastructure planning decisions should be based. One of those core values is equity. According to the report, all benefits of infrastructure improvements should be distributed equitably throughout the community. This means that underserved individuals should experience the benefits of infrastructure improvements sooner than others, and improvements should be tailored to meet their unique needs.

So how is Berkeley doing with regard to equity in our streets? When looking specifically at residential streets throughout the City, Districts 8 and 5 have the highest average residential PCI and District 7 has the lowest. Additionally, street segments that are in more than one district (multi-district) have the second lowest average PCI in this comparison.

Figure 13. Average Pavement Condition Index by Street Segment, by District



Source: Auditor analysis of StreetSaver data

Note: Multi-district street segments are segments in more than one district.

It is important to note that no two districts are the same size or contain the same make up of street types. This makes comparisons across districts challenging. The current process for allocating funding does not consider other outcome measures besides PCI. Looking at average PCI scores across

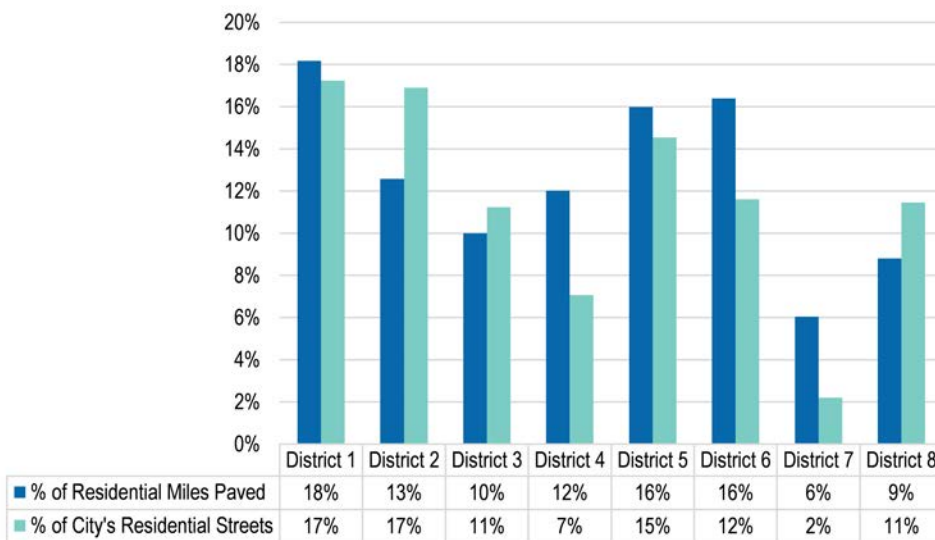
<sup>8</sup> Task Force Recommendations: [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/09\\_Sep/Documents/2020-09-29\\_Special\\_Item\\_01\\_Vision\\_2050\\_Task\\_Force\\_Recommendations\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/09_Sep/Documents/2020-09-29_Special_Item_01_Vision_2050_Task_Force_Recommendations_pdf.aspx)

After securing a \$600 million bond, through the passage of Measure KK, Oakland prepared a three-year paving plan which represents \$100 million construction investment. Oakland anticipates the plan to be fully funded by Measure KK. The Oakland Department of Transportation developed a framework to prioritize streets for repaving based on equity, street condition, and traffic safety. For the prioritization of local streets, Oakland staff developed a weighted system that equally accounts for street condition and underserved populations. The definition of underserved population includes people of color, low-income households, people with disabilities, households with severe rent burden, people with limited English proficiency, and youth/seniors. The two metrics were combined by planning area, to produce a weighted factor that was used to distribute 85 percent of the local street program funding.

Measure R Ballot Language: “Shall the measure, advising the Mayor to engage citizens and experts in the development of Vision 2050, a 30-year plan to identify and guide implementation of climate-smart, technologically advanced, integrated and efficient infrastructure to support a safe, vibrant and resilient future for Berkeley, be adopted?”

districts might tell us something about the overall condition within a specific district, however, additional factors should be taken into consideration when discussing equity of paving citywide. For example, Figure 14 shows that Districts 1 and 2 have the most residential streets in the City, with each containing 17 percent of the City’s total residential streets, while District 7 contains only two percent of the City’s residential streets. When looking at all the residential streets paved between 2014 and 2020 under the Five-Year Paving Plans, District 2 received the least street paving in proportion to the percentage of residential streets in their district. This comparison does not take into account the cost variances in the types of pavement treatment. Some treatments are more expensive than others, which may result in less miles paved for the same amount of money as other less expensive treatments. This is just one additional way to look at equity across districts.

Figure 14. Residential Miles Paved Relative to Residential Miles by District, Years 2014-2017



Source: Auditor analysis of StreetSaver data

Berkeley has not developed deeper ways to look at equity in paving like the ones described above. Demographic data by district is not readily available. However, by looking at the overall picture of our streets, it is clear that the streets in the Berkeley hills are generally in slightly better condition than the streets in the flat areas. If the City continues to underfund street repair and prioritize keeping better paved streets in good condition, the disparity in street condition among districts will continue to grow. According to forecasts conducted by PEI, Districts 1 and 2 are projected to have the lowest PCIs of 45.5 and 46.2 by 2025 at the current rate of funding.<sup>9</sup>

<sup>9</sup>This forecast includes all street types (arterials, collectors, and residential streets).

## The Policy is not guided by clear goals or performance measures.

The current policy includes outdated priorities and lacks any goals or performance measures to track the success of the program. Other transportation plans in the City including the Bike Plan and Berkeley Strategic Transportation Plans, include goals and performance measures. While Public Works does take other transportation plans and programs into account when updating the Five-Year Paving Plan, there is room for improvement to increase transparency and ensure the best use of limited funds.

Performance-based planning and programming involves integrating performance management concepts into the existing planning and programming process to achieve desired outcomes of the entire transportation system. This type of planning attempts to ensure transportation dollars are spent based on the ability to meet established goals for improving the overall system. It involves using data to support long-range and short-range investment decision-making, and it is considered a best practice in the transportation industry. It generally starts with a vision and goals, selection of performance measures, and use of data and analysis tools to inform priorities, which are carried forward into short-term planning.

Figure 15. Performance-Based Planning and Programming Framework



Source: US Department of Transportation Performance Based Planning and Programming Guidebook, 2013

 The Bike Plan  
 defines safety goals  
 and performance  
 measures.

Goal 1: Safety First

Performance Measure: Zero bicycle-involved fatalities by 2025.

Performance Measure: Zero bicycle-involved severe injuries by 2035.

 The Berkeley  
 Strategic  
 Transportation Plan  
 (BeST Plan)

provides a prioritized vision of how to improve Berkeley's transportation network over 5-, 10-, and 30-year periods. This is a guide for achieving a transportation network that aligns with the City's Complete Streets Policy and other transportation visions established by other City plans and policies. The BeST Plan defines the methodology for measuring success of transportation improvements and includes defining metrics based on the vision, goals, and policies. There are five goals:

1. Increase mobility and access for all mode choices
2. Increase user safety
3. Increase access to commercial districts and opportunity areas
4. Increase transportation choices for disadvantaged communities
5. Increase environmental sustainability and resiliency

## Paving decisions are not transparent and inefficiencies may exist.

There is a lack of transparency about how paving decisions are being made. Without a clear and updated policy, guided by goals and performance measures, Public Works and City Council are not able to make fully informed or transparent decisions regarding annual street paving. This may lead to inefficiencies and inequities in the streets program.

### Recommendations

To ensure a transparent decision-making process, we recommend that the Public Works Department:

- 2.1 Update the Street Rehabilitation and Repair Policy annually and define who is responsible for ensuring the Policy is updated, as stated in the Policy.
- 2.2 When updating the Street Rehabilitation and Repair Policy, incorporate equity to align with Vision 2050 and clearly define how it will be applied to the street maintenance and rehabilitation planning process.
- 2.3 Define goals and performance measures to guide the Street Rehabilitation and Repair Policy and Street Rehabilitation Program that align with other plans and policies relevant to street paving (e.g., Complete Streets Policy, Vision 2050, etc.). Regularly report to Council on performance measures.



## Appendix I: Methodology and Statement of Compliance

### Methodology

We audited the Streets Rehabilitation Program for fiscal years (FY) 2014 through 2020. We performed a risk assessment of the program's practices and procedures to identify potential internal control weakness, including fraud risks, within the context of our audit objectives. We assessed funding levels and the pavement condition index, and evaluated policies and plans. This included a review of selected policies and procedures, as well as interviews with staff from Public Works. In performing our work, we identified concerns about the program's outdated policies, and insufficient resources, planning, and communication that would help ensure that Berkeley's streets are paved and maintained. While we assessed the fiscal impact of pavement condition, our analysis did not include the external costs on vehicles or safety associated with street condition.

To gain an understanding of the Streets Rehabilitation Program operations and threats to performance and to achieve our audit objectives, we:

- Reviewed the Street's Rehabilitation and Repair Policy and Complete Streets Policy.
- Reviewed and analyzed the Five-Year Street Rehabilitation Plans from FY 2014 through FY 2020 and accompanying council items.
- Reviewed MTC's 2035 Transportation Plan, 2018 Pothole Report, and certification letters.
- Interviewed Public Works Staff, Public Works Commissioners, City Councilmembers, and community members.
- Reviewed Pavement Engineering Incorporated's 2018 report on the City's pavement management program.
- Reviewed the City's budgets and Capital Improvement Programs from FY 2014 through FY 2020.
- Reviewed paving project costs for construction projects completed in FY 2014 through FY 2019.
- Reviewed the Bike, Pedestrian, and Berkeley Strategic Transportation Plans.
- Compared best practices for transportation planning with the City's current process.

### Data Reliability

StreetSaver data is sufficient and reliable for the purposes of providing overall descriptive statistics on the condition of pavement throughout the City. Outside experts are hired to conduct periodic condition analyses of city streets and update the pavement management database (StreetSaver). Under contract with MTC, Pavement Engineering Inc. (PEI) updated the City's Pavement Management System in 2018. The purpose of a Pavement Management System is to track inventory, store work history and furnish budget estimates to optimize funding for improving the City's pavement system.

We relied on reports produced by the Metropolitan Transportation Commission (MTC) and PEI to answer our audit objectives. These reports are sufficient and appropriate in the context of our audit objectives. MTC is the metropolitan planning organization for the nine-county San Francisco Bay Area that includes Berkeley.

Pavement Engineering Inc. is a civil engineering firm that specializes in pavement management and rehabilitation. They are currently under contract with MTC as qualified Pavement Management Technical Assistance Partner consultants, and were responsible for reviewing and updating Berkeley's pavement management system, StreetSaver, in 2018.

### Statement of Compliance

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Appendix II: Recommendations and Management Response

City Management agreed to our findings, conclusions, and recommendations. In our meetings with Public Works Department management, they described their current and planning actions to address our audit recommendations. We found those verbal responses reasonable. Below is the Public Works Department initial corrective action plan and proposed implementation dates. As part of the follow-up process, the Berkeley City Auditor will be actively engaging the Public Works Department every six months to assess the process they are making towards complete implementation.

- 1.1** Annually, conduct a budget analysis, based on the deferred maintenance needs at that point in time, to determine what level of funding is necessary to achieve the desired goals of the Street Rehabilitation Program. Report findings to City Council. This information will be helpful during updates to the Five-Year Street Rehabilitation Plan and during the budgeting process.

Management Response: Agree.

Proposed Implementation Plan: By January 2021, include this information in Public Works' staff recommendation for City Council's approval of 5 year paving plan.

Proposed Implementation Date: January 2021

- 1.2** Identify funding sources to achieve and maintain the goals of the Street Rehabilitation Program.

Management Response: Agree.

Proposed Implementation Plan: By January 2021, include this information in Public Works' staff recommendation for City Council's approval of 5 year paving plan.

Proposed Implementation Date: January 2021

- 2.1** Update the Street Rehabilitation and Repair Policy annually and define who is responsible for ensuring the Policy is updated, as stated in the Policy.

Management Response: Agree.

Proposed Implementation Plan: By June 2021, Public Works staff and Public Works Commission submit a proposed revised policy for Council adoption, which addresses both equity and Vision 2050. This policy will then be approved annually by City Council at the same time as the paving plan.

Proposed Implementation Date: June 2021

**2.2** When updating the Street Rehabilitation and Repair Policy, incorporate equity to align with Vision 2050 and clearly define how it will be applied to the street maintenance and rehabilitation planning process.

Management Response: Agree.

Proposed Implementation Plan: By June 2021, Public Works staff and Public Works Commission submit a proposed revised policy for Council adoption, which addresses both equity and Vision 2050.

Proposed Implementation Date: June 2021

**2.3** Define goals and performance measures to guide the Street Rehabilitation and Repair Policy and Street Rehabilitation Program that align with other plans and policies relevant to street paving (e.g., Complete Streets Policy, Vision 2050, etc.). Regularly report to Council on performance measures.

Management Response: Agree.

Proposed Implementation Plan: By May 2021, Public Works includes annual performance goals and measures as part of the citywide budget development process, and includes reports on these measures as part of the future biennial budget development.

Proposed Implementation Date: May 2021

**Mission Statement**

Promoting transparency and accountability in Berkeley government.

**Audit Team**

Erin Mullin, Auditor-in-Charge  
Claudette Biemeret, Audit Manager (Former)  
Tracy Yarlott-Davis, Audit Team Member

**City Auditor**

Jenny Wong

**Office of the City Auditor**

**Phone:** (510) 981-6750

**Email:** [auditor@cityofberkeley.info](mailto:auditor@cityofberkeley.info)

**Website:** [www.cityofberkeley.info/auditor](http://www.cityofberkeley.info/auditor)

Icons made by Freepik from [www.flaticon.com](http://www.flaticon.com)

Copies of our audit reports are available at  
[www.cityofberkeley.info/Auditor/Home/Audit\\_Reports.aspx](http://www.cityofberkeley.info/Auditor/Home/Audit_Reports.aspx)



BERKELEY CITY AUDITOR





Office of the Mayor

CONSENT CALENDAR

December 15, 2020

To: Members of the City Council

From: Mayor Arreguin and Councilmember Bartlett

Subject: Tenth Annual Martin Luther King Jr. Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund

RECOMMENDATION

1. Adopt a Resolution co-sponsoring the 10th Annual Martin Luther King Jr. Celebration on January 18, 2021.
2. Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Mayor Arreguin, to the Berkeley Rotary Endowment, the fiscal sponsor of the 10th Annual Martin Luther King Jr. celebration, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.

BACKGROUND

The annual Martin Luther King Jr Celebration, which first started in 2012, strives to bring together a diverse group of East Bay residents to celebrate and continue the work of Dr. Martin Luther King Jr. The purpose of this event is to bring the faith based, business, university, youth and civic communities together to celebrate the life and vision of Dr. King and to honor adult and youth leaders in our community.

We are proposing that City Councilmembers make individual grants of up to \$250 to the Berkeley Rotary Endowment to commemorate and honor Dr. Martin Luther King Jr. Due to the COVID-19 pandemic, the event is being held virtually on January 18, 2021. Funds raised will go to local non-profit organizations recognized at the event.

FINANCIAL IMPLICATIONS

No General Fund impact; \$250 is available from Mayor Arreguin's Office Budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution for City Sponsorship
- 2: Resolution for Council Expenditures



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

CITY SPONSORSHIP OF THE 10TH ANNUAL DR. MARTIN LUTHER KING JR. CELEBRATION

WHEREAS, the Tenth Annual Dr. Martin Luther King Jr. Celebration will take place virtually on January 18, 2021; and

WHEREAS, the purpose of this event is to bring the faith based, business, university, youth and civic communities together to celebrate the life and vision of Dr. King and to honor adult and youth leaders in our community; and

WHEREAS, historically the Berkeley City Council has generously provided sponsorship for this event.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley hereby co-sponsors the 10th Annual Dr. Martin Luther King Jr. Celebration, has permission to use the City's name and logo in the event's promotional materials and signage naming the City of Berkeley as a co-sponsor solely for the purpose of the City indicating its endorsement of the event.

BE IT FURTHER RESOLVED that this co-sponsorship does not: (1) authorize financial support, whether in the form of fee waivers, a grant or provision of City services for free; (2) constitute the acceptance of any liability, management, or control on the part of the City for or over the MLK Jr Celebration; or (3) constitute regulatory approval of the event.

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

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

WHEREAS, Mayor Jesse Arreguin has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax exempt corporation, the Berkeley Rotary Endowment, seeks funds in the amount of \$250 to provide the following public services to publicly commemorate and honor the contributions of Dr. Martin Luther King Jr.; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose of bringing the communities across the City, including, but not limited to faith based, business, university, youth and civic communities, together to celebrate the life and vision of Dr. King and to honor adult and youth leaders in our community.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$250 per office shall be granted to the Berkeley Rotary Endowment to fund the following services of bringing the communities across the City, including, but not limited to faith based, business, university, youth and civic communities, together to celebrate the life and dreams of Dr. King and to honor adult and youth leaders in our community.



Cheryl Davila  
Councilmember  
District 2

## REVISED AGENDA MATERIAL

**Meeting Date:** December 15, 2020

**Item:** Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025

**Submitted by:** Councilmember Cheryl Davila

### Revisions:

Council Report and Resolution amended to reflect the action at the Wednesday, November 18, 2020 Meeting of the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee, the Committee reviewed this item and voted with a positive recommendation with the following amended actions:

1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.
2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.

Blue font and strike throughs are tracked changes. Clean version at end of document.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025

RECOMMENDATION

Adopt a resolution with the following actions:

~~1. Direct the City Attorney to prepare any draft ordinances to terminate the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025; this shall include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out such as cars over \$28K by 2023, cars over \$22K by 2024, and all cars by 2025, so as to actively create a used electric vehicle market for lower income customers.~~

*(At the Wednesday, November 18, 2020 Meeting of the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee, the Committee reviewed this item and voted with a positive recommendation with the following amended actions)*

1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.

~~2. Short term referral to the City Manager and/or designee(s) to report to the City Council in 90 days, in consultation with other City Departments with the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the sale of all electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates; the simplification of building code requirements for chargers; and the establishment of charging stations and related infrastructure to support all electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.~~

2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.

#### POLICY COMMITTEE RECOMMENDATION

On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Davila) to the send the item with a positive recommendation as amended by the committee with the following recommendation:

Adopt a resolution with the following actions: 1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars over \$28K by 2025, cars over \$23K by 2026, and all other cars by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.

2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments with the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between

an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.

Vote: All Ayes.

#### BACKGROUND

The earth is already too hot for safety. Humanity can no longer safely emit greenhouse gases if it wishes to avoid reaching irreversible climate tipping points.

Only one degree Celsius of global warming is already causing excessive and unnecessary damage worldwide. Together, Hurricanes Harvey and Irma are estimated to have cost upwards of \$290 billion dollars. Hurricane Maria has cost Puerto Rico up to \$90 billion. Hurricane Dorian was the most costly disaster in Bahamian history, estimated at \$7 billion in property damage. The combined death tolls from these hurricanes are unprecedented.

Closer to home, the devastating wildfires in California have killed dozens of people, burned thousands of homes and other structures, caused the evacuation of hundreds of thousands of people, and are estimated to cost the state upwards of \$80 billion a year.

Low income communities of color continue to suffer the most extreme impacts of climate disasters, underlying the environmental justice component of inaction. The nation and the world is in a climate emergency.

Extreme storm damage to refineries in Florida, Texas and along the Gulf Coast have caused price spikes in gasoline prices across the country. The volatility of fossil fuel prices will continue in a climate-disrupted future and will particularly impact low income residents.

Additionally, emissions from vehicles powered by fossil fuels and from production and refinement of fossil fuels contribute substantially to health problems for frontline communities living near freeways, oil drill sites and refineries. Disproportionately, the burden of dirty fuel energy is borne by low income communities of color, while reductions in fossil fuel burning would have a measurable impact on asthma-induced emergency room visits across.

To drastically reduce greenhouse gas emissions, countries such as Great Britain, India, China and Germany have already set an end date on the sales of gasoline and diesel powered passenger vehicles. Due to the short-term climate emission dangers posed by methane leaks associated with natural gas extraction, the sale of natural gas vehicles should be included in any ban.

Furthermore, automobile manufacturers such as Audi and Volvo are moving toward all-electric vehicle (EV) sales and General Motors, Ford, Land Rover and BMW are introducing new lines as well. A healthy secondary electric vehicle market is already making EVs more affordable than ever.

If the City is to continue to thrive and play a role as an international leader in climate action, all efforts must be made to reduce greenhouse gas emissions in every sector, including transportation, as soon as possible. In order to protect and promote the health of its residents, the City should make all efforts to reduce exposure to toxic emissions from freeways, oil drill sites and refineries.

#### FINANCIAL IMPLICATIONS

To be determined.

#### ENVIRONMENTAL SUSTAINABILITY

The Berkeley City Council unanimously passed the Climate Emergency Declaration in June 2018, and has a record of passing legislation to protect our climate. It is important, now more than ever to take the next step to insure that we are prepared and ready for the climate crisis we will face.

#### CONTACT PERSONS

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

#### ATTACHMENTS:

1. Resolution

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY IN SUPPORT OF INTRODUCING AN ORDINANCE TERMINATING THE SALE OF GASOLINE, DIESEL, NATURAL GAS VEHICLES THROUGHOUT THE CITY OF BERKELEY BY 2025

WHEREAS, The Berkeley City Council unanimously passed the Climate Emergency Declaration on June 12, 2018; and

WHEREAS, the cities of Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations; and

WHEREAS, There are over 48 cities throughout the United States who have declared, as well as over 1180 governments and 23 countries throughout the world. The declaration is the first step; and

WHEREAS, As unprecedented winter wildfires and ensuing mudslides destroyed parts of our City and region, a climate emergency mobilization of our City has never been more fiercely urgent; and

WHEREAS, Such an effort must end to the maximum extent technically feasible city-wide greenhouse gas emissions in every sector by 2025 and begin a large-scale effort to safely and justly remove carbon from the atmosphere; and

WHEREAS, Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate; and

WHEREAS, To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters; and

WHEREAS, Abnormal wildfires, mudslides and other demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impacted lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South; and

WHEREAS, Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen after Hurricanes Katrina, Sandy, Harvey, Irma, Maria and Dorian how environmentally and economically vulnerable have been generally left to fend for themselves; and

WHEREAS, The City must therefore aggressively move to reduce and remove greenhouse gas emissions and adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so,

Berkeley can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity; and

~~NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council directs the City Attorney be to prepare any draft ordinances to terminating the sale of gasoline, diesel and natural gas passenger vehicles by 2025; this shall include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out such as cars over \$28K by 2023, cars over \$22K by 2024, and all cars by 2025, so as to actively create a used electric vehicle market for lower income customers.~~

NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles; and

BE IT FURTHER RESOLVED, that the Berkeley City Council refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.

~~BE IT FURTHER RESOLVED, that the City Council directs the City Manager and Staff to be instructed to report to the Council in 90 days, in consultation with other City Departments on the feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the city by 2025; this review should also include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out such as cars over \$28K by 2023, cars over \$22K by 2024, and all cars by 2025, so as to actively create a used electric vehicle market for lower income customers.~~

~~BE IT FURTHER RESOLVED, that the City Council directs all City Departments and proprietaries to report back on maximum emergency reductions in greenhouse gas emissions from their operations feasible by the end of 2025, with the highest priority on an equitable and just transition in all sectors; and~~

~~BE IT FURTHER RESOLVED, that the City Council directs the City Manager and/or Designee to report on ways to promote and facilitate the sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates; the simplification of building code requirements for chargers; and the establishment of charging stations and related infrastructure to support all-electric vehicles.~~



~~BE IT FURTHER RESOLVED, that the City Council directs the City Manager and/or Designee, in consultation with the Economic Development Department, be directed to report to Council in 90 days on any "just transition" elements related to the above action, including the impact and opportunities upon auto-mechanics.~~



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025

RECOMMENDATION

Adopt a resolution with the following actions:

*(At the Wednesday, November 18, 2020 Meeting of the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee, the Committee reviewed this item and voted with a positive recommendation with the following amended actions)*

1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.
2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.

POLICY COMMITTEE RECOMMENDATION

On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Davila) to the send the item with a positive recommendation as amended by the committee with the following

recommendation:

Adopt a resolution with the following actions: 1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include the termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars over \$28K by 2025, cars over \$23K by 2026, and all other cars by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.

2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments with the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any “just transition” elements related to the above action, including the impact upon and opportunities for auto mechanics.

Vote: All Ayes.

#### BACKGROUND

The earth is already too hot for safety. Humanity can no longer safely emit greenhouse gases if it wishes to avoid reaching irreversible climate tipping points.

Only one degree Celsius of global warming is already causing excessive and unnecessary damage worldwide. Together, Hurricanes Harvey and Irma are estimated to have cost upwards of \$290 billion dollars. Hurricane Maria has cost Puerto Rico up to \$90 billion. Hurricane Dorian was the most costly disaster in Bahamian history, estimated at \$7 billion in property damage. The combined death tolls from these hurricanes are unprecedented.

Closer to home, the devastating wildfires in California have killed dozens of people, burned thousands of homes and other structures, caused the evacuation of hundreds of thousands of people, and are estimated to cost the state upwards of \$80 billion a year.

Low income communities of color continue to suffer the most extreme impacts of climate disasters, underlying the environmental justice component of inaction. The nation and the world is in a climate emergency.

Extreme storm damage to refineries in Florida, Texas and along the Gulf Coast have caused price spikes in gasoline prices across the country. The volatility of fossil fuel prices will continue in a climate-disrupted future and will particularly impact low income residents.

Additionally, emissions from vehicles powered by fossil fuels and from production and refinement of fossil fuels contribute substantially to health problems for frontline communities living near freeways, oil drill sites and refineries. Disproportionately, the burden of dirty fuel energy is borne by low income communities of color, while reductions in fossil fuel burning would have a measurable impact on asthma-induced emergency room visits across.

To drastically reduce greenhouse gas emissions, countries such as Great Britain, India, China and Germany have already set an end date on the sales of gasoline and diesel powered passenger vehicles. Due to the short-term climate emission dangers posed by methane leaks associated with natural gas extraction, the sale of natural gas vehicles should be included in any ban.

Furthermore, automobile manufacturers such as Audi and Volvo are moving toward all-electric vehicle (EV) sales and General Motors, Ford, Land Rover and BMW are introducing new lines as well. A healthy secondary electric vehicle market is already making EVs more affordable than ever.

If the City is to continue to thrive and play a role as an international leader in climate action, all efforts must be made to reduce greenhouse gas emissions in every sector, including transportation, as soon as possible. In order to protect and promote the health of its residents, the City should make all efforts to reduce exposure to toxic emissions from freeways, oil drill sites and refineries.

#### FINANCIAL IMPLICATIONS

To be determined.

#### ENVIRONMENTAL SUSTAINABILITY

The Berkeley City Council unanimously passed the Climate Emergency Declaration in June 2018, and has a record of passing legislation to protect our climate. It is important, now more than ever to take the next step to insure that we are prepared and ready for the climate crisis we will face.

#### CONTACT PERSONS

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

#### ATTACHMENTS:

1. Resolution

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY IN SUPPORT OF INTRODUCING AN ORDINANCE TERMINATING THE SALE OF GASOLINE, DIESEL, NATURAL GAS VEHICLES THROUGHOUT THE CITY OF BERKELEY BY 2025

WHEREAS, The Berkeley City Council unanimously passed the Climate Emergency Declaration on June 12, 2018; and

WHEREAS, the cities of Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations; and

WHEREAS, There are over 48 cities throughout the United States who have declared, as well as over 1180 governments and 23 countries throughout the world. The declaration is the first step; and

WHEREAS, As unprecedented winter wildfires and ensuing mudslides destroyed parts of our City and region, a climate emergency mobilization of our City has never been more fiercely urgent; and

WHEREAS, Such an effort must end to the maximum extent technically feasible city-wide greenhouse gas emissions in every sector by 2025 and begin a large-scale effort to safely and justly remove carbon from the atmosphere; and

WHEREAS, Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate; and

WHEREAS, To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters; and

WHEREAS, Abnormal wildfires, mudslides and other demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impacted lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South; and

WHEREAS, Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen after Hurricanes Katrina, Sandy, Harvey, Irma, Maria and Dorian how environmentally and economically vulnerable have been generally left to fend for themselves; and

WHEREAS, The City must therefore aggressively move to reduce and remove greenhouse gas emissions and adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeley can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity; and

NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over \$28K by 2025, over \$23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles; and

BE IT FURTHER RESOLVED, that the Berkeley City Council refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
December 15, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Potential Bonding and Funding Opportunities for Improving the PCI of Residential Streets, and Creating a Paving Master Plan

RECOMMENDATION

Refer to the to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee (FITES) to continue working with the Public Works Department and the Commission to explore potential bonding and funding opportunities for improving the PCI of residential streets, create a paving master plan, and consider the Public Works Commission Paving Policy, once complete.

POLICY COMMITTEE RECOMMENDATION

On November 18, 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to send the item with a positive recommendation to the City Council requesting that the item be referred back to the Facilities committee for further consideration and to request that Council refer the Paving Plan from the Public Works Commission to the committee when the item comes before Council in January. Vote: All Ayes.

BACKGROUND

On January 21, 2020, the City Council referred the following language from the revised agenda material from Councilmember Harrison in the Supplemental Communications Packet 2, and as further revised by the Council, to the FITES Committee for consideration:

Refer to the Facilities, Infrastructure, Transportation, Environment, & Sustainability Committee to work with the Public Works Department and the Commission to explore potential bonding and funding opportunities for improving the PCI of residential streets, and creating a paving master plan.

The FITES committee has been working diligently with the Public Works Department, the Public Works Commission and community members to explore funding opportunities to support programs and policies that will significantly increase citywide paving condition index (PCI).

Currently, the Public Works Department and Commission are in the process of finalizing an updated five-year paving plan. The five-year paving plan will proceed directly to Council in January so that bids may be issued for paving in 2021. At the same time, the Department and Commission are working on proposals for funding significant long-term paving improvement, stabilization and maintenance programs and recommendations for an updated Paving Policy, which has not been revised since 2009, and which includes a new definition of paving equity and consideration of how to complete paving segments in the most efficient manner possible. Both the Public Works Department and Commission expect to have updated paving policy and funding proposals for Council review by early next year. The FITES committee is prepared to continue consideration of these proposals in order to assist Council action.

In light of these policy developments and given that FITES consideration of the original Council referral is set to expire on November 23, 2020, Committee members unanimously voted on November 18, 2020 to request that the Council extend the period of consideration. Approval of this item would extend the FITES Committee's consideration and oversight with regard to improving Berkeley's PCI and referral of the Public Works Commission's forthcoming Paving Policy to the FITES Committee.

#### ENVIRONMENTAL SUSTAINABILITY

Extending FITES consideration of paving funding opportunities and policies would provide continued Council oversight related to procuring sustainable and low-carbon paving technologies and practices.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary to facilitate further FITES Committee consideration.

#### CONTACT PERSON

Councilmember Kate Harrison  
510-981-7140





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
December 15, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf  
Subject: The Berkeley Baby Book Project: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$125 per Councilmember, including \$125 from Councilmember Wengraf, to support the Berkeley Baby Book Project, a non-profit, with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf and all other Councilmembers who would like to contribute, will provide books to Berkeley children aged 0-5 years. The books are delivered by USPS and addressed to the child who owns them at no cost to their family. \$125 covers 5 years of monthly delivery costs.

FINANCIAL IMPLICATIONS

No General Fund impacts

BACKGROUND

Research shows that the presence of a generous number of books in the home of a young child is, by itself, a surprisingly strong indicator of later education level attainment, outweighing correlations to income and parent education. Frequent book sharing with babies is the best way to nurture roots of literacy. Ownership makes that easy.

Literacy is a cornerstone of social justice and equality. Without it, full access to and participation in the programs, movements and institutions that shape our culture and society is hindered.

ENVIRONMENTAL SUSTAINABILITY

No impact

CONTACT PERSON

Councilmember Wengraf                      Council District 6                      510-981-7160

Attachments:

1: Resolution

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE FUNDING TO THE BERKELEY BABY BOOK PROJECT

WHEREAS, Councilmember Susan Wengraf has surplus funds in her office expenditure account and will contribute \$125.00 and invites other Councilmembers to join her in contributing; and

WHEREAS, a California non-profit tax-exempt corporation, The Berkeley Baby Book Project, will receive funds in an amount up to \$125.00 per contributing Councilmember's discretionary account; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of providing a generous number of books to children aged 0-5 to read and have as their own; and

WHEREAS, research shows that books in a young child's home is a surprisingly strong indicator of later education level attainment, outweighing correlations to income and parent education.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget, up to \$125 per office, shall be granted to The Berkeley Baby Book Project.



# The Berkeley Baby Book Project

June, 2020

Dear Fellow Literacy Advocate

Thanks to generous support from people like you our Dolly Parton's Imagination Library Program has gifted over 20,000 new, age-appropriate, quality books to children in our city aged 0 to 5. Currently 800 children receive books monthly and 450+ have 'graduated' from our Imagination Library (IL) Program, launched in 2015 with Head Start. IL books are delivered by the USPS, addressed to the child, who owns them. Books are a gift to the child; there's no cost to families.

Research shows that the presence of a generous number of books in the home of a young child is, by itself, a surprisingly strong indicator of later education level attainment, outweighing correlations to income and parent education. Frequent book sharing with babies is the best way to nurture roots of literacy. Ownership makes that easy.

Literacy is a cornerstone of social justice and equality. Without it, full access to and participation in the programs, movements and institutions that shape our culture and society is handicapped.

We aim to make books a birthright all over the East Bay, starting in our home town. I hope you will consider supporting our efforts. IL makes our goal feasible: just \$25 covers a full year of monthly book deliveries; \$125 covers 5 years of monthly delivery costs.

Because of Covid-19 we activated online registration capability for IL, a thing we'd planned for in late 2021 because of the predictable increase in participation it brings. But, IL is a superb service for hunkering down families, with schools and libraries closed. We felt an urgency to make it more easily available. And, IL books are effectively quarantined before delivery: they're wrapped and labeled 2-10 weeks before landing in the mailbox. And, preschoolers are happily motivated to read *their own* book with *their* name on it, often proudly proclaiming, "Mine!" upon delivery.

We are counting on this community to support our long-term work thru these uncertain times.

With IL, any child can amass a high-quality home library long *before* Kindergarten begins. Eligibility for the Program is determined only by a child's age and home address: all children under age 5 inside an Affiliate's region of service are eligible, they need only be registered by a parent/guardian. The BBBP serves Berkeley, with aspirations to expand.

Imagination Library is good for the child, good for schools, and good for the community. Widespread IL participation can strengthen our social fabric: shared book ownership creates potential for connection between children from families with little else in common. Preschool and Kinder teachers can build on shared literature experiences. BUSD Pre-K teachers love it.

Putting a book in a child's hands is just one small thing but it is a *joyous* thing, it is a *powerful* thing. It is a *long game* thing. I am in for that long game. Please join me. Make a donation today.

Sincerely,

Seena Hawley, Executive Director      P.O. Box 8213, Berkeley, CA 94707  
510-292-1346      seena@thebbbp.org      www.thebbbp.org  
A 501(c)(3) organization      EIN 46-1358633

Some 2019 survey comments, and a graph!

Since the books have been delivered my son has started to read on his own and loves Reading time. Thank you for supporting his love for reading and learning.

*I just wanted to say that this program is very helpful for the community and people of color because our black and brown kids can see themselves on the cover and inside so many of these books.*

We love this program. I am encouraged to read to my son every day because of your help with this program. Thank you so much! Mom

*It's soooo exciting when a book arrives. I show my child the label with HER name on it and she's just so pumped to have her own book mailed to her. We especially love love love the books with Spanish and English. Thank you for all your efforts.*

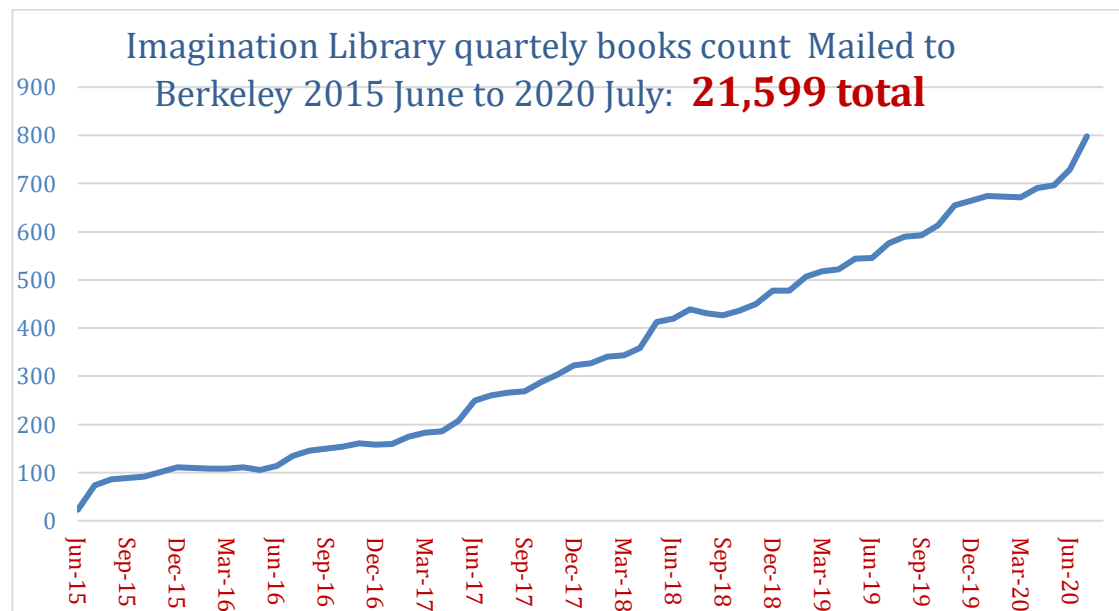
Imagination Library has created excitement and ownership around reading, and gives them shared stories with other kids at their school.

*My son loves getting his books he runs to the mail box every time at first he couldn't read by his self and now it is getting so much better. Thank you guys for all you do.*

Thank You! These books bring us so much joy!

*The variety has been great -- most of which I would not have discovered on my own. My kids love receiving a book in the mail. Thank you 100X over for another great year!!*

My two children have really developed a love for books and I know Dolly's books played a big role in that. Thank you for all your work!





CONSENT CALENDAR  
December 15, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Rigel Robinson  
Subject: Resolution: Support of S. 4571 - 2020 Census Deadline Extensions Act

### RECOMMENDATION

Adopt a Resolution supporting S. 4571, the 2020 Census Deadline Extensions Act, which would extend the Census Bureau's statutory deadlines for delivering apportionment and redistricting data to April and July 2021, respectively.

### BACKGROUND

The Census Bureau currently faces a December 31, 2020 statutory deadline to produce census numbers for congressional apportionment, and an April 1, 2021 deadline to transmit redistricting data to the states. The 2020 Census Deadline Extensions Act would extend both deadlines by 120 days to allow for thorough and accurate data processing.

Due to the COVID-19 pandemic, the Bureau extended data collection through October 31, 2020.<sup>1</sup> If Congress does not act to adjust the apportionment and redistricting deadlines accordingly, time for data processing would be cut in half, from 26 weeks in 2000 and 21 weeks in 2010 to just 11 weeks in 2020. These deadlines are particularly challenging given a larger, more diverse population, as well as disruptions to census operations caused by the pandemic.

One of many disruptions has been the closure of college campuses, which has increased the likelihood of double-counting or miscounting college students who have moved back home. The Census Bureau is required to count people at their April 1 "usual residence," meaning that students should be counted in their college towns. However, Berkeley has already seen some of the lowest self-response rates in the nation for Census Tracts 4227 and 4228, which encompass the Southside neighborhood.<sup>2</sup>

The Bureau needs adequate time to supplement low self-response rates through imputation. Data from this census will guide the allocation of economic and pandemic recovery resources to states and municipalities, including grant money, PPE, medical equipment, vaccines, and therapeutics. Furthermore, students counted in the wrong state could affect the outcome of congressional apportionment. Without careful data

<sup>1</sup> <https://www.census.gov/newsroom/press-releases/2020/statement-covid-19-2020.html>

<sup>2</sup> <https://2020census.gov/en/response-rates/self-response.html>

processing, cities like Berkeley could face significant undercounting, underfunding, and underrepresentation in the decade to come.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Resolution

2: Bill text

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

SUPPORT OF S. 4571 - 2020 CENSUS DEADLINE EXTENSIONS ACT

WHEREAS, S. 4571, the 2020 Census Deadline Extensions Act, would extend the Census Bureau's statutory deadlines for delivering apportionment and redistricting data to April and July 2021, respectively; and

WHEREAS, the Bureau's operations have been drastically impacted by the COVID-19 pandemic, leading to the decision to extend data collection through October 31, 2020; and

WHEREAS, due to the impact of the pandemic on college campuses, the City of Berkeley has already seen some of the lowest self-response rates in the nation for Census Tracts 4227 and 4228, which encompass the Southside student neighborhood; and

WHEREAS, if Congress does not act to adjust the Bureau's statutory deadlines, there will be insufficient time for the data quality assurance and imputation work that the Bureau conducts to accurately count these low self-responding populations; and

WHEREAS, the 2020 Census numbers will guide the next decade of congressional apportionment, redistricting, economic investment, and the allocation of critical economic and pandemic recovery resources to states and localities.

THEREFORE BE IT RESOLVED that the Council of the City of Berkeley supports S. 4571, the 2020 Census Deadline Extensions Act, and calls upon Congress to carry out its constitutional duty to give the Census Bureau the time its experts need to produce statistically sound and acceptably accurate data.

BE IT FURTHER RESOLVED that copies of this Resolution shall be sent to Senator Brian Schatz, Representative Don Young, Senator Kamala Harris, Senator Dianne Feinstein, Representative Barbara Lee, and the U.S. Census Bureau.

# S. 4571

To extend certain deadlines for the 2020 decennial census.

---

## IN THE SENATE OF THE UNITED STATES

September 15, 2020

Mr. Schatz (for himself, Ms. Murkowski, and Mr. Sullivan) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

---

## A BILL

To extend certain deadlines for the 2020 decennial census.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the “2020 Census Deadline Extensions Act”.

### SEC. 2. CENSUS DEADLINE MODIFICATION.

Notwithstanding the timetables provided in subsections (b) and (c) of section 141 of title 13, United States Code, and section 22(a) of the Act entitled “An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress”, approved June 18, 1929 ([2 U.S.C. 2a\(a\)](#)), for the 2020 decennial census of population—

(1) the tabulation of total population by States required by subsection (a) of such section 141 for the apportionment of Representatives in Congress among the several States shall be—

(A) completed and reported by the Secretary of Commerce (referred to in this section as the “Secretary”) to the President not earlier than 1 year and not later than 13 months after the decennial census date of April 1, 2020; and

(B) made public by the Secretary not later than the date on which the tabulation is reported to the President under subparagraph (A);

(2) the President shall transmit to Congress a statement showing the whole number of persons in each State, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives, as



required by such section 22(a), and determined solely as described therein, not later than 14 days after receipt of the tabulation reported by the Secretary; and

(3) the tabulations of population required by subsection (c) of such section 141 shall be completed by the Secretary as expeditiously as possible after the decennial census date of April 1, 2020, taking into account the deadlines of each State for legislative apportionment or districting, and reported to the Governor of the State involved and to the officers or public bodies having responsibility for legislative apportionment or districting of that State, except that the tabulations of population of each State requesting a tabulation plan, and basic tabulations of population of each other State, shall be completed, reported, and transmitted to each respective State not later than 16 months after the decennial census date of April 1, 2020.

**SEC. 3. 2020 CENSUS OPERATIONS.**

For the 2020 decennial census of population, the Bureau of the Census may not conclude the Nonresponse Followup operation or the Self-Response operation before October 31, 2020.





Lori Droste  
Councilmember District 8

Consent Calendar  
December 15, 2020

**To:** Honorable Mayor and Members of the City Council  
**From:** Councilmember Lori Droste, Mayor Jesse Arreguin, Councilmember Rigel Robinson, Councilmember Kate Harrison  
**Subject:** Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration

### **Recommendation**

Refer to the City Manager to develop a program, and if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status. Consider criteria for transitioning spaces for public vs. private outdoor use:

- Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces
- Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors.
- Consider *merchant opt-out vs. opt-in*: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the city might reach out to temporary permit holders and offer an opt-in or quick transition program.
- Consider *fees and potential fee waivers for temporary spaces transitioning to permanent status*: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits.

- *Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible.*
- *Request the Agenda Committee consider sharing this item on Berkeley Considers.*
- *Consider removing the prohibition of parklets on State Highways (Ashby Ave, San Pablo Ave., for example)*

#### POLICY COMMITTEE RECOMMENDATION

On November 2, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Robinson/Hahn) to send the item with a positive recommendation to the City Council with the recommendation language as amended by the committee.

The revised recommendation language includes:

Refer to the City Manager to develop a program and, if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to permanent status. - Consider criteria for transitioning spaces for Public vs. Private outdoor use. - Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces. - Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors. - Consider Merchant opt-out vs. opt-in: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the City might reach out to temporary permit holders and offer an opt-in or quick transition program. - Consider Fees and potential Fee waivers for temporary spaces transitioning to permanent status: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits. - Consider Protocols for transfer of private use parklets if businesses change, turn over, etc. - Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible. - Request the Agenda Committee consider sharing this item on Berkeley Considers.

Vote: Ayes - Hahn, Robinson; Noes – Davila; Abstain – None; Absent - Harrison

#### Background

Since the parklet pilot program began in 2013, the City of Berkeley has explored the use of parklets to improve the pedestrian environment, support commercial areas, and re-

envision public spaces. By 2018, the City had six parklets and City Council adopted a parklets ordinance to make the program permanent.<sup>1</sup>

With the rise of COVID-19, the City has adopted new public health orders to protect the safety of residents by mandating social distancing protocols and new rules around indoor dining, recreation, and gatherings. Parklets have emerged as a safe way for restaurants to allow patrons to eat outside with ample space in between diners. Salons and gyms have utilized parklets to move services outside. Currently, 29 businesses have applied for outdoor commerce permits (which includes both sidewalk seating and parklets) with 13 of those applications for parklets.

To support businesses as quickly as possible, the City passed an urgency ordinance<sup>2</sup> to establish outdoor dining and commerce in the public right of way. As currently written, the simplified application process as well as the permit for outdoor dining and commerce will last as long as the City's declaration of emergency. The fee waiver associated with this ordinance lasts up to one year (as of June 2020).

When the City's declaration of emergency ends, these permits and the outdoor dining and commerce structures in the public right of way will expire.

Information on the safety protocols, insurance requirements, and specific types of outdoor dining and commerce permits can be found on the OED materials in Attachment 1.

### **Financial Implications**

The installation of parklets may result in a slight reduction in parking revenues over time. Transportation staff have provided the following table to reflect the lost parking revenue associated with parklets. Because meter costs vary throughout the City, different commercial areas have different revenue projections.

---

<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/05\\_May/Documents/2018-05-15\\_Item\\_08\\_Establishment\\_of\\_the\\_Parklet.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/05_May/Documents/2018-05-15_Item_08_Establishment_of_the_Parklet.aspx)

<sup>2</sup> <https://www.cityofberkeley.info/uploadedFiles/Clerk/Urgency%20Item%20Outdoor%20Commerce.pdf>

## Impacts of Parklets on Parking Meter Revenue

| Meter Area     | # of Parklets | Total Spaces | Annual Revenue Loss |                     |
|----------------|---------------|--------------|---------------------|---------------------|
|                |               |              | Actual*             | Potential**         |
| 4th Street     | 3             | 7            | \$19,200.75         | \$28,633.50         |
| Downtown       | 6             | 21           | \$78,983.78         | \$229,068.00        |
| Elmwood        | 3             | 6            | \$27,016.00         | \$44,995.50         |
| North Berkeley | 6             | 22           | \$60,433.59         | \$119,988.00        |
| Solano         | 3             | 8            | \$14,230.33         | \$32,724.00         |
|                | <b>21</b>     | <b>64</b>    | <b>\$199,864.46</b> | <b>\$455,409.00</b> |

\*Calculated using February 2020 revenue data  
*Revenue shown is average of meter financial area. 4th St. specific to 1800 block of 4th Street.*

\*\*Potential revenue assumes metered spaces are paid from 9am-6pm, Monday-Saturday, holidays excepted, at Feb. 2020 hourly rates.

**Contact**

Councilmember Lori Droste, District 8, 510-981-7180

Attachment 1:

[https://www.cityofberkeley.info/uploadedFiles/Health\\_Human\\_Services/Public\\_Health/covid19/Aug20\\_OED\\_OutdoorCommerceGuide.pdf](https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Public_Health/covid19/Aug20_OED_OutdoorCommerceGuide.pdf)



Lori Droste  
Councilmember District 8

Consent Calendar  
December 15, 2020

**To:** Honorable Mayor and Members of the City Council  
**From:** Councilmember Lori Droste, Mayor Jesse Arreguin, Councilmember Rigel Robinson, Councilmember Kate Harrison  
**Subject:** Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration

**Recommendation**

Refer to the City Manager and the ~~Facilities, Infrastructure, Transportation, Environment and Sustainability Policy Committee~~ to develop a program, and if necessary, ordinance language to facilitate the transition of ~~make the~~ temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to become permanent status. Consider criteria for transitioning spaces for public vs. private outdoor use. Ordinance language should include:

- Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces
- Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors.
- Consider merchant opt-out vs. opt-in: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders should ~~should~~ might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the city might reach out to temporary permit holders and offer an opt-in or quick transition program.
- Consider fees and potential fee waivers for temporary spaces transitioning to permanent status: Fees associated with the minor encroachment permits or

sidewalk seating typically necessary for outdoor dining and commerce permits ~~sh~~ could be waived for all transitioning permits.

- *Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible.*
- *Request the Agenda Committee consider sharing this item on Berkeley Considers.*
- ~~Protocols for transfer of parklets if businesses change, turn over, etc.~~
- *Consider removing the prohibition of parklets on State Highways (Ashby Ave, San Pablo Ave., for example)*

### **Background**

Since the parklet pilot program began in 2013, the City of Berkeley has explored the use of parklets to improve the pedestrian environment, support commercial areas, and re-envision public spaces. By 2018, the City had six parklets and City Council adopted a parklets ordinance to make the program permanent.<sup>1</sup>

With the rise of COVID-19, the City has adopted new public health orders to protect the safety of residents by mandating social distancing protocols and new rules around indoor dining, recreation, and gatherings. Parklets have emerged as a safe way for restaurants to allow patrons to eat outside with ample space in between diners. Salons and gyms have utilized parklets to move services outside. Currently, 29 businesses have applied for outdoor commerce permits (which includes both sidewalk seating and parklets) with 13 of those applications for parklets.

To support businesses as quickly as possible, the City passed an urgency ordinance<sup>2</sup> to establish outdoor dining and commerce in the public right of way. As currently written, the simplified application process as well as the permit for outdoor dining and commerce will last as long as the City's declaration of emergency. The fee waiver associated with this ordinance lasts up to one year (as of June 2020).

When the City's declaration of emergency ends, these permits and the outdoor dining and commerce structures in the public right of way will expire.

---

<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/05\\_May/Documents/2018-05-15\\_Item\\_08\\_Establishment\\_of\\_the\\_Parklet.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/05_May/Documents/2018-05-15_Item_08_Establishment_of_the_Parklet.aspx)

<sup>2</sup> <https://www.cityofberkeley.info/uploadedFiles/Clerk/Urgency%20Item%20Outdoor%20Commerce.pdf>



Information on the safety protocols, insurance requirements, and specific types of outdoor dining and commerce permits can be found on the OED materials in Attachment 1.

**Financial Implications**

The installation of parklets may result in a slight reduction in parking revenues over time. Transportation staff have provided the following table to reflect the lost parking revenue associated with parklets. Because meter costs vary throughout the City, different commercial areas have different revenue projections.

Impacts of Parklets on Parking Meter Revenue

| Meter Area     | # of Parklets | Total Spaces | Annual Revenue Loss |                     |
|----------------|---------------|--------------|---------------------|---------------------|
|                |               |              | Actual*             | Potential**         |
| 4th Street     | 3             | 7            | \$19,200.75         | \$28,633.50         |
| Downtown       | 6             | 21           | \$78,983.78         | \$229,068.00        |
| Elmwood        | 3             | 6            | \$27,016.00         | \$44,995.50         |
| North Berkeley | 6             | 22           | \$60,433.59         | \$119,988.00        |
| Solano         | 3             | 8            | \$14,230.33         | \$32,724.00         |
|                | <b>21</b>     | <b>64</b>    | <b>\$199,864.46</b> | <b>\$455,409.00</b> |

\*Calculated using February 2020 revenue data  
*Revenue shown is average of meter financial area. 4th St. specific to 1800 block of 4th Street.*

\*\*Potential revenue assumes metered spaces are paid from 9am-6pm, Monday-Saturday, holidays excepted, at Feb. 2020 hourly rates.

**Contact**

Councilmember Lori Droste, District 8, 510-981-7180

Attachment 1:

[https://www.cityofberkeley.info/uploadedFiles/Health\\_Human\\_Services/Public\\_Health/covid19/Aug20\\_OED\\_OutdoorCommerceGuide.pdf](https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Public_Health/covid19/Aug20_OED_OutdoorCommerceGuide.pdf)





Office of the Mayor

CONSENT CALENDAR  
December 15, 2020

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Appoint Alexandria Thomas-Rodriguez to the Berkeley Housing Authority Board

RECOMMENDATION

Adopt a Resolution appointing Alexandria Thomas-Rodriguez to serve as a tenant Commissioner on the Berkeley Housing Authority Board of Commissioners for a two-year term.

BACKGROUND

On May 22, 2007, the Berkeley City Council established a Berkeley Housing Authority (BHA) Board of Commissioners. State law mandates BHA commissioners, including successors be appointed by the Mayor and confirmed by the City Council.

There are currently two vacancies on the seven-member Berkeley Housing Authority Board, including one tenant Commissioner seat. BHA advertised an opening for the tenant Commissioner position and received several applications from residents. The Mayor reviewed the applicants and has selected Alexandria Thomas-Rodriguez for the vacant tenant Commissioner seat.

Alexandria Thomas-Rodriguez is a long-term Berkeley resident, having graduated from Berkeley High School. She has been involved with the Berkeley Housing Authority for the past three years, serving on the Resident Advisory Board, where she works on reviewing, editing and brainstorming ideas with the Operations Manager and other Section 8 participants on the Administrative Plan.

Thomas-Rodriguez currently works as a Tenant Counselor and Hotline Administrator for Tenants Together. In this role, she is on the front lines of handling tenant issues, taking in and prioritizing calls amid the COVID-19 pandemic that has led to a surge in tenants seeking advice. She also recently joined Berkeley Mutual Aid as a Case Manager, providing resources to Berkeley citizens for mental health, housing, food and essential items.

As a Section 8 tenant and through her work experience, Thomas-Rodriguez has gained the knowledge and experience to handle the work of the BHA Board, bringing compassion and fairness for tenants and landlords. She is also working with various City Commissions on public safety, transportation, and housing retention, which can be expanded in her role on the Board.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1: Resolution

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

APPOINTING ALEXANDRIA THOMAS-RODRIGUEZ AS A TENANT COMMISSIONER  
ON THE BERKELEY HOUSING AUTHORITY BOARD OF COMISSIONERS

WHEREAS, the Council of the City of Berkeley, as the governing body of the City of Berkeley, declared itself to the Commissioners of the Berkeley Housing Authority (BHA) and appointed two tenant Commissioners pursuant to Health and Safety Code Section 34290; and

WHEREAS, on May 22, 2007 the Mayor appointed and the City Council by a majority vote confirmed the appointment of 5 Commissioners and 2 tenant Commissioners to the BHA Board pursuant to Health and Safety Code Section 34270; and

WHEREAS, there is currently one vacant tenant Commissioner seat that needs to be filled; and

WHEREAS, Alexandria Thomas-Rodriguez has been involved with the Berkeley Housing Authority for the past three years, serving on the Resident Advisory Board, where she works on reviewing, editing and brainstorming ideas with the Operations Manager and other Section 8 participants on the Administrative Plan; and

WHEREAS, Thomas-Rodriguez currently works as a Tenant Counselor and Hotline Administrator for Tenants Together where she is on the front lines of handling tenant issues, taking in and prioritizing calls amid the COVID-19 pandemic that has led to a surge in tenants seeking advice. She also recently joined Berkeley Mutual Aid as a Case Manager, providing resources to Berkeley citizens for mental health, housing, food and essential items; and

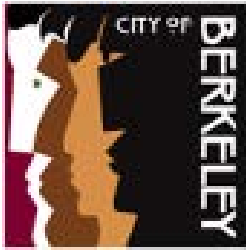
WHEREAS, As a Section 8 tenant and through her work experience, Thomas-Rodriguez has gained the knowledge and experience to handle the work of the BHA Board, bringing compassion and fairness for tenants and landlords.

NOW THEREFORE, BE IT RESOLVED by the Mayor of the City of Berkeley that Alexandria Thomas-Rodriguez is appointed to serve as a tenant Commissioner on the Berkeley Housing Authority Board; and

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that it supports the Mayor's determination regarding the qualifications of Alexandria Thomas-Rodriguez and hereby confirms the Mayor's appointment; and

BE IT FURTHER AND FINALLY RESOLVED by the Mayor of the City of Berkeley that, pursuant to Health and Safety Code Section 34272(a), Alexandria Thomas-Rodriguez is appointed to serve as a tenant Commissioner for a two-year term.





Office of the Mayor

ACTION CALENDAR

December 15, 2020

To: Members of the City Council

From: Mayor Arreguín, Vice-Mayor Hahn, and Councilmembers Bartlett and Harrison

Subject: Establishment of Reimagining Public Safety Task Force

RECOMMENDATION:

1. Establish a Reimagining Public Safety Task Force, comprised of: one representative appointed by each member of the City Council and Mayor, one representative appointed by the Mental Health, Police Review and Youth Commissions, one representative appointed by the Associated Students of the University of California (ASUC), one representative appointed by the Berkeley Community Safety Coalition (BCSC), and three additional members to be appointed “At Large” by the Task Force. The Task Force will be guided by a professional consultant, and will include the participation of City Staff from the City Manager’s Office, Human Resources, Health, Housing and Community Services, Berkeley Fire Department, Berkeley Police Department, and Public Works Department. For visual, see Attachment 1.
2. Appointments to the Task Force should be made by January 31, 2021,<sup>1</sup> and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council’s July 14, 2020,<sup>2</sup> commitment to centering the voices of those most impacted in our process of reimagining community safety appointments should be made with the goal of achieving a balance of the following criteria:
  - a. Active Members of Berkeley Community (Required of All)<sup>3</sup>
  - b. Representation from Impacted Communities
    - Formerly incarcerated individuals
    - Victims/family members of violent crime
    - Immigrant community

---

<sup>1</sup> With the exception of the “At Large” appointments, which will be selected by the initial appointees with an eye for adding outstanding perspectives, knowledge and experience.

<sup>2</sup> “Be It Further Resolved that the City Council will engage with every willing community member in Berkeley, centering the voices of Black people, Native American people, people of color, immigrants, LGBTQ+ people, victims of harm, and other stakeholders who have been historically marginalized or under-served by our present system. Together, we will identify what safety looks like for everyone.”, [Item 18d, Transform Community Safety, July 14, 2020, Berkeley City Council Agenda](#),

<sup>3</sup> \* At Large Appointees are not required to be Berkeley Residents, as long as they are active, committed Berkeley Stakeholders.

- Communities impacted by high crime, over-policing and police violence
  - Individuals experiencing homelessness
  - Historically marginalized populations
- c. Faith-Based Community Leaders
  - d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
  - e. Health/ Public Health Expertise
  - f. City of Berkeley labor/union representation
  - g. Law Enforcement Operation Knowledge
  - h. City Budget Operations/Knowledge
  - i. Committed to the Goals and Success of The Taskforce (Required of All)
3. The charge of the Task Force is as outlined in the July 14, 2020, City Council Omnibus Action,<sup>4</sup> and should include but is not limited to:
- I. Building on the work of the City Council, the City Manager, BPD, the PRC and other City commissions and other working groups addressing community health and safety.
  - II. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
  - III. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform considering,<sup>5</sup> among other things:
    - A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety.
    - B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
    - C. Limiting militarized weaponry and equipment.
    - D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
    - E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with

---

<sup>4</sup> [July 14th, 2020, Berkeley City Council Item 18a-e Proposed Omnibus Motion on Public Safety Items](#)

<sup>5</sup> [Transforming Police](#), NICJR



educational, community serving, restorative and other positive programs, policies and systems.

- F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit.

4. Direct the City Manager to ensure that the working group of City Staff as outlined in her October 28th Off-Agenda Memo is coordinating with the Task Force.<sup>6</sup>

The Task Force's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY 2024-2025 budget processes to ensure that recommended changes will be achieved. The Task Force shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY 2022-23 Budget Process.

## BACKGROUND

On July 14, 2020, the Berkeley City Council made a historic commitment to reimagine the City's approach to public safety with the passage of an omnibus package of referrals, resolutions and directions. Central to this proposal is a commitment to a robust community process to achieve this "new and transformative model of positive, equitable and community centered safety for Berkeley". Item 18d, Transforming Community Safety, provides direction on the development of a "Community Safety Coalition", goals and a timeline led by a steering committee and guided by professional consultants. Recommendation 3 above reflects the original scope voted on by the council. However, that item did not specify the structure, exact qualifications or process of appointing this steering committee. This item follows the spirit of the original referral, and provides direction on structure, desired qualifications and appointment process.

To avoid confusion with the community organization that has independently formed since the passage of that referral, this steering committee is now being referred to as the Reimagining Public Safety Task Force.

City staff has been diligently been working to implement the referrals in the omnibus motion, including the development, release and evaluation of a request for proposals (RFP) for a consultant to facilitate this process.<sup>7</sup> Initially, the expectation was that the development of a structure and process for the Task Force would be developed in consultation with the professionals selected by this RFP. However, to ensure thorough review of these proposals the timeline for selecting the consultant is longer than initially expected. At the July 18, 2020, meeting, City Council clearly stated that the Task Force will begin meeting no later than January 2021. To meet this timeline, the

---

<sup>6</sup>[October 28, 2020 Off-Agenda Memo: Update on Re-Imagining Public Safety](#)

<sup>7</sup> Ibid

Council should adopt the proposed framework and appointment process so that the Task Force and our community process can begin shortly after the RFP process is completed.

#### RATIONALE FOR RECOMMENDATION

The proposed structure creates a Task Force with 17 total seats, ensuring representation from each Councilmember and the Mayor, key commissions including the Police Review Commission, the Youth Commission and the Mental Health Commission as well as representation from the ASUC, the Berkeley Community Safety Coalition (BCSC) and three “at-large” members to be selected by the Task Force to fill any unrepresented stakeholder position or subject matter expertise.<sup>8</sup>

This model was developed with input from all co-authors, the City Manager, community stakeholders including the ASUC and BCSC as well organizations and experts with experience running community engagement processes. Additionally, the Mayor’s office researched a wide range of public processes that could inform the structure and approach for Berkeley, including youth-led campaigns, participatory budgeting processes, and long-term initiatives like the California Endowment Building Healthy Communities initiative.<sup>9</sup>

The proposed Task Force structure and process draws most directly on the processes underway in Oakland and in Austin, Texas.<sup>10</sup><sup>11</sup> In July, Oakland voted to establish a Reimagining Public Safety Task Force with 17 members, including appointees from all councilmembers and the Mayor, three appointees from their public safety boards, two appointees to represent youth and two at-large appointees selected by their council co-chairs<sup>12</sup>. The model proposed for Berkeley draws heavily from the Oakland approach. A key difference is that, unlike Oakland, this proposed structure does not recommend developing additional community advisory boards. Instead, it is recommended that Berkeley leverage our commissions and community organizations to provide additional input and research to inform the Task Force’s work rather than establish additional community advisory boards.

The list of proposed qualifications for appointees (recommendation 2) is also modeled after Oakland’s approach. In July, the city council committed to centering the voices of those that are most impacted by our current system of public safety as we reimagine it for the future. The list of qualifications is intended to guide councilmembers and other appointing bodies and organizations

---

<sup>8</sup> [The Berkeley Community Safety Coalition](#), initially known as Berkeley United for Community Safety, produced a 40 page report that was shared with the council in July. Their recommendations were referred to the reimagining process as part of the Mayor’s omnibus motion. Co-Founder Moni Law describes BCSC as a “principled coalition that is multiracial, multigenerational and Black and brown centered. We include over 2,000 people and approximately a dozen organizations and growing.”

<sup>9</sup> [California Endowment Building Healthy Communities Initiative](#).

<sup>10</sup> [Austin, Texas Reimagining Public Safety Task Force](#)

<sup>11</sup> [Reimagining Public Safety](#), Oakland website

<sup>12</sup> [Oakland Reimagining Public Safety Task Force Framework](#)

to ensure that the makeup of the Task Force reflects that commitment. After all appointments are made, the Task Force will select 3 additional “at large” members to join the Task Force with an eye on adding perspectives, expertise or experience that are missing in initial appointments.

#### ALTERNATIVE ACTIONS CONSIDERED

The Council could wait for a consultant to be hired and have them develop a model for the Task Force. This would likely result in further delay in the process to reimagine public safety and push the starting point of the process past the Council’s January 2021 deadline. Alternative appointment structures were evaluated, including a citywide application process and an independent selection committee. However, given that the Task Force will ultimately advise the City Council, there was broad agreement that the council should have a strong role in appointing the Task Force.

#### FINANCIAL IMPLICATIONS

City Council allocated \$200,000 to support engagement of outside consultants in the reimagining process.

#### ENVIRONMENTAL SUSTAINABILITY

No Environmental Impact.

#### CONTACT PERSON

Mayor Jesse Arreguín                      510-981-7100

#### Attachments:

1. Framework for Reimagining Public Safety Task Force
2. July 14, 2020 City Council Item 18d, Transforming Community Safety
3. July 14, 2020 City Council Item a-e, Proposed Omnibus Motion on Public Safety Items



---

# Reimagining Public Safety Task Force

---



# Task Force Purpose & Goals <sup>Page 7 of 70</sup>

As Defined by July 14<sup>th</sup> Council Action



---

**Purpose:** The Community Safety Coalition, guided by a task force, will serve as the hub for a broad, deep and representative process, and uplift the community's input into a new positive, equitable, anti-racist system of community health and safety.

The work of the task force should include but not be limited to:

1. Building on the work of the City Council, the City Manager, BPD, the PRC and other City commissions and other working groups addressing community health and safety.
2. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.

# Steering Committee Purpose & Goals



Continued...

---

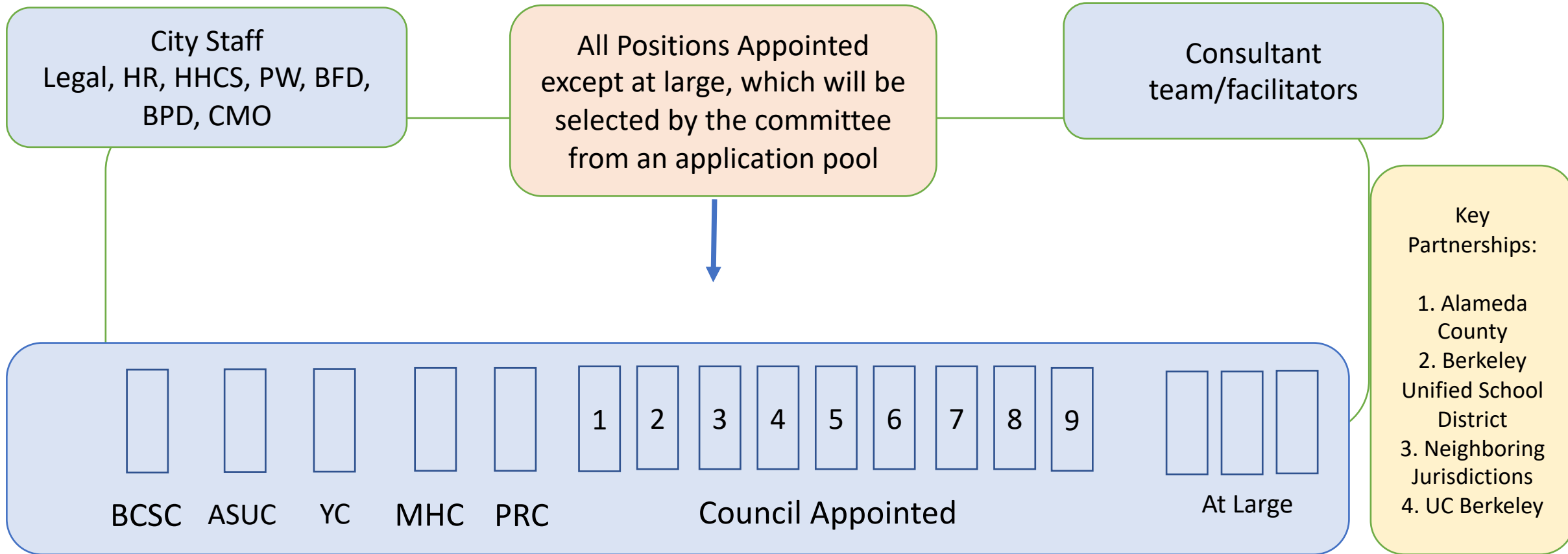
3. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform considering, among other things:

- a) The social determinants of health and changes required to deliver a holistic approach to community-centered safety
- b) The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
- c) Limiting militarized weaponry and equipment.
- d) Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
- e) Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
- f) Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit



# Proposed Task Force Structure

Selected by Councilmembers, Mayor & Key Commissions and Community Stakeholders



Parallel  
Community  
Engagement





# Task Force Membership

## Knowledge, Expertise, & Experience Needed

---

- Active Members of Berkeley Community (Required of All\*)
- Representation from Impacted Communities
  - Formerly incarcerated individuals
  - Victims/family members of violent crime
  - Immigrant community
  - Communities impacted by high crime, over-policing and police violence
  - Individuals experiencing homelessness
  - Historically marginalized populations
- Faith-Based Community Leaders
- Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
- Health/ Public Health Expertise
- City of Berkeley labor/union representation
- Law Enforcement Operation Knowledge
- City Budget Operations/Knowledge
- Committed to the Goals and Success of The Taskforce (Required of All)

*\*At Large appointees may not be Berkeley residents, so long as they are active and committed stakeholders*



# Task Force Responsibilities



Active membership & Participation Required of Selected members

---

- Work collaboratively to achieve the purpose and goals established
- Thorough preparation for and active participation in all taskforce meetings (1-2 meetings per month)
- Participate in and support various community engagement efforts
- Other responsibilities – to be determined



Office of the Mayor  
Jesse Arreguín

ACTION CALENDAR  
July 14, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Vice-Mayor Sophie Hahn, Councilmember Ben Bartlett, Councilmember Kate Harrison

Subject: Transform Community Safety and Initiate a Robust Community Engagement Process

**RECOMMENDATIONS**

1. Adopt a Resolution expressing the City Council's commitment to:
  - a. A transformative approach to community-centered safety and reducing the scope of policing,
  - b. Equitable investment in the essential conditions of a safe and healthy community, especially for those who have been historically marginalized and have experienced disinvestment, and
  - c. A broad, inclusive community process that will result in deep and lasting change to support safety and wellbeing for all Berkeley residents.
2. Direct the City Manager to track and report progress on actions to implement this initiative, and other actions that may be identified by the Coalition and referred by Council to the City Manager. Updates shall be provided by written and verbal reports to Council and posted on a regularly updated and dedicated page on the City website.
3. Direct the City Manager to collaborate with Mayor and select Councilmembers to complete the following work, to inform investments and reallocations to be incorporated into future Budget processes:
  - a. Contract with independent subject matter experts to:
    - i. Analyze the scope of work of, and community needs addressed by, the Berkeley Police Department, to identify a more limited role for law enforcement, and identify elements of police work that could be achieved through alternative programs, policies, systems, and community

investments. Analysis should include but not be limited to: calls received by dispatch by type of complaint, stops by law enforcement generated at officer discretion (as contained in the Police Department's open data portal) or on request of other city agencies, number of officers and staff from other city agencies that respond to incidents, estimated time in response to different types of calls, daily patrol activities, organizational structure, and beat staffing. Work to include broad cost estimates of police and other city agency response to different types of calls, and other information and analysis helpful to identify elements of current police work that could be transferred to other departments or programs or achieved through alternative means. Work should be completed in time for the November 2020 Annual Appropriation Ordinance revision.

- ii. Identify immediate and longer-term opportunities to shift policing resources to alternative, non-police responses and towards alternative and restorative justice models, to better meet community needs, that could be considered in the November 2020 AAO#1 budget process. Some areas to be considered include homeless outreach and services, substance abuse prevention and treatment, and mental health/crisis management, as well as alternative models for traffic and parking enforcement, "neighborhood services" and code enforcement. Provide a broad timeline and process for transitioning functions not ready for transition at this first milestone.

Deliverables should coincide with budget cycles, including the November 2020 AAO and FY 2022-2023 Budget processes, and provide a suggested timeline for transitioning functions at these and other budget opportunities, so that alternative investments may be considered for funding and launched in a timely and orderly manner.

- b. Contract with independent Change Management experts to initiate and facilitate a representative Community Safety Coalition, guided by a Steering Committee, that will begin meeting no later than January 2021. The CSC and its Steering Committee should be broadly inclusive and representative of Berkeley residents and stakeholders. The Steering Committee, with the support of Change Management professionals, shall be responsible for engaging the Coalition and the broader Berkeley community and relevant City Staff in a robust process, to achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley.

The work of the Coalition should include but not be limited to:

1. Building on the work of the City Council, the City Manager, the PRC and other City commissions and other working groups addressing community health and safety.
2. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
3. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (Attachment 3), considering, among other things:
  - a. The social determinants of health and changes required to deliver a holistic approach to community-centered safety
  - b. The appropriate response to community calls for help including size, scope of operation and powers and duties of a well-trained police force.
  - c. Limiting militarized weaponry and equipment.
  - d. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
  - e. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
- c. The Coalition's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY2024-2025 budget processes to ensure that recommended changes will be achieved. The Coalition shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY2022-23 Budget Process.

## **SUMMARY**

Local government's most fundamental role is to provide for the health and safety of its residents. Cities around the country are acknowledging that they are falling behind in this basic function, and are embarking on efforts to reimagine health and safety, and to consider reallocating resources towards a more holistic approach; one that shifts resources away from policing towards health, education and social services, and is able to meet crises with a variety of appropriate responses.

The current re-energized movement for social justice and police reform highlights a problematic expansion, over many decades, in the roles and responsibilities of the police. As other systems have been defunded, most notably mental health, education, affordable housing and other health and safety-net programs, the police have been asked to respond to more and more crises that could have been avoided with a different set of investments in community wellbeing. Rather than being the responders of last resort, focused on criminal, aggressive and violent behaviors, police are now frontline responders routinely called to address mental health crises, poverty and homelessness, substance abuse, stress in the school environment, traffic and code violations and neighborhood disputes. This is an extensive set of responsibilities that is not traditionally the purview of the police.

This item initiates a restructure and redefinition of "health and safety" for all Berkeleyans, with immediate, intermediate and longer-term steps to transform the city to a new model that is equitable and community-centered. It roots the transformative process in broad, deep and representative community engagement which empowers the community to address social determinants of health and safety and deliver transformative change, with the help of change management professionals and informed by research and analysis of current and best practices.

## **BACKGROUND**

The recent murders of George Floyd, Breonna Taylor and Ahmaud Arbery have ignited the nation in passionate protest against police brutality and racial injustice. Across the country, community members have gathered for weeks to demand change and called out the enduring, systemic racism, white supremacy and accompanying police brutality that have defined the United States for too long. Among the more immediate demands are calls to reduce funding and the scope of police work and to invest in alternative models to achieve positive, equitable community safety.

These demands for change go beyond necessary efforts in procedural justice, implicit bias training, and improved use of force policies. Activists, organizers and their allies in our community are seeking a broader discussion about the true foundations for a safe and healthy community for all people. For too long, "public safety" has been equated

with more police, while economic and social welfare programs have been viewed as special projects unrelated to health and safety.

Responding from the epicenter of this moment, the City of Minneapolis has voted to disband their police department and engage in a deep and detailed year long process to fundamentally transform community health and safety in their city.<sup>1</sup> Closer to home, Mayor London Breed has announced that San Francisco will demilitarize their police force and end the use of police as a response for non-criminal activity.<sup>2</sup>

As this movement ripples across the nation, Berkeley has an opportunity to lead in transforming our approach to public health and safety. We need the right response for each crisis rather than defaulting to police. This resolution and recommendations initiate a thoughtful, thorough approach to restructuring and redefining health and safety through investment in the social determinants of health, rooted in deep community engagement and empowerment.

Community members are calling on city leaders to be creative in reimagining the city's approach to health and safety and to make clear, demonstrated commitments and timelines for this work.

In order to earn community buy-in for these important changes it is critical that the future of community health and safety be defined by the Berkeley community, centering the voices of our Black, Native American/First Peoples and other communities of color, LGBTQ+ people, victims of harm and other stakeholders that have been historically, and continue to be, marginalized and under-served by our current system. A community-wide process would ultimately inform recommended investments and approaches to achieve a higher and more equitable level of community safety for the entire community.

## **CURRENT SITUATION AND ITS EFFECTS**

Despite strong efforts and leadership on police reform, homelessness, health, education and housing affordability in Berkeley, racial disparities remain stark across virtually every meaningful measure. According to the City of Berkeley's 2018 Health Status Summary Report, African Americans are 2.3 times more likely to die in a given year from any condition as compared to Whites. In 2013, African Americans were twice as likely to live in poverty in Berkeley. By 2018, they were eight times more likely. The Center for Policing Equity (CPE) found that Black drivers are 6.5 times as likely as white drivers to be stopped by Berkeley police officers and four times as likely to be searched. Latinx people are also searched far more often than white people. Furthermore, there is a striking disproportionality in BPD's use of force against Black community members.

---

<sup>1</sup> <https://lms.minneapolismn.gov/Download/File/3806/Transforming%20Community%20Safety%20Resolution.pdf>

<sup>2</sup> <https://sfmayor.org/article/mayor-london-breed-announces-roadmap-new-police-reforms>

Black people comprise 8% of Berkeley's population but 46% of people who are subjected to police force.<sup>3</sup>

Local government's most fundamental role is to provide for the health and safety of its residents. Cities around the country are acknowledging that they are falling behind in this basic function and are embarking on efforts to reimagine health and safety, and to consider reallocating resources towards a more holistic approach; one that shifts resources away from policing towards health, education and social services, and is able to meet crises with a variety of appropriate responses.

In addition to renewed efforts around policing in places like Minneapolis and San Francisco that were prompted by George Floyd's murder, the financial and public health impacts of COVID-19 had already required Berkeley to reimagine and innovate to meet the moment. Berkeley now faces multiple intersecting crises: the COVID-19 pandemic and its economic impacts, the effects of systemic racism and the ongoing climate emergency. There is no returning to "normal."

COVID-19 has demonstrated that we are only as healthy and safe as the most vulnerable amongst us, and we are in fact one community. There is both a moral and fiscal imperative to restructure the way Berkeley envisions and supports health and safety.

Berkeley is facing a \$40 million budget deficit, and while deferrals of projects and positions can help close the gap in the short term, the economic impacts of the pandemic will require deeper restructuring in the coming years. The current structure of the police department consumes over 44% of the City's General Fund Budget. With the increase in payments required to meet pension and benefit obligations, the police budget could overtake General Fund capacity within the next 10 years. Thus, even before the important opportunity for action created through outrage at the murder of George Floyd, the City's current investments in safety were unsustainable. To provide meaningful safety and continue critical health and social services, Berkeley must commit to, and invest in, a new, positive, equitable and community-centered approach to health and safety - this is affordable and sustainable.

---

<sup>3</sup> <https://www.berkeleyside.com/wp-content/uploads/2018/05/Berkeley-Report-May-2018.pdf>

## **RATIONALE FOR RECOMMENDATIONS**

### **1. Resolution expressing City Council's commitment to a new city-wide approach to public health and safety**

Transforming our system of health and safety requires strong commitment from our leaders and the community. This resolution (Attachment 1) is an expression of commitment and a tool for accountability to the public.

The proposed set of principles as well as specific initiatives are the starting point for a robust and inclusive process. Some actions will require significantly more work and additional council direction prior to implementation. For example, moving traffic and parking enforcement from police is a concept that is recommended but would require a significant redesign of city operations. Other changes may be able to move forward more quickly. These ideas are submitted in a spirit of conviction and humility. The future of community health and safety must be addressed in a fundamentally different way and the Council is committed to collaborating with the community to define a new, positive and equitable model of health and safety for everyone.

### **2. Direct the City Manager to publicly track progress on actions that respond to the directives of the principles herein and others identified by the Coalition. Progress shall be updated regularly and available on a dedicated page on the City website.**

This webpage should include a summary of the actions outlined in this item, as well as other work already underway such as the Mayor's Fair and Impartial Working group, the Use of Force policy updates, other work underway by the Police Review Commission and any other Council referrals or direction on public safety, including existing referrals addressing alternative and restorative justice, that reflect the spirit and scope of this item.

Transformative change will only be successful if processes are transparent and information widely disseminated, as the City has so successfully demonstrated in managing the COVID-19 crisis. By publicly posting this information, the public will have the capacity to keep its elected officials, city staff, and our whole community accountable for realizing a new system of community centered safety that meets the needs of all of Berkeley's residents.



**3. Direct the City Manager to collaborate with Mayor and select Councilmembers to complete the following work, to inform investments and reallocations to be incorporated into future Budget processes:**

***(a) Begin the process of structural change including directing the analysis of the activities of the Berkeley Police Department and other related departments.***

Transforming community health and safety has to start by understanding the existing system, the calls to which it responds and other activities. This recommendation seeks to build on Councilmember Bartlett's George Floyd Community Safety Act to immediately engage independent, outside experts to conduct a data-driven analysis of police calls and responses and a broader understanding of how the police actually spend their time.<sup>45</sup>

Engaging the services of outside experts will ensure a transparent and trusted process and provide accurate data required to effectuate substantive change will be identified and that data will inform immediate change and the work throughout the community engagement process. The experts must be knowledgeable about policing, code enforcement, criminal justice and community safety and have deep experience with current and emerging theories, as well as expertise in data collection and analysis to inform recommendations for transformative change.

This analysis should commence as quickly as possible with the goal of providing some recommendations in time for the November 2020 AAO and then to more broadly inform the work of the Community Safety Coalition.

***(b) Identify immediate opportunities to shift elements of current policing resources to fund more appropriate community agency responses***

This re-energized movement for social justice also highlights a problematic expansion, over many decades, in the roles and responsibilities of the police. As other systems have been defunded, most notably mental health, education, affordable housing and other health and safety-net programs, the police have been asked to respond to more and more crises that could be avoided with a different set of investments in community wellbeing. Rather than being the responders of last resort, focused on criminal, aggressive and violent behaviors, police are now frontline responders routinely called to address mental health crises, poverty and homelessness, substance abuse, stress in the school environment, traffic and code violations and neighborhood disputes. This is an extensive set of responsibilities that have slowly accreted to the police.

---

<sup>4</sup>[https://www.cityofberkeley.info/uploadedFiles/Clerk/Update\\_Budget%20Request%20to%20Hire%20a%20Consultant%20to%20Perform%20Police%20Call%20and%20Re...pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Update_Budget%20Request%20to%20Hire%20a%20Consultant%20to%20Perform%20Police%20Call%20and%20Re...pdf)

<sup>5</sup> [New York Times- How Do the Police Actually Spend Their Time?](#)

By November 2020, with preliminary information provided by outside experts, the City Manager and Council should identify some responsibilities that can be quickly shifted to other programs, departments and agencies. Some areas to be considered include:

- Mental health and crisis management (consideration should be given to possible expansion of the Mobile Integrated Paramedic Unit (MIP) Pilot initiated by the Berkeley Fire Department during the COVID-19 pandemic), and other models for mental health outreach and crisis response, including by non-profits
- Homeless outreach and services
- Civilianizing some or all Code Enforcement + Neighborhood Services and placing these functions elsewhere
- Alternatives for traffic and parking enforcement, and
- Substance abuse prevention and treatment

The consultants should work with the City Manager to provide a specific timeline and process for transitioning functions as quickly as possible, with deliverables to coincide with timelines for budget processes.

**(c) Contract with Change Management experts to initiate and facilitate a Community Safety Coalition (“CSC”) and Steering Committee that will begin meeting no later than January 2021.**

While the Council can make some important changes and investments in the near future, a complete and enduring transformation in community safety is only possible through robust community engagement. It is critical that the future of community health and safety is defined by the Berkeley community, elevating the voices of our Black, Native American/First Peoples and other communities of color, LGBTQ+ people, victims of harm and other stakeholders that have been historically marginalized and under-served by current systems. The Community Safety Coalition, guided by a steering committee, will serve as the hub for a broad, deep and representative process, and uplift the community’s input into a new positive, equitable, anti-racist system of community health and safety.

Berkeley has a history in leading transformational change to achieve a more equitable society. The robust public process that led to school desegregation is an example of our community’s success in bringing about significant, transformative change (Attachment 4).

The robust public process, led by the Community Safety Coalition and its steering committee, will be guided and facilitated by outside experts.

The work of the Coalition should include but not be limited to:

- Build upon the work of the City Council, City Manager, the Fair and Impartial Policing Working Group, the Use of Force subcommittee and other efforts of the Police Review and other City Commissions, and the work of other community agencies addressing community-centered health and safety
- Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley. This research should explore and propose investments in restorative justice models, gun violence intervention programs, and substance abuse support, among other things.
- Recommend a positive, equitable, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (Attachment 3), considering, among other things:
  - The social determinants of health and changes required to deliver a holistic approach to community-centered safety
  - The appropriate response to community calls for help including size, scope of operation and powers and duties of a well-trained police force.
  - Limiting militarized weaponry and equipment.
  - Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
  - Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.

The Coalition's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY2024-2025 budget processes to ensure that recommended changes will be achieved. The Coalition shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY2022-23 Budget Process.

## FINANCIAL IMPLICATIONS

\$160,000 from the Auditor's budget to assess police calls and responses

\$200,000 from current budget cycle from Fund 106, Civil Asset Forfeiture, for initial subject matter expertise and engagement of outside consultants

Staff time to support the process of identifying and implementing change.

## REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS

This effort is in support of the following strategic plan goals:

- Champion and demonstrate social and racial equity
- Create a resilient, safe, connected, and prepared City
- Create affordable housing and housing support services for our most vulnerable community members
- Provide an efficient and financially-healthy City government
- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community

## ENVIRONMENTAL SUSTAINABILITY

No Environmental Impact.

## CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

Vice-Mayor Sophie Hahn

Councilmember Ben Bartlett

Councilmember Kate Harrison

Attachments:

1. Resolution
2. Safety for All: The George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis
3. "Shrink the Beast" A Framework for Transforming Police, National Institute for Criminal Justice Reform
4. School Desegregation in Berkeley: The Superintendent Reports, Neil Sullivan 1968

RESOLUTION

Whereas, The recent murders of George Floyd, Breonna Taylor and Ahmaud Arbery have ignited the nation in passionate protest against police brutality and racial injustice; and

Whereas, Demands for change go beyond necessary efforts in procedural justice, implicit bias training, and use of force policies and seek a broader discussion about investment in the conditions for a safe and healthy community; and

Whereas, Investment in “public safety” has been equated with more police for too long while economic and social welfare programs have been viewed as special projects unrelated to health and safety; and

Whereas, This movement is highlighting the problematic expansion in the roles and responsibilities of police officers. Rather than being the responders of last resort, focused on criminal, aggressive and violent behaviors, police are now frontline responders to mental health crises, homelessness, drug addiction, sex work, school disruption, traffic and code violations and neighborhood conflicts; and

Whereas, the adopted 2020 budget allocated \$74 million to the Berkeley Police Department, which represents over 44% of the City’s General Fund of \$175 million, and is more than twice as much as the combined City budgets for Health Housing and Community Services, and Economic Development; and

Whereas, It is clear that our current system of public health and safety is not working and is not sustainable in Berkeley. Despite strong efforts and leadership on police reform, homelessness and affordable housing, racial inequity remains stark across virtually every meaningful measure of health and well-being; and

Whereas, Local government’s most fundamental role is to provide for the health and safety of its residents. Cities around the country are acknowledging that they are falling behind in this basic function and are embarking on efforts to reimagine health and safety, and to consider reallocating resources towards a more holistic approach that shifts resources away from policing towards equitable health, education and social services that promote wellbeing up front;<sup>678</sup> and

Whereas, As this movement ripples across the nation, Berkeley has an opportunity to lead in transforming our approach to public health and safety. We need the right response for each crisis rather than defaulting to using the police; and

---

<sup>6</sup> [Transforming Community Safety Resolution-Minneapolis](#)

<sup>7</sup> [San Francisco Mayor, Supervisor announce effort to redirect some police funding to African-American community](#)

<sup>8</sup> [The cities that are already defunding the police](#)

Now, Therefore, Be It Resolved by The City Council of The City of Berkeley:

That the City Council commits to the principles of reduce, improve and re-invest: reduce the scope and investment in policing, improve the response and accountability of public and community agencies, reinvest in racial equity and community-based intervention initiatives<sup>9</sup>;

Be It Further Resolved that the City Council will engage with every willing community member in Berkeley, centering the voices of Black people, Native American people, people of color, immigrants, LGBTQ+ people, victims of harm, and other stakeholders who have been historically marginalized or under-served by our present system. Together, we will identify what safety looks like for everyone.

Be It Further Resolved that the process will center the role of healing and reconciliation. The process will require healers, elders, youth, artists, and organizers to lead deep community engagement on race and public safety. We will work with local and national leaders on transformative justice in partnerships informed by the needs of every block in our city.

Be It Further Resolved that decades of police reform efforts have not created equitable public safety in our community, and our efforts to achieve transformative public safety will not be deterred by the inertia of existing institutions, contracts, and legislation.

Be It Further Resolved that these efforts heed the words of Angela Davis, “In a racist society, it is not enough to be non-racist. We must be anti-racist.”

Be It Further Resolved that the transformation under consideration has a citywide impact, and will be conducted by the City Council in a spirit of collaboration and transparency with all constructive stakeholder contributors including the Mayor’s Office, the City Manager, the Police Chief, and community organizations.

Be It Further Resolved that the City Council of the City of Berkeley is committed to:

1. A transformative approach to community-centered safety and reducing the scope of policing
2. Equitable investment in the essential conditions of a safe and health community especially for those who have been historically marginalized and have experienced disinvestment
3. A broad, inclusive community process that will result in deep and lasting change to support safety and wellbeing for all Berkeley residents.

---

<sup>9</sup> [A Framework fo Transforming Police- NICJR](#)

Be it Further Resolved that the City Council supports taking the following actions to realize this transformation:

1. Direct the City Manager to track and report progress on actions to implement this initiative, and other actions that may be identified by the Coalition and referred by Council to the City Manager. Updates shall be provided by written and verbal reports to Council, and posted on a regularly updated and dedicated page on the City website.
2. Direct the City Manager to collaborate with Councilmembers later selected by the Mayor to complete the following work, to inform investments and reallocations to be incorporated into future Budget processes:
  - a. Contract with independent consultants/Change Management and subject matter experts to:
    - i. Analyze the scope of work of, and community needs addressed by, the Berkeley Police Department, to identify a more limited role for law enforcement, and identify elements of police work that could be achieved through alternative programs, policies, systems, and community investments. Analysis should include but not be limited to: calls received by dispatch by type of complaint, stops by law enforcement generated at officer discretion (as contained in the Police Department's open data portal) or on request of other city agencies, number of officers and staff from other city agencies that respond to incidents, estimated time in response to different types of calls, daily patrol activities, organizational structure, and beat staffing. Work to include broad cost estimates of police and other city agency response to different types of calls, and other information and analysis helpful to identify elements of current police work that could be transferred to other departments or programs, or achieved through alternative means. Work should be completed in time for the November 2020 Annual Appropriation Ordinance revision.
    - ii. Identify immediate and longer term opportunities to shift policing resources to alternative, non-police responses and towards alternative and restorative justice models, to better meet community needs, that could be considered in the

November 2020 AAO#1 budget process. Some areas to be considered include homeless outreach and services, substance abuse prevention and treatment, and mental health/crisis management, as well as alternative models for traffic and parking enforcement, “neighborhood services” and code enforcement. Provide a broad timeline and process for transitioning functions not ready for transition at this first milestone.

Deliverables should coincide with budget cycles, including the November 2020 AAO and FY 2022-2023 Budget processes, and provide a suggested timeline for transitioning functions at these and other budget opportunities, so that alternative investments may be considered for funding and launched in a timely and orderly manner.

- b. Contract with independent Change Management experts to create and facilitate a representative Community Safety Coalition, guided by a Steering Committee, that will begin meeting no later than January 2021. The CSC and its Steering Committee, should be broadly inclusive and representative of Berkeley residents and stakeholders. The Steering Committee, with the support of Change Management professionals, shall be responsible for engaging the Coalition and the broader Berkeley community and relevant City Staff in a robust process, to achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley.

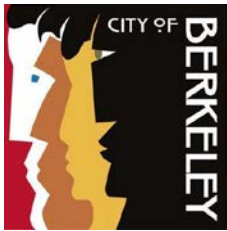
The work of the Coalition should include but not be limited to:

4. Building on the work of the City Council, the City Manager, the PRC and other City commissions and other working groups addressing community health and safety.
5. Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
6. Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of *Reduce, Improve and Reinvest* as proposed by the National Institute for Criminal Justice Reform (Attachment 3), considering, among other things:



- a. The social determinants of health and changes required to deliver a holistic approach to community-centered safety
- b. The appropriate response to community calls for help including size, scope of operation and powers and duties of a well-trained police force.
- c. Limiting militarized weaponry and equipment.
- d. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
- e. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.

The Coalition's goal/output will be a set of recommended programs, structures and initiatives to incorporate into upcoming budget processes for FY 2022-23 and, as a second phase, in the FY2024-2025 budget processes to ensure that recommended changes will be achieved. The Coalition shall return to City Council an initial plan and timeline by April 1, 2021, to ensure the first phase of changes can be incorporated into the FY2022-23 Budget Process.



Councilmember Ben Bartlett  
City of Berkeley, District 3

## EMERGENCY ITEM AGENDA MATERIAL

**Meeting date:** June 16, 2020  
**Item Description:** Safety for All: The George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis  
**Submitted by:** Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin, and Councilmembers Kate Harrison (Co-Sponsor)

### Rationale:

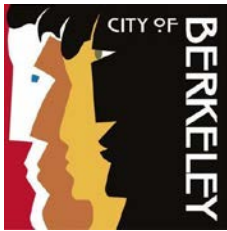
Pursuant to California Government Code Section 54954.2(b) (2), Councilmember Ben Bartlett submits the attached item to the City Council for placement on the June 16, 2020 meeting agenda. Gov. Code Section 54954.2(b) (2) states that “Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).”

This item meets the criteria for “immediate action” as follows:

- 1) The budget is being considered and there is public outcry for Council to take action.
- 2) Racism Is a Public Health Emergency.
- 3) Council is considering numerous police items right now.

Hundreds of thousands of people in every state have marched in solidarity to call for an end to police brutality, to demand police accountability, and to reform law enforcement, bringing justice to the Black lives and people of color who have been wrongfully harmed at the hands of the criminal justice system. Police brutality has taken the lives of 46-year-old Black man George Floyd, 26-year-old Black woman Breonna Taylor, and countless other people of color. Often resorting to violent means of punishment, police officers are not trained to handle noncriminal and nonviolent situations. Unfortunately, the lack of sufficient data and reporting has allowed police misconduct to be swept under the rug, which has increased police militarization, failed to prioritize community safety, and prevented providing the civilian with the necessary treatment to resolve the situation.

To respond to urgent calls for police transparency and accountability, this item requests the City Manager to hire third-party consultants to conduct a data-driven analysis of the Berkeley Police Department’s calls, responses, budget, and expenditures to determine which calls can be serviced to non-law enforcement agencies, ensuring noncriminal and nonviolent situations are properly handled by trained community professionals.



Councilmember Ben Bartlett  
City of Berkeley, District 3

CONSENT CALENDAR

June 16, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin, and  
Councilmembers Kate Harrison (Co-Sponsor)  
Subject: Safety for All: The George Floyd Community Safety Act - Budget Request to  
Hire a Consultant to Perform Police Call and Response Data Analysis

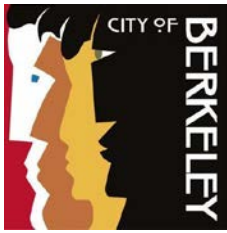
RECOMMENDATION:

1. Refer to the Thursday, 6/18/2020 Budget & Finance Policy Committee and the FY 2020-21 Budget Process the \$150,000 to
  - a. Hire a consultant to conduct a data-driven analysis of police calls and responses to determine the quantity and proportion of these calls that can be responded to by non-police services. The third-party consultant must be hired and engaged in work within three months of the item's passage.
  - b. Hire a consultant to conduct an analysis of the Berkeley Police Department's budget and its expenditures by call type. The third-party consultant must be hired and engaged in work within three months of the item's passage.
2. Direct the City Manager to:
  - a. Implement initiatives and reforms that reduce the footprint of the police department and limit the police's response to violent and criminal service calls.

CURRENT SITUATION

In all 50 states and more than 145 cities, Americans are calling to end police violence and brutality, to legitimize police accountability, and to transform the police system to protect the safety of communities and people of color. Police violence and brutality led to the death of a 46-year-old Black man George Floyd and the murders of other Black people, igniting a flame that has been brewing for a long time. These events of police violence gave rise to a wave of demonstrations and demands for change, including many in the City of Berkeley.

Due to the Coronavirus pandemic, the City of Berkeley is facing a nearly 30+ million dollar budget deficit, sharply stalling economic growth with effects that parallel the Great Depression. At the same time, the City is projected to undergo an increase in people experiencing homelessness, trauma, and mental health crises. Therefore, the City must ensure that each dollar is spent for the residents' best interest and will produce the maximum return.



Councilmember Ben Bartlett  
City of Berkeley, District 3

In order to better respond to the needs of the Berkeley community, it is critical that the Council takes local-level action on police reform. In particular, the City must examine the types of calls and responses from the police department and analyze the agency's budgets and expenditures according to call type.

As a component of the **REDUCE, IMPROVE, RE-INVEST** framework, this item works towards the REDUCE goal: *the City should implement initiatives and reforms that reduce the footprint of the police department and limit the police's response to violent and criminal service calls*. Specifically, this item proposes to hire an outside consultant to conduct an analysis of police calls and responses as well as the department budget.

With military-style techniques and structure, police officers are trained to combat crime in a manner that exerts violence through punishments, establishing a monopoly on force in communities. While law enforcement is supposed to protect our communities and keep us safe, crime waves from the 1970s and 1980s have transformed the police community into a body for crime control, maintaining such focus until modern-day despite declines in criminal activity<sup>1</sup>. With this focus on crime control, police officers lack the necessary training to adequately respond to noncriminal and nonviolent crimes. Non Criminal crimes refer to issues involving mental health, the unhoused community, school discipline, and neighborhood civil disputes<sup>2</sup>. Nonviolent crimes are categorized as property, drug, and public order offenses where injury or force is absent<sup>3</sup>. When police respond to these types of matters, they resort to violent means of arrest or problem escalation because they are ill-equipped and not trained to resolve the underlying issues.

According to the Vera Institute of Justice's report between 1980 and 2016, more than 10.5 million arrests are made every year; only 4.83 percent of those arrests were for violent offenses<sup>4</sup>. Eighty percent of these arrests were for low-level offenses, such as "disorderly conduct," non-traffic offenses, civil violations, and other offenses. This criminalization may be attributed to the arrest quotas for police productivity, which promotes punishment by rewarding the number of arrests for police funding instead of finding solutions to these issues<sup>5</sup>. This high percentage of low-level offenses resulted in

<sup>1</sup> <https://www.theatlantic.com/ideas/archive/2020/06/first-step-figuring-out-what-police-are/612793/>

<sup>2</sup> <https://www.latimes.com/california/story/2020-06-12/san-francisco-police-reforms-stop-response-noncriminal-calls>

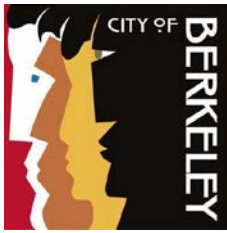
<sup>3</sup>

<https://www.bjs.gov/content/pub/ascii/pnoesp.txt#:~:text=Nonviolent%20crimes%20are%20defined%20as%20possession%2C%20burglary%2C%20and%20larceny.>

<sup>4</sup>

<https://arresttrends.vera.org/arrests?compare%5Boffense%5D%5Bpart1%5D=part1&compare%5Boffense%5D%5Bpart2%5D=part2#infographic>

<sup>5</sup> <https://theintercept.com/2019/01/31/arrests-policing-vera-institute-of-justice/>



Councilmember Ben Bartlett  
City of Berkeley, District 3

arrest when other nonviolent, rehabilitative methods could have occurred from the solutions of community workers with the experience to handle these situations.

It is imperative that the City of Berkeley develops, implements, and enforces a clear and effective roadmap towards making real change, ending anti-Black racism, stopping police violence, and holding police accountable for their actions. Thus, the Council should direct the City Manager to hire third party consultants to conduct a data-driven analysis of police calls and responses as well as their budget and expenditures in order to determine ways in which experienced community workers can reduce the police footprint by addressing noncriminal situations. We recommend that community workers also resolve nonviolent situations.

### BACKGROUND

In order to achieve the aforementioned goals, the City must implement a series of important law enforcement reforms and take action by initiating the following:

#### **REDUCE:**

##### **I. Hire a consultant to conduct a data driven analysis of police calls and responses.**

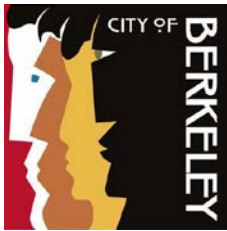
University of Denver Political Science Professor Laurel Eckhouse stated, “One method of reducing police presence... is to separate and reassign to other authorities various problems currently delegated to the police... such as the problems of people who don’t have housing... mental health issues... and even things like traffic<sup>6</sup>.” Community organizations, civilian workers trained in mental health situations, or neighborhood problem-solvers would better address these specific issues due to their experience, ensuring that the police are not the only force addressing these issues and promoting community vitality<sup>7</sup>.

Conducting a data driven analysis of police calls and responses would signify a report of the calls and responses that police receive and would inform the city where to better allocate resources to resolve specific issues. Noncriminal and nonviolent activities can thus be properly addressed by those who are equipped to handle these situations and would relieve law enforcement from these calls to then pursue more serious criminal situations. For example, the San Francisco Police Department receives approximately 40,000 calls per year about homeless people on the streets<sup>8</sup>. Social workers who can help unhoused citizens and those with mental health disorders are better equipped to help these citizens receive

<sup>6</sup> <https://www.stanforddaily.com/2020/06/04/police-abolition-looks-like-palo-alto/>

<sup>7</sup> <https://www.theatlantic.com/ideas/archive/2020/06/first-step-figuring-out-what-police-are/612793/>

<sup>8</sup> <https://www.latimes.com/california/story/2020-06-12/san-francisco-police-reforms-stop-response-noncriminal-calls>



Councilmember Ben Bartlett  
City of Berkeley, District 3

proper treatment while also protecting the safety of our communities, which would give law enforcement time to handle other crimes.

One suggestion to reduce the costs of policing is to boost productivity by allocating a portion of the calls for service to community organizations who have the resources and training to handle such situations<sup>9</sup>. For example, in Mesa, Arizona from 2006 to 2008, a third of calls for service are handled by civilians; these calls are for incidents of “vehicle burglaries, unsecured buildings, accidents, loose dogs, stolen vehicles, traffic hazards, and residential burglaries<sup>10</sup>.” Approximately half of calls for service in Mesa are handled by police officers, but among those, there are ways to reduce police authority. For example, 11 percent of those calls that police officers handled were in response to burglary alarms, where 99 percent were false. Six percent of those calls included “juveniles disturbing the peace.” This situation in Mesa demonstrates the possibility of reduced police force in exchange for community based response teams who can better resolve these issues with their experience.

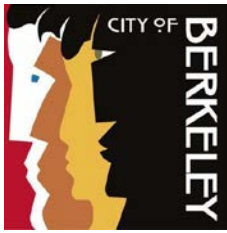
The City Manager should hire a third party consultant within three months of this item’s passage to conduct the data analysis, ensuring that the report is completed in an impartial and timely manner.

The third party consultant should create a report with the following information by analyzing and gathering the data from the police department, reporting their findings to the City every two years. We recommend the following data to be considered for analysis:

- a. Number of calls the police department receives per day, week, month, and year, which will be categorized into noncriminal, misdemeanor, nonviolent felony, and serious and violent felony calls.
- b. Demographics for these calls
- c. Characteristics of traffic stops
  - i. Quantity
  - ii. Type/reason
  - iii. Number of those resulting in searchings paired with the frequency at which illegal items were found
  - iv. Police response (i.e. citation, arrest, use of force)
  - v. Demographics of the civilian in the traffic stop that is broken into type of stop and whether a search occurred
- d. Number of complaints against an officer
  - i. Enumerate the officers with a high number of complaints

<sup>9</sup> <https://www.ncjrs.gov/pdffiles1/nij/231096.pdf>

<sup>10</sup> <https://www.ncjrs.gov/pdffiles1/nij/231096.pdf>



Councilmember Ben Bartlett  
City of Berkeley, District 3

ii. Reason behind the complaints.

With the results of the data analysis, the City can determine the portion of calls that the community crisis worker pilot can properly address with the resources and experience they have.

**II. Hire a consultant to conduct an analysis of the police department budget.**

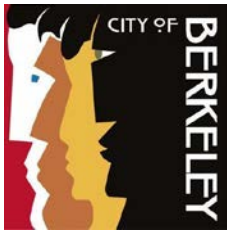
Using the analysis generated by a review of police call and response data, a third party consultant should be hired to analyze the police department's expenditures and budgets for various calls of service and report their findings to the City every two years.

According to the 2019 budget, the Berkeley Police Department's expenditures were approximately \$69 million, which consists of 5.6 percent of the city's net expenditures. However, for the 2020 budget, the BPD is expected to have \$74 million in expenditures, reflecting a \$5 million increase from the previous year and approximately \$8 million higher than 2017's expenditures<sup>11</sup>. Unfortunately, anecdotal evidence suggests that only 20 percent of police time is spent on solving crime and the majority is spent towards addressing those experiencing homelessness and mental health crises. The City should reallocate resources to a crisis worker entity who would be tasked with responding to noncriminal calls. We recommend that nonviolent calls also be addressed by this entity. This would give police officers more time to focus on crime, leading to better outcomes for public safety, community health, and a higher quality of life.

In Canada, Police Information and Statistics Committee police services Waterloo Police Regional Service and Ontario Provincial Police collaborated with Justice Canada and Public Safety to collect data on their calls for service and determine the costs of policing<sup>12</sup>. Their research reported that in 2013, bylaw complaints were listed as the most frequent call for service in Waterloo at 8,769 calls and non-crime policing activities were listed as the most frequent. In contrast, the only criminal activity listed in the top 10 generated calls were domestic dispute, theft under \$5000, and major violent crime in property damage. Considering the most frequent of costly calls are noncriminal activities such as selective traffic enforcement programs (\$22,212.45 in sum of total unit service time in hours) and vehicle stops (\$206,668.13), the greatest cost in calls were for noncriminal activities. As noncriminal activities result in the greatest costs, it would be more efficient for community workers to handle these situations in order to reduce

<sup>11</sup> <https://www.cityofberkeley.info/uploadedFiles/Manager/Budget/FY-2020-2021-Adopted-Budget-Book.pdf>

<sup>12</sup> <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2015-r018/index-en.aspx#c-1-i>



Councilmember Ben Bartlett  
City of Berkeley, District 3

police department costs, allowing trained professionals to resolve the issue and giving police officers time to spend on more serious criminal offenses.

By analyzing the budget expenditures for the police for each call type, the community can divest from the police and reallocate those funds for trained community organizations who can handle noncriminal and nonviolent offenses. Considering the significantly delayed response to former requests for the police department's budget, the data analysis should be conducted by a third party consultant that is hired and engaged in active service within three months of this item's passage, ensuring that the police department's budget information is transparent to the public and reported in an impartial, timely manner.

#### REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

The City Manager provides regular reports on crime in Berkeley and on the policies of the Berkeley Police Department<sup>13</sup>. The data on serious crime is collected annually by the Federal Bureau of Investigation (FBI), which consists of over 17,000 law enforcement agencies that represent over 90 percent of the United States population. The FBI's Uniform Crime Report (UCR) reports crime statistics on violent crimes (including murder, rape, robbery, and aggravated assault) and property crimes (including burglary, larceny, auto theft, and arson). This data allows the BPD to analyze national and local crime trends, determine effectiveness of response to crime, and plan for future policies and resource allocation. Additionally, the City of Berkeley implements the Daily Calls for Service Log that the community can access to see the volume and nature of police activity.

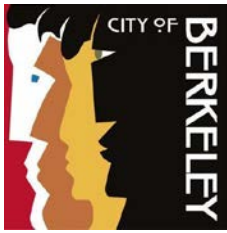
Currently, Utah requires agencies to report tactical deployment and forcible entries where such reports are summarized by the Utah Commission on Criminal and Juvenile Justice. Utah Law Enforcement Transparency reporting interface was added to Utah Criminal Justice Information System in 2014 through the use of federal grant funding. Law enforcement agencies are required to report incidents of forcible entry and the deployment of tactical groups, representing data collection of police use of force<sup>14</sup>.

However, these reports do not analyze the demographics or types of calls and responses from the BPD, which makes it difficult to hold police officers accountable for the mistreatment of individuals. Without this information, it becomes difficult to determine how to decrease the police footprint or implement safer policing practices if the analysis only pertains to the quantity and types of arrests and does not include the

<sup>13</sup> [https://www.cityofberkeley.info/Police/Home/Annual\\_Crime\\_Reports.aspx](https://www.cityofberkeley.info/Police/Home/Annual_Crime_Reports.aspx)

<sup>14</sup> <https://justice.utah.gov/Documents/CCJJ/LETR/2018%20LET%20Annual%20Report.html>





Councilmember Ben Bartlett  
City of Berkeley, District 3

background, call of service, reason, demographics, complaints against the police officer, and other important factors to the BPD's response.

Despite voluntary data sharing and crime reports, data collection still remains vague and insufficient, leaving many unanswered questions regarding the number of instances of and reasons for use of force, complaint process against police officers, and other information about police actions. This lack of clarity allows police misconduct to perpetuate due to the lack of research that would hold police departments accountable.

#### ACTIONS/ALTERNATIVES CONSIDERED

One possible alternative to the community response teams would be to implement better training procedures so that police officers are more equipped to handle nonviolent and noncriminal activities. For example, the state of Washington requires both violence de-escalation and mental health training for police officers<sup>15</sup>. Such reform may render the data analysis on the types of calls unnecessary because the police department would be trained to handle all services regardless of the type of call.

However, training police officers to handle situations such as mental health or homelessness would signify an increase in funding for the police department to provide such training services. Not only would this type of training be difficult to maneuver when police forces are currently trained in a militarized manner, but it would be more efficient for community professionals to peacefully and properly resolve such issues since they have already engaged in this training and experience for years.

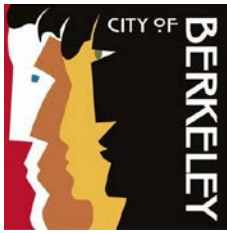
Reforming police training may be beneficial, but in this case, it would also indicate the lack of basis for reporting the police department's types of calls and responses, which is necessary to hold the police accountable and ensure safer practices. While reporting the data analysis could still occur without the community crisis workers, only having the police department manage all situations would increase their authority over the communities, which would lead to increased militarization of the police forces if other community organizations do not intervene or hold them accountable.

#### OUTREACH OVERVIEW AND RESULTS

The District 3 Office has consulted with David Muhammad, who is the Executive Director of the National Institute for Criminal Justice Reform; the former Chief Probation Officer in Alameda County; and the former Deputy Commissioner of Probation in New York City. David Muhammad is a leading expert on criminal justice who has helped inform our response to the current situation.

---

<sup>15</sup> <https://www.theatlantic.com/ideas/archive/2020/06/how-actually-fix-americas-police/612520/>



Councilmember Ben Bartlett  
City of Berkeley, District 3

The District 3 Office has also consulted with Marcus McKinney, the Senior Director of Government Affairs & Public Policy at the Center for Policing Equity.

The District 3 Office has also consulted with Professor Tracey L. Meares, Walton Hale Hamilton Professor and Faculty Director of the Justice Collaboratory at Yale Law School.

### RATIONALE FOR RECOMMENDATION

Police departments across the country enforce policies and practices that breed a culture of violence resulting in killings--like those of Floyd and Moore, and of countless other people of color. These authoritative, militarized behaviors are often rooted in anti-Black racism, and such behavior must stop being acceptable. Transformation of police departments, their role, and relationship to our communities requires a change in culture, accountability, training, policies, and practices.

To prioritize community safety and reduce police violence, the City must hire a third party consultant to analyze police data in order to decide how to divest from the police to fund experienced community workers who can adequately resolve noncriminal and nonviolent situations. These community workers would protect the community from violence and emphasize revitalization and rehabilitation over the punishment that police officers often enforce. Implementing a data-driven analysis on police data would increase the transparency of the police department and hold them accountable, detecting the issues within the police force that community response teams can help heal. The Council must make informed legislative decisions that will reduce police footprint, improve current practices of law enforcement, and reinvest in the community for the safety of our civilians.

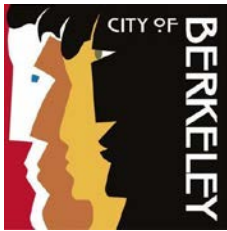
### FISCAL IMPACTS OF RECOMMENDATION

The third party consultant/s would cost approximately \$150,000 to \$200,000. It is up to the City Manager to hire the third party consultants who will analyze the data of the police department's calls, responses, budget, and expenditures. Consultants must be hired and engaged in service within three months if this item passes. These consultants would ensure that noncriminal situations are handled by those with the necessary training, which may lead to a decrease in repeat offenses when community workers properly resolve the situation and guide civilians to helpful resources.

### ENVIRONMENTAL SUSTAINABILITY

We do not expect this recommendation to have significant negative impacts on environmental sustainability.

### OUTCOMES AND EVALUATION



Councilmember Ben Bartlett  
City of Berkeley, District 3

If this item is passed, third party consultants would be hired by the City and engaged in data analysis within three months of passage. These consultants would produce biennial reports regarding the Berkeley Police Department's types of calls and responses as well as the budgets and expenditures in order to inform the City how to reallocate funds from the police into a community response team with better experience to handle noncriminal situations. We recommend that nonviolent situations also be addressed by community crisis workers.

#### CONTACT PERSON

Councilmember Ben Bartlett  
James Chang  
Kyle Tang  
Kimberly Woo

510-981-7130  
[jchang@cityofberkeley.info](mailto:jchang@cityofberkeley.info)  
[ktang@cityofberkeley.info](mailto:ktang@cityofberkeley.info)  
[kimwoo1240@berkeley.edu](mailto:kimwoo1240@berkeley.edu)

#### ATTACHMENTS

1. Cover Letter - Safety for All: George Floyd Community Safety Act
  - <https://drive.google.com/file/d/16pqqd9J6NPRzh6298Bgazo7jw1qxTK6Y/view?usp=sharing>

# SHRINK THE BEAST:

A Framework for Transforming Police

NICJR★  
National Institute for  
Criminal Justice Reform



The killing of George Floyd by Minneapolis police was the match that lit a fire that has been building in our communities for a long time. Nationwide demands for not just reform, but complete transformation of policing have put pressure on local jurisdictions across the country to make rapid and real change.

Since its founding, the National Institute for Criminal Justice Reform (NICJR) has worked to reform the juvenile and criminal justice systems through a process of Reduce – Improve – and Reinvest. This framework can also be effective in transforming policing. In the past 15 years, the U.S. juvenile justice system has been reduced by more than half. Youth correctional facilities have been shuttered and investment into community services has increased. While there is certainly more progress to be made, the movement to transform policing can learn a great deal from criminal justice reform.

**NICJR's framework to Shrink the Beast focuses on three areas:** reducing the footprint of law enforcement, significantly improving what remains of policing, and reinvesting the savings from smaller police budgets into community services.

## Reduce

One of the most significant structural reforms we must advance in policing, already happening in the criminal justice arena, is shrinking its scope. Officers are asked to do too much with too few resources. The warrior mentality that police are indoctrinated with, starting as early as the first day of the police academy, does not allow them to handle many of those responsibilities well. It is time for an alternative response network for all non-violent calls for service. Similar to the community-based organizations that provide diversion programs for youth and adults who would otherwise end up in the justice system, a new infrastructure of community safety and problem-solving responders, with expertise in crisis response, mental health, and de-escalation techniques, must be developed. Such a network should be vast and well equipped, including 24-hour on-call community crisis response and outreach workers. The resulting reduced police force would then focus primarily on responding to serious violence. Small, but promising examples of this model already exist:

- › **In Oakland, CA**, non-profit organizations employ street outreach workers and crisis response specialists who respond to shooting scenes, intervene in and mediate conflicts, and sit down with young adults who have been identified as being at very high risk of violence to inform them of their risk and offer them intensive services. These City-funded efforts have been credited with a [50 percent reduction in shootings](#) and homicides in the city.
- › **In Eugene, OR**, Crisis Assistance Helping Out on the Streets ([CAHOOTS](#)) responds to more than 22,000 requests for service annually with its Crisis Intervention Workers. This represents nearly 20 percent of the total public safety call volume for the metropolitan area.
- › **In Austin, TX**, the [Expanded Mobile Crisis Outreach Team](#) is equipped to respond to 911 calls where callers indicate that a mental health response, not police, is needed.
- › **In Albuquerque, NM**, where the police have been involved in numerous unjustified killings, the Mayor has proposed creating a [new non-law enforcement public safety agency](#) that will respond to non-violent calls.

## Steps To Reduction



Create a robust alternative emergency response network with mental health workers, crisis intervention specialists, and street outreach workers – the Community Emergency Response Network (CERN).



Significantly reduce police patrol divisions which are currently primarily responsible for responding to 911 calls. Police will instead focus on responding to serious and violent incidents, a small percentage of all current calls.



CERN Crisis Intervention Specialists would respond to all other calls.



Traffic policing should be replaced by technology to the maximum extent possible.



Violence reduction teams should be created or remain intact: Patrol and investigation units focused on reducing gun violence. Like all remaining police personnel, these units must be trained in and adhere to strict use of force and Procedural Justice policies.



Investigation Units should also remain intact.

## Improve

The primary challenge in police agencies is culture. Many have described it as a warrior culture. Adrenaline-filled young officers want to “knock heads” during their shifts; the “us vs them,” military occupation syndrome. We must confront and transform this destructive culture. Policing should focus on protection and service to the community.

Improving the smaller police departments that remain, after taking the steps to reduction outlined above, includes three components: policy, training, and accountability. Implement new policies including restricting the use of force, mandating verbal de-escalation, community policing, and eliminating stop and frisk. Implement high quality and frequent training on these newly developed policies. And, most importantly, hold all police personnel accountable for adhering to and demonstrating these policies in action.



### Steps To Improvement

- 1 Increase hiring standards to screen out candidates with any signs of racial bias, interest in the warrior culture, or those who have been fired or forced to resign from previous law enforcement positions.
- 2 Prioritize hires of those who grew up in the city and/or live in the city.
- 3 Make deliberate efforts to have the police force representative of the community it serves.
- 4 Revise use of force policies to limit any use of deadly force as a last resort in situations where a suspect is clearly armed with a firearm and is using or threatening to use the firearm.
- 5 All other force must be absolutely necessary and proportional.
- 6 Provide thorough, high quality, and intensive training in subjects including:
  - New use of force policy
  - Verbal de-escalation
  - Bias-free policing
  - Procedural Justice
- 7 Transparency: Provide regular reports to the public on stops, arrests, complaints, and uses of force, including totals, demographics, and aggregate outcomes data.
- 8 Effectively use an early intervention system that tracks various data points to identify high risk officers and implement discipline, training, and dismissal where necessary.
- 9 Use aggressive, progressive discipline to root out bad officers.
- 10 Rescind state and local laws that provide undue protection to police unions and prohibit effective and efficient disciplinary action.

## Reinvest

A smaller footprint of law enforcement should result in a reduced police budget. Resources should be shifted away from the police department to the CERN and other community-based intervention initiatives, including Credible Messengers/Life Coaches, social workers, and mental health service providers.



The National Institute for Criminal Justice Reform (NICJR) is a non-profit organization providing technical assistance, consulting, research, and organizational development in the fields of juvenile and criminal justice, youth development, and violence prevention. NICJR provides consultation, program development, technical assistance, and training to an array of organizations, including government agencies, non-profit organizations, and philanthropic foundations.



[NICJR.org](http://NICJR.org)

## R E P O R T R E S U M E S

ED 015 988

UD 004 752

SCHOOL DESEGREGATION IN BERKELEY--THE SCHOOL SUPERINTENDENT REPORTS.

BY- SULLIVAN, NEIL V.

PUB DATE NOV 67

EDRS PRICE MF-\$0.25 HC-\$0.92 21F.

DESCRIPTORS- \*SCHOOL INTEGRATION, \*BOARD OF EDUCATION POLICY, \*BOARD OF EDUCATION ROLE, SCHOOL ADMINISTRATION, SCHOOL SUPERINTENDENTS, JUNIOR HIGH SCHOOLS, ELEMENTARY SCHOOLS, COMMUNITY COOPERATION, BUS TRANSPORTATION, STAFF ROLE, ELECTIONS, INTEGRATION PLANS, BERKELEY, CALIFORNIA

DESCRIBED IS THE HISTORY OF THE EFFORTS TO DESEGREGATE THE BERKELEY, CALIFORNIA, SCHOOL DISTRICT, WHICH IS SCHEDULED TO BE FULLY DESEGREGATED BY SEPTEMBER 1968. CHANGE BEGAN IN THE 1950'S WITH THE ELECTION OF A "LIBERAL" TO THE BOARD OF EDUCATION. FIRST STEPS INVOLVED IMPROVING EDUCATIONAL OPPORTUNITIES FOR MINORITY GROUP CHILDREN AND MAKING EFFORTS FOR BETTER RACE RELATIONS. DESEGREGATION BEGAN IN THE JUNIOR HIGH SCHOOLS BUT NOT WITHOUT COMMUNITY FRICTION TO THE POINT OF A DEMAND FOR A RECALL ELECTION OF THE BOARD. HOWEVER THE BOARD WAS VINDICATED ON ITS STAND FOR VOLUNTARY INITIATION OF DESEGREGATION. A NEW SCHOOL SUPERINTENDENT WAS FACED WITH THE JOB OF IMPLEMENTING THE PLAN AND BEGAN HIS EFFORTS BY DEVELOPING COMMUNITY SUPPORT AND PRODUCTIVE LIAISON WITH HIS STAFF. THE NEXT STEP INVOLVED DESEGREGATING THE ELEMENTARY SCHOOLS. THE WIDE GEOGRAPHIC SEPARATION OF IMBALANCED SCHOOLS IN THE CITY REQUIRED THE DESIGNATION OF CERTAIN WHITE SCHOOLS AS RECEIVING SCHOOLS AND THE USE OF FEDERALLY FUNDED BUSES AND ADDITIONAL STAFF FOR THE 230 INCOMING PUPILS. HOWEVER THIS WAS ONLY A "TOKEN" EFFORT. VOLUNTARY REVERSE BUSING AND A TIMETABLE FOR COMPLETE DESEGREGATION HAVE BEEN RECOMMENDED. IT IS FELT THAT THE REQUISITES FOR SUCCESSFUL SCHOOL DESEGREGATION ARE FULL COMMITMENT BY THE SCHOOL ADMINISTRATION AND THE BOARD, COMMUNITY INVOLVEMENT WITH AND FAITH IN THE BOARD AND ADMINISTRATION, AND THE DEVELOPMENT OF "WORKABLE" PLANS. THIS PAPER WAS PREPARED FOR THE NATIONAL CONFERENCE ON EQUAL EDUCATIONAL OPPORTUNITY IN AMERICA'S CITIES, SPONSORED BY THE U.S. COMMISSION ON CIVIL RIGHTS, WASHINGTON, D.C., NOVEMBER 16-18, 1967. (NH)



04752

**SCHOOL DESEGREGATION IN BERKELEY:  
THE SCHOOL SUPERINTENDENT REPORTS**

Prepared by  
Neil V. Sullivan, Ed. D., Superintendent of Schools  
Berkeley Unified School District-Berkeley, California  
for the  
National Conference on Equal Educational Opportunity  
in America's Cities  
sponsored by the  
U.S. Commission on Civil Rights, Washington, D.C.  
November 16-18, 1967

**U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE  
OFFICE OF EDUCATION**

**THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE  
PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS  
STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION  
POSITION OR POLICY.**

In recent years Berkeley, California, has been fortunate to have a school district which recognizes its problems and works effectively toward their solution. The city schools already have completely desegregated the junior high schools, and have made a token start at the elementary level. The School Board has committed itself to completing the process in all schools by September 1968. When that goal is reached, Berkeley will be a rare example of a major city working out a solution to this problem without court orders, violence, boycotts, or compulsion, but only with the conviction of the Board of Education, the Administration, and the citizens that it was right.

This has not been achieved overnight. To place the present achievements in their proper context it is necessary to trace the development of events in the recent past.

ED015988

UD 004 752

PRE-1964

The Liberal Renaissance - Prior to the mid-1950's Berkeley's local government -- including the Board of Education -- was typical of those found in most middle-size, middle-class communities. The orientation was pro-business, with a heavy emphasis on keeping the tax rate down. This condition was so pronounced that teachers, in order to obtain a much needed and earned salary increase, were forced to use an initiative petition to get school revenues raised; the Board had refused to do so.

There are many different versions concerning the beginning of the liberal renaissance. There is general agreement that the first concrete step was the election of one liberal to the Board in 1957, followed by another in 1959, and two more in 1961. With the 1961 election the liberals assumed control of both the Board of Education and the City Council. However, even with only one "liberal" Board member in the late 1950's, the Board began to give attention to the problems of race relations in a multi-racial city.

Preliminary Steps - A citizens committee (named the Staats Committee after its chairman) was organized to study race relations within schools. This committee did not come to grips with the question of de facto segregation but sought to deal otherwise with improving educational opportunities for minority youngsters and improving race relations in the schools. For the late 1950's this report was a forward-looking document. It led to two particularly noteworthy developments.

First, the hiring practices for minority teachers were greatly improved. The number of Negro teachers increased from 36 in 1958 to 75 in 1962. Negroes also were advanced to principalships and other high positions in the District's administrative hierarchy. And by 1962 there were about 30 Orientals on the certificated staff.\*

Second was the Intergroup Education Project (IEP). This project was designed to help teachers appreciate cultural diversities and better understand youngsters from other than middle-class backgrounds. It conducted seminars for teachers, mass community meetings, and weekend conferences for this purpose. The IEP helped prepare the ground for the high staff support for later integration efforts.

Junior High School Desegregation - In 1962 a delegation from the Congress on Racial Equality visited the Superintendent of Schools -- and later the Board of Education. Complimenting the School District for progress already made, the CORE delegation suggested that it was time to get on with the task of desegregating the schools. CORE asked that a citizens committee be appointed to study this problem.

The report included a recommendation for desegregating the junior high schools by assigning some students from the predominantly Caucasian "hill" area to Burbank, the Negro junior high school; students from predominantly Negro west Berkeley would be assigned partly

---

\* The distribution of minority teachers among the various schools did not keep pace with progress in hiring. Most of these recruits were assigned to predominantly Negro schools. In more recent years we have made a concerted effort to achieve a better racial balance on all faculties. It is important, especially to combat stereotypes, to the education of all children to see members of all races working together in such respected vocations as teaching.

to Garfield, the Caucasian junior high school. Since the third junior high school already was racially balanced, this recommendation would have eliminated de facto segregation at the junior high school level.

The report struck the community like a bombshell. Although the community was aware that the committee was functioning, most people had not taken seriously the possibility that such a concrete recommendation would be made. The reaction was intense. During the remainder of 1963 and through January of 1964 there was extensive community discussion of the proposal. Two hearings were held -- one attracting 1200 people and other drawing over 2000. PTA's and other groups set up study committees on this problem; never before had such crowds attended PTA meetings!

In the hill area affected by the recommendation many liberals faced a dilemma. Some asked: "How do we express our opposition to this particular proposal without sounding like bigots?" Our response was to ask them to develop a better plan. Many sincere critics of the citizens committee proposal set out to do just that.

One of these alternative proposals was named the "Ramsey Plan" after the junior high school English teacher who suggested it. This plan proposed desegregation of Berkeley's three junior high schools by making the predominantly Negro school into a 9th grade school and dividing the 7th and 8th graders between the two remaining junior high schools.

In February 1964 a five-member staff committee was asked to study the reactions of the Berkeley school staff to the citizens committee proposal and to other ideas that had been offered. Every school faculty was asked to consider the matter.

In March the 5-member staff committee reported to the Board that the staff as a whole was favorable toward integration, and preferred the Ramsey Plan to the original citizens committee proposal. The Board instructed the Superintendent to consider the educational pros and cons of the Ramsey Plan, and its feasibility for September 1964 implementation.

The results of this study were presented to the Board and the community on May 19, 1964, a landmark date in the history of Berkeley schools. Again there were over 2000 people in the audience. The opposition, which had formed the "Parents Association for Neighborhood Schools" (PANS) solemnly warned that if the Ramsey Plan or any such desegregation proposal were adopted, the Board would face a recall election. The Board members did vote for the Ramsey Plan -- and they did face recall.

The Recall - Through the summer months the opponents of the Board collected signatures on recall petitions. A rival group was formed to defend the Board (Berkeley Friends of Better Schools). By late July the PANS group had enough signatures to force a recall election.

There followed a series of procedural skirmishes before the City Council and the state courts. Finally, an election was called for October 6, and after an intensive and heated campaign it was held. It was a stunning triumph for the courageous incumbent Board members. This election was another landmark for Berkeley education and for the cause of desegregation across the nation. There was more at stake than indi-

vidual Board members continuing in office. The basic issue was the survival of a Board of Education which voluntarily took effective action to desegregate schools -- not because of court order or other compulsion, but simply because the Board believed desegregation was right. If such a board of Education could not be sustained the lesson would not be lost on boards of education in other cities facing the same problem. Thus, it was extremely significant that in this election the Board was vindicated by the Berkeley community.

#### SULLIVAN ADMINISTRATION

The New Administration - On September 1, 1964, five weeks prior to the recall election, I took office as Berkeley's Superintendent of Schools in the midst of a climate of change and uncertainty. Of the five-member Board of Education which had unanimously invited me to come to Berkeley, only two remained in office. One had resigned because his business interests led him to move from the city. Another was transferred to become minister of one of the largest churches of his denomination in New York City, and a third was appointed by the Governor to be a Superior Court judge. The two who remained were facing a recall election.

There also was a sweeping change in the school administration. Virtually every top ranking member of the central administration was either new to the District or new in his position. Over one-third of our schools had new principals.

Making the New Plan Work - The decision to desegregate the junior high schools had been made before I arrived. The role of the

new administration was to make it work.

School opened as usual and the new system was put into effect with no marked difficulties. In fact, the orderliness of the transition was an important contribution to the defeat of the recall attempt. It demonstrated clearly that desegregation could be achieved without the dire consequences that had been forecast.

Developing Community Support - Defeat of the recall election meant that courageous Board members would remain in office, and the junior high school desegregation plan would continue. My next task as Superintendent was to attempt to reunite a badly split community, to develop a sense of community understanding, and to provide a basis for school support.

I approached this problem by creating a climate of openness with the public. We immediately established the practice of recognizing and admitting our problems and inviting the community's help in seeking solutions. As a new superintendent, I was besieged by invitations to speak publicly. I accepted as many as I could and during the 1964-65 school year scheduled over 100 speaking engagements.

I issued an open invitation to citizens to visit my office and discuss their school concerns, to share their ideas and suggestions. In addition I telephoned or wrote to dozens of people who had been recommended to me as community leaders deeply interested in schools. For several months I met almost continually, often a few times a day, with citizens individually and in groups. These meetings made me familiar with the Berkeley community and established a climate that encouraged exchange of ideas.

I established a liaison channel between my office and the area-wide PTA Council. I made it a practice to convene three or four briefing sessions a year with the unit presidents and council officers of that organization, and included other groups such as the League of Women Voters. At these sessions problems and issues facing the schools, as well as hopes and plans for improvement were discussed.

The day after the recall election I recommended the formation of a broadly-based School Master Plan Committee, to examine all facets of the School District's operation and to develop guidelines for the future. I urged participation of all elements of the community, making it clear that we wanted cooperation, regardless of positions in the recall election. The response was heartwarming; over 200 highly qualified citizens were nominated or volunteered their services. The Board of Education selected 91 people from this list to serve on the committee. Also named were 47 staff members. The committee has been hard at work for two years, and presented its report in the fall of 1967.

During my first year in Berkeley, I was invited by the local newspaper to write a weekly column on local and national education matters. This column has been a valuable means of keeping the community informed and introducing some new ideas. During the past year I accepted the invitation from a local radio station to conduct a weekly program of fifteen minute sessions dealing with events in the school system and issues facing public education. Each month the final week's program is extended to one hour, and features a direct phone-in from the radio audience.



In addition to developing relationships with the general public, we have worked to maintain good liaison with the staff. We have frequent breakfast conferences with the leaders of both teacher organizations, and meet regularly with the Superintendent's Teacher Advisory Council, made up of teacher representatives chosen by each faculty.

The purpose of these communication efforts has been three-fold. First, extensive dialogue with staff and community helps to identify and define problems needing attention. Second, it serves as an excellent source of new ideas and suggestions. Third, it helps interpret our problems, goals, and programs to the community.

Our efforts have been, in short, to "mold consensus" in the community behind the school system. Although we have not achieved unanimity on any single subject (that would be impossible in Berkeley!) there have been good indications during the past three years. It seems that we have succeeded in molding community support for the schools, and in developing sufficient consensus to resolve some of the crucial problems facing urban schools today.

#### A START TOWARD ELEMENTARY INTEGRATION

Segregation in the Elementary Schools - The Board's adoption of the Ramsey Plan, followed by the defeat of recall election, insured desegregation at the junior high school level. Since there is only one regular senior high school, our entire secondary school program, beginning with grade 7, was desegregated. However, we still face de facto segregated elementary schools. The four elementary schools in south and west Berkeley are overwhelmingly Negro. The seven schools located in

the northern and eastern hill areas of the city are overwhelmingly Caucasian. In between, in a strip running through the middle of Berkeley, are three desegregated schools. Since the racially imbalanced Negro and Caucasian schools are on opposite sides of the city, separated by the integrated schools, boundary adjustments will not solve the problem.

When the Ramsey Plan was adopted the Board tabled a companion recommendation that would have desegregated the elementary schools by dividing the city into four east-to-west strips, each containing three or four schools. The schools within each of these strips would have been assigned students on a Princeton principle, i.e., 1-3 in some schools, grades 4-6 in others.

Educational Considerations - It is not the function of this paper to develop fully the case for school desegregation. However, the basic motivation underlying our progress in Berkeley can be stated concisely.

Many studies, in Berkeley and elsewhere, have documented the fact that segregation hurts the achievement of disadvantaged youngsters. Schools with a preponderance of these boys and girls have low prestige and generally lack an atmosphere conducive to serious study.

The emotional and psychological harm done to children through this type of isolation also has been demonstrated. Regardless of cause, racial segregation carries with it the symbol of society's traditional rejection of Negroes.

The benefit of integration extends to children of all races. We are all sharing this society, and if it is to be successful we must learn to respect each other and get along with one another. This will not happen if segregation remains.

These considerations have been taken seriously in Berkeley as we move toward total school integration.

ESEA Busing Program - The Elementary and Secondary Education Act of 1965 allowed the schools to make a beginning on the problem of elementary school segregation. Berkeley's share under Title I of that Act was approximately a half-million dollars. A major share of these funds was used to reduce pupil-teacher ratios in our four target area (Negro) schools and to provide extra specialists and services for students attending them. The reduction of pupil-teacher ratios left a surplus of 235 children. The seven predominantly Caucasian hill-area schools had spaces for these youngsters. Our proposal for the first year's use of Title I funds, then, included improved services and reduced pupil-teacher ratio in the target area schools and the purchase of buses to transport the 235 "surplus" youngsters to the hill area schools.

In the preparation of this project we again employed our principle of mass community involvement. Each school faculty was invited to submit suggestions. Their response was gratifying. These suggestions, when piled together, produced a stack of paper several inches high. When they had been sifted and evaluated, and a project developed, we submitted it to the Board. Copies were made available to the school faculties and the public for their reactions. Two major public meetings were held in different sections of the city, and the Board of Education held a workshop session at which teachers could react. Many valuable suggestions and constructive criticisms resulted and were incorporated into the final proposal.

As might have been predicted, most of the public attention was centered on the busing proposal, although it involved a relatively minor share of the funds. This time the opposition, though by no means silent, was much less severe.

Since the children in the hill area schools were not being asked to go anywhere else -- the hill schools were simply going to receive youngsters from the other areas of the city -- this provided no focal point for the development of opposition. And the proposal included employing eleven extra teachers, paid with local money, and placing them in the receiving schools to maintain the pupil-teacher ratio there. A few scattered voices were raised against the proposal, but the preponderance of community opinion was favorable. Both teacher organizations endorsed the project, and on November 30, 1965, the Board adopted the program for implementation the spring semester.

The proposal went to the State Board of Education and became one of the first fourteen ESEA projects approved in the State of California. We had approximately two months to prepare for its implementation -- the selection of youngsters (this was voluntary on the part of the parents), the employment of teachers, arrangement of transportation, and other administrative details. Parent groups in the receiving schools helped by establishing contact with the parents of the transferring students. The students in the receiving schools likewise participated, and some wrote letters of welcome to the newcomers. Dry runs were conducted with the buses so that by the time the program was implemented in February 1966, the necessary advance preparation had been accomplished.

Results to Date - Although the program has not been in effect long enough for an extensive objective evaluation, early indications are that it has been extremely successful. The children have adjusted well in their new school environment and, by their performance, have made friends for integration. One evaluation, made by an outside consultant employed by the District, found that receiving school parents whose children were in class with Negroes were more favorable to integration than parents whose children were not in class with Negroes. And parents of the bused students were so pleased with the results that many requested that their other children be included.

This limited program provided an integrated experience for the 230 youngsters being transferred, less than 10 percent of the sending schools' enrollment. It also provided token integration for the receiving schools. However, it left the four southwest Berkeley schools just as segregated as they were before, although with a somewhat improved program due to the reduced pupil-teacher ratio and added services.

#### COMMITMENT TO TOTAL INTEGRATION

The Problem - Although the ESEA program has provided a start in the direction of elementary school desegregation, we never regarded the busing of only 235 youngsters as the solution to the segregation problem. The problem will not be solved as long as our four south and west Berkeley schools remain overwhelmingly Negro, and the schools in the north and east overwhelmingly Caucasian. The segregation problem must be solved if minority youngsters are ever to close the achievement gap and if all youngsters, regardless of race, are to be adequately prepared for life in a multi-racial world.

Although we have integrated the schools down to the 7th grade, we strongly believe that integration must begin earlier. In too many cases attitudes already are hardened and stereotypes developed by the time the youngsters reach the 7th grade. It is, of course, politically and logistically easier to desegregate the secondary schools. In fact, a bi-racial city that has not desegregated its secondary schools is by definition not committed to integration. The problem is much more difficult at the elementary level. Buildings and attendance areas are smaller, children are younger, and community emotions are more intense. Yet, the problem must be solved at the elementary level. It is ironic that solutions come more easily at one level, but more good can be accomplished at the other.

The Commitment - The commitment of the Board of Education to desegregation of all elementary schools in Berkeley came in the spring of 1967. In early April a delegation from west Berkeley made a resen- tation to the Board, stating that it was time to get on with the job of total desegregation. The delegation had many other recommendations specifically relating to the south and west Berkeley schools and the programs available to minority youngsters. At this meeting I recommended that the Board authorize the Administration to develop a program of voluntary reverse busing from Caucasian areas to south and west Berkeley. I let it be known that this was to be regarded only as a stop-gap measure to demonstrate good faith and did not represent a solution to the desegregation problem.

At the next meeting, however, before we could develop a reverse busing plan, the issue moved ahead. Both of our certificated staff organizations made appeals to the Board for action either to erase de facto

segregation completely or at least to make a significant step in that direction. Officials of the local NAACP and other members of the audience supported these appeals. A motion was presented to the Board calling for desegregation of all Berkeley schools. The Board concurred and established September 1968 as the target date for desegregating the schools.

The next two or three Board meetings, including one workshop or "open hearing", drew crowds of several hundred spectators and many speakers. Most of the speakers and most of the crowds were supportive of the Board's action; there was a minority who disagreed with the Board's position -- some opposed desegregation altogether, and others felt that 1968 was too long to wait.

On May 16 the Board adopted a formal resolution reaffirming the September 1968 commitment and adding an interim calendar of deadlines for the various steps required to achieve desegregation. The Administration was instructed to develop plans for total integration. We were instructed to make our report by the first Board meeting in October, 1967. The timetable calls for the Board to adopt a particular program by January or February 1968. Seven or eight months would then remain for implementing the program in time for the opening of school in September 1968. This is the calendar on which we now are operating.

The Board included in its Resolution on Integration two other features: first, the assumption that desegregation is to be accomplished in the context of continued quality education, and second, that massive community involvement was to be sought in development and selection of the program. Both of these features I heartily support.

Developing the Plan - We went to work immediately. The Administration compiled information on enrollment and racial makeup of each school, school capacities and financial data. This information was distributed to each faculty. We then called a meeting of all elementary school teachers; I relayed our charge from the Board and asked each faculty to meet separately and develop suggestions. We also sent information packets to over sixty community groups and invited them to contribute their ideas. By the end of June we had received many suggestions, both from staff members and lay citizens.

Meanwhile both local and national endorsements were pouring in. The Berkeley City Council passed a resolution commending the Board on its commitment to integration. Other local organizations and individuals did the same.

During the summer months two task groups were assigned to work on the problem. One was concerned with the logistics of achieving desegregation and the other was concerned with the instructional program under the new arrangement. The Board appointed a seven-member lay citizens group to advise the Administration in development of its recommendations. Even after the Administration's recommendation has been given to the Board, this group will continue to function as an advisory body to the Board. Upon receiving the Administration's recommendation, the Board plans a series of workshop sessions to provide every opportunity for community reaction and suggestion.

As this paper is written (mid-September) we are making excellent progress toward meeting our deadline. Soon after the opening of school, a report from the Summer Task Group outlining four or five



of the most promising plans was sent to each school faculty and to each group or individual who submitted a plan during the summer. These proposals are being made available to the community as well, along with the many suggestions received earlier from staff and lay citizens. School faculties and the community-at-large are invited to react to these proposals and to make suggestions to the Administration. Procedures have been organized to facilitate a response from school and community groups. Each faculty has been asked to meet at least twice. On one afternoon, schools will be dismissed early and the district-wide staff divided into cross sectional "buzz" groups. Each of these groups will submit ideas. Following these steps we will use the task group proposals, along with the reactions and suggestions that come from the staff and community, in developing our recommendation to the Board. This recommendation will be presented to the Board on schedule, at the first meeting in October. From that point on the matter will be in the hands of the Board, which is to make its decision by January or February 1968.

As our plans develop, we have received invitations to appear before many groups, large and small. Some have been hostile at first. However, meeting with them has made possible an excellent exchange of views and an opportunity for explaining our program to people who had not been reached earlier. We anticipate that the fall months will be crowded with such speaking assignments. It is our firm commitment, and that of the Board of Education, to inform the citizens of Berkeley thoroughly about the issue and about prospective plans prior to the Board's adoption of a program in January or February.

LESSONS LEARNED

While working toward integration in the Berkeley schools over the past several years, we have learned some lessons:

1. Support by the Administration and the Board of Education for the concept of school integration is absolutely essential. The Board must give its consent before any plan of desegregation can occur. The support of the Superintendent and his administrative team is vital in helping to obtain Board support and in making a success of any program adopted. While the Board nor the Administration need broad community support, their leadership role is vital.

2. Integration has the best chance of success when a climate of openness has been established in the community. Lines of communication with Board, Administration, teachers, and the community-at-large must be kept open through frequent use. Anyone who thinks a solution to the problem of integration can be developed in a "smoke-filled room" and then rammed through to adoption while the community is kept in ignorance is simply wrong.

Our citizens are vitally interested; they are going to form opinions and express them, whether we like it or not. It is in our interest to see that these opinions are formed on the basis of correct information. Furthermore, the success of integration, once adopted, depends upon broad community support and understanding between the lay community and the schools. This can be created only through a climate of openness.

3. It can be done! A school district can move voluntarily to desegregate without a court order and without the compulsion of violence or boycotts. Berkeley has demonstrated that a school community can marshal its resources, come to grips with the issue of segregation, and develop a workable solution.

Furthermore, if the new arrangement is well planned and executed, it will gain acceptance on the part of many who opposed it at first.

Many fears and threats which arose in Berkeley were not realized. The Board was not recalled. Our teachers did not quit in droves. In fact, the reverse happened; our teacher turnover rate has been drastically reduced during the last two or three years. Integration did not lead to the kind of mass white exodus being experienced in other cities (which, interestingly enough, have not moved toward integration). In fact, last year for the first time in many years the long-standing trend toward a declining white enrollment in the Berkeley schools was reversed.

The not-so-subtle hints that direct action for integration would lead to loss of tax measures at the ballot box proved to be unfounded. In June 1966 we asked the voters for a \$1.50 increase in the ceiling of our basic school tax rate. Much smaller increase proposals were being shot down in neighboring districts and across the nation. In Berkeley we won the tax increase with over a 60 percent majority.

4. A community can grow. Berkeley did! When the citizens committee report came out in the fall of 1963 with an actual plan for desegregation of the junior high schools, the community suddenly awoke to the fact that desegregation was a real possibility. The furor that

resulted could be predicted in any city. However, as large public hearings and countless smaller meetings were held by dozens of groups, support for integration began to grow and opposition diminish. One area of the city that reacted emotionally at first later provided some of our strongest supporters.

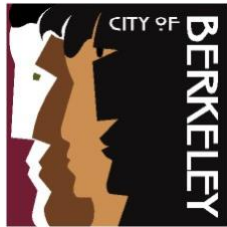
An example in a different but related field can illustrate this point. Berkeley held a referendum election on a Fair Housing Proposal early in 1963, before the citizens committee report, and the measure was defeated by a narrow margin. A year and a half later the community, together with the rest of California, voted on the same issue -- Proposition 14. Although the statewide vote on that issue was a resounding defeat for Fair Housing, the City of Berkeley voted the direct opposite by almost a two-to-one margin. The Proposition 14 election was held only a month after the recall election, after almost a full year of intensive community involvement with the school desegregation issue. In other words, a city that voted down its own Fair Housing proposal, later voted two-to-one for Fair Housing in a statewide election. Many of us feel that this change of direction was substantially influenced by the extensive community involvement in the school integration question between the two elections. The community grew in understanding as it studied the issues.

5. Community confidence in the good faith of its school administration and school board must be maintained. Berkeley has been successful in doing this. The good faith of our Board and Administration has been demonstrated. There have been no court orders, no pickets, no boycotts, no violence. Each advance has been made, after extensive

study and community deliberation, because the staff, the Board and the community thought it was right. By moving in concert with the community we have avoided being placed in polarized positions of antagonism. The climate thus produced has enabled us, as we move step by step, to work with rather than against important segments of the community in seeking solutions. If this climate of good faith is missing, even the good deeds of school officials are suspect.

#### CONCLUSION

There is no greater problem facing the schools of America today than breaking down the walls of segregation. If our society is to function effectively its members must learn to live together. Schools have a vital role to play in preparing citizens for life in a multi-racial society. The Berkeley experience offers hope that integration can be successfully achieved in a good-sized city. This success can be achieved if the Board of Education, the school staff, and the citizens of the community are determined to solve the problem and work together toward this end.



Office of the Mayor

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** July 14, 2020

**Item Number:** #18a-e

**Supplemental/Revision Submitted By:** Mayor Arreguin

**“Good of the City” Analysis:**

*The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.*

The City Council has before it tonight five different proposals to initiate a robust community process to reimagine policing, and also specific proposals to conduct analyses and initiate new approaches to public safety.

The Mayor is proposing an omnibus motion that adopts elements of every one of the five proposals with some modifications.

Given that the Council is discussing various proposals relating to public safety tonight, and there is strong community interest in Berkeley initiating reforms in light of the murder of George Floyd and the nationwide movement for racial justice, the Good of the City outweighs the lack of time for prior citizen review or evaluation by the Council.

***Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)***

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.



Office of the Mayor

**Proposed Omnibus Motion on Public Safety Items (Items 18a-e)  
July 14, 2020**

**RECOMMENDATION**

That the Berkeley City Council adopts the following motion:

1. To APPROVE item 18a “George Floyd Community Safety Act - Budget Request to Hire a Consultant to Perform Police Call and Response Data Analysis” (Bartlett) as revised in Supplemental Packet 1 and further amended below:

- Reaffirming the Council’s prior action adopting Recommendation # 1 through its allocation of \$160,000 for an Auditor I position in the FY 2021 Budget to conduct a data-driven study that includes analysis of police calls and responses, as well as analysis of the Berkeley Police Department (BPD) budget and expenditures by call type, including FTE (full-time equivalent position), cost per FTE, overtime and special pay expenditures and supervisory structure. Recommended data points/areas of focus are included in pages 4-7 of the Bartlett item. The Auditor is encouraged to consult subject matter experts in developing the scope of work for this study and to consult with the community-based organization selected for community outreach (Item 18d) throughout her work.

- Approving Recommendation # 2 as revised below:

Refer to the City Manager and the public safety reimagining process in item 18d to evaluate initiatives and reforms that reduce the footprint of the Police Department and limit the Police’s scope of work primarily to violent and criminal matters.

- Allocate \$100,000 from the FY 2021 Unallocated General Fund Balance (of \$141,518 unallocated in the FY 2021 Adopted Budget) to analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit. This Specialized Care Unit (SCU) consisting of trained crisis-response workers would respond to 911 calls that the operator evaluated as non-criminal and that posed no imminent threat to the safety of first responders. The program would be designed by staff based on existing successful models and likely employ a combination of mental health professionals as well as EMTs and/or nurses, who would be unarmed. The program should be designed to reduce costs while enhancing outcomes in public safety, community health, mental health, social services, civil rights, and overall quality of life. Based on pilot results, a proposal to adjust and/or expand and continue the program, and related reductions in policing services, should be presented to the City Council for consideration in time for

inclusion in the FY 2022 budget. *(Council previously approved a study of the creation of a Specialized Care Unit pilot on June 16, 2020)*

2. To APPROVE the following recommendations based on Councilmember Davila's item 18b "Support Redistribution of City Resources and Operations from the Berkeley Police":

- As previously recommended in other areas of this motion by other Councilmembers, refer as part of the public safety reimagining process to evaluate functions currently served by Berkeley Police personnel which could be better served by trained non-sworn city staff or community partners and how those positions/responsibilities could be transferred out of the police department as soon as practicable. (Davila Recommendation 1 modified)
- Refer to the public safety reimagining process the goal of reducing the Berkeley Police Department budget by 50%, to be based on the results of requested studies and analysis and achieved through programs such as the Specialized Care Unit. Functions to consider shifting away from the Police Department include non-emergency calls that are evaluated to pose no danger to the safety of responders, such as calls related to enforcement of COVID-19 Shelter in Place orders, mental health calls (including wellness checks), calls related to quality of life crimes, calls related to homelessness, and any other calls that can be safely served by another new or existing city or community partner resource (Davila Recommendation 2 and 3 modified)
- Engage in a full and complete operational analysis, undertake meaningful community consultation and develop a transition plan. This reduction will enable a reallocation of public safety resources so that Police are focused on violent and criminal matters, and consider how to shift resources to, among others, non-sworn mental health, homeless outreach, and parking and traffic enforcement professionals. This will also enable the reallocation of existing police dollars for community programs and priorities to support communities of color, promote violence prevention and restorative justice and improve community health and safety. (Davila Recommendation 3 modified)
- Reducing the Berkeley Police Department budget will allow funding to be considered for these and other similar priorities: youth programs, or community groups and programs, violence prevention and restorative justice programs, domestic violence prevention, housing and homeless services, food security, mental health services including a specialized care unit, healthcare, new city jobs, expanded partnerships with community organizations, public health services, and the creation of a new Department of Transportation to administer parking regulations and traffic laws. (Davila Recommendation 4 modified)
- Refer to the City Manager and the public safety re-imagining process to identify the expertise needed for non-police responses to calls, taking into account comparable



approaches including CAHOOTS and other existing programs that might be expanded such as the Berkeley Free Clinic, Building Opportunities for Self Sustainability (BOSS), and the Women's Daytime Drop-in Center, Consider the Homeless and others. (Davila recommendation 6 modified)

- Create plans and protocols for emergency/911 dispatch to send calls to the preferred responding entity and consider placing dispatch in the Fire Department or elsewhere outside the Police Department. (Davila recommendation 7 modified)
- Request that the Berkeley Unified School District end programs that place police officers in schools. (Davila recommendation 8 modified)

*(Councilmember Davila's suggested language encouraging BUSD to adopt policies to safeguard information from ICE is already adopted district policy. BUSD was one of the first districts in the country to adopt a sanctuary schools policy and should be commended for its forward-thinking leadership.)*

- Refer to the City Manager and public safety reimagining process to explore the creation of a city policy to prohibit the expenditure of Police Department settlements from the General Fund. In the interim, it is recommended that the projected cost of settlements be included in the Police Department budget and the Department be responsible for requesting additional funding as needed. (Davila recommendation 9 modified)

3. To APPROVE the report and resolution in item 18d "Transform Community Safety and Initiate a Robust Community Engagement Process" (Mayor/Hahn/Bartlett/Harrison) with the following revisions below:

- Amend recommendation 3 to clarify that the City Manager would "collaborate with the Mayor and **all** Councilmembers to complete the work, to inform investments and reallocations to be incorporated into future Budget processes."
- Amend recommendation 3 to refer all of the recommendations from the Berkeley United for Community Safety coalition (see attached) to the City Manager and public safety reimagining process.
- Amend recommendations 3(a) (ii) to clarify that the analysis and initial recommendations on shifting police resources to alternate, non-police responses and toward alternative and restorative justice models will coincide with the November 2020 AAO#1 process and the **June 2021 budget process**.
- Amend recommendation 3(b) to add the following language proposed by Councilmember Wengraf in item 18c:

This work should include public, transparent community forums to listen, learn and receive people's ideas about how policing should be re-imagined and transformed so that communities of color can be safer within their neighborhoods, the City of Berkeley, and trust in the Berkeley Police Department can begin to be rebuilt.

- Amend recommendation 3(b)(1) to read:  
Building on the work of the City Council, the Council Public Safety Policy Committee, the City Manager, the PRC, other City commissions and working groups (e.g. the Mayor's Fair and Impartial Policing Working Group) addressing community health and safety, the Community Safety Coalition and community process will engage relevant city commissions in this work on an ongoing basis.

4. To APPROVE Item 18e "BerkDOT: Reimagining Transportation for a Racially Just Future" (Robinson) as revised in Supplemental Packet 1:

Refer to the City Manager, the FY 2021-22 budget process, and the proposed community engagement process to reimagine public safety to:

- (1) Pursue the creation of a Berkeley Department of Transportation (*BerkDOT*) to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs, & infrastructure, and
- (2) Identify & implement approaches to reduce and/or eliminate the practice of pretextual stops based on minor traffic violations.



## Berkeley United for Community Safety

### June 27, 2020 / Event Recommendations (Partial List)

- Adopt best practices, one example Alameda County Connect: access screening, resources, mobile crisis team.
- Look for models that provide services that keep the community healthy and safe. Research the Oakland Model and the Oakland Power Project.
- We need an all new well-resourced, holistic and intersectional first responder team that responds to mental health, addiction issues, sexual harm, and homeless camp response. One that does not involve the police.
- We need more licensed and trained mental health professionals; culturally competent, compassionate, and aware. Diverse therapists also needed to relate to clients.
- We need to train professionals; “mental health clinicians” in both substance abuse and mental health issues. Outreach workers are needed who can de escalate and properly assist fellow community members in crisis.
- Fund a program with Community Care Workers on the street with proper training and resources to assist - leaving police to work on investigating and arresting criminals.
- Consider whether Berkeley Free Clinic can assist with developing a group of Community Care volunteers who assist in responding to crisis in homes and on the street that exhibit mental health, substance abuse when no crime is being committed.
- Create a City Department that focuses on Social Equity and Racial Justice.
- Make the city budget process MORE TRANSPARENT. Invest in Budget Town Halls that break down how the document works.
- Protect funding for youth programming including schools, Anticipated cuts to BUSD (2-6 million) due to COVID-19. Black and Brown Youth disproportionately affected by these cuts (fund and fast track African American Holistic Health Center)
- Divest funds from BPD into restorative justice programming run by the city or contracted to a community organization.
- Bolster nutrition programs that are at risk of being cut.
- Offer officer trainings that align with annual goals for the department. Professional development opportunities are to be made available only when these trainings support achievement of the annual goals for the department.



- BPD should not accept, request or seek to acquire military grade weapons or materials.
- BPD should receive a revised mission statement as a result of community discussions that redefines what is wanted from a "police force".
- Grant the community the ability to be autonomous.
- Have a specific public security priority to consolidate funding for all the communities' security efforts and needs. This will help create a system that will help further accountability in the police department.
- Create a stronger police accountability board.
- Ban rubber bullets as tear gas has been banned. Use less lethal tools.
- Council members need to fight for accountability and for what the community needs.



ACTION CALENDAR  
December 15, 2020

To: Honorable Members of the City Council  
 From: Mayor Jesse Arreguín, Councilmembers Droste and Robinson  
 Subject: Adopt a Resolution Advocating for More Effective Methods of Traffic Enforcement

RECOMMENDATION

Adopt a Resolution supporting the California State Legislature to enact legislation that would give municipalities greater flexibility to enforce speeding and vehicle code enforcement laws and send copies of the resolution to Governor Gavin Newsom, Senator Nancy Skinner and Assemblymember Buffy Wicks

BACKGROUND

According to Berkeleyside analysis, from January 2019 through November 2019 there were 230 people injured due to traffic collisions in Berkeley including three fatalities.<sup>1</sup> Notably, in January 2020 School Board President Judy Appel and her wife were severely injured by a driver who failed to yield. This analysis found that in crashes where the driver was at fault, unsafe speed was one of the biggest issues. Currently, the tools available under state law to enforce speeding laws and safe traffic behavior are inadequate to meet the City's ambitious goals in the implementation of Vision Zero, BerkDOT, and the broader effort to reimagine public safety.

The California Legislature needs to enact legislation that allows municipalities like Berkeley the flexibility in enforcement approaches to meet the new paradigm embodied by Vision Zero, and the efforts to reimagine public safety. These strategies and solutions to eliminate severe and fatal traffic injuries as well as the racial disparities in stops, searches and arrests that arise from unequitable enforcement require changes in State law in California. Currently, it is not legal to use Automated Speed Enforcement (ASE), a safety technique that is used in 142 communities across the United States, that is a proven tool to counter excessive speeding.<sup>2</sup> Similarly, vehicle code enforcement generally guides traffic enforcement. Achieving our goal of safely transitioning enforcement of traffic law to civilianized employees in BerkDOT would be more easily met with a change in State Law.

In the interests of safety, equity and fiscal sustainability, alternative speed enforcement tools are needed in Berkeley. The inflexibility of California State Law should not be a barrier to Berkeley achieving its goal of safe streets and equitable public safety. The City Council should call on the

<sup>1</sup> <https://www.berkeleyside.com/2020/01/28/berkeleyside-interactive-maps-cyclist-and-pedestrian-injury-crashes-in-2019>

<sup>2</sup> [https://www.sfmta.com/sites/default/files/reports-and-documents/2017/12/1.\\_ab\\_342\\_fact\\_sheet\\_dec\\_2017\\_0.pdf](https://www.sfmta.com/sites/default/files/reports-and-documents/2017/12/1._ab_342_fact_sheet_dec_2017_0.pdf)

state legislature to enact legislation that would give municipalities greater flexibility to enforce traffic laws.

ENVIRONMENTAL SUSTAINABILITY

No Environmental Impact.

CONTACT PERSON

Mayor Jesse Arreguín            510-981-7100

Attachments:

1. Resolution

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

URGING THE STATE LEGISLATURE TO ESTABLISH MORE EFFECTIVE METHODS  
OF TRAFFIC ENFORCEMENT

WHEREAS, in January 2019 School Board President Judy Appel and her wife were hit by a car causing debilitating injuries;<sup>3</sup> and

WHEREAS, in the City of Berkeley there have been numerous accidents due to speeding, failure to yield at traffic signs and traffic lights, causing numerous fatalities, including but not limited to serious injuries and property damage; and

WHEREAS, according to analysis in Berkeleyside, from January 2019 through November 2019 there were 230 people injured due to traffic collisions in Berkeley, including three fatalities;<sup>4</sup> and

Whereas, in the 2018, the U. S. Department of Transportation, National Highway Traffic Safety Administration reported, 8,596 (16.7%) of Driver and motorcycle operators involved in fatal crashes, due to “driving too fast for conditions or in excess of posted speed limits or racing; and

WHEREAS, Berkeley’s road safety is deteriorating as too many motorists exceed limits on residential streets, the use automated enforcement using traffic cameras and civilian personnel traffic enforcement can decrease these negative impacts, fatalities and improve traffic and roadway safety; and

WHEREAS, in March 2020 the Berkeley City Council adopted the Vision Zero Action Plan, data-driven strategy to eliminate all traffic fatalities and severe injuries while increasing safe, healthy, and equitable mobility for all;<sup>5</sup> and

WHEREAS, as a part of Vision Zero we are re-engineering our streets, and focusing traffic enforcement efforts on the most deadly traffic violations with the goal of eliminating all severe and fatal traffic injuries in Berkeley; and

WHEREAS, in July 2020 the City of Berkeley made a historic commitment to reimagine public safety, create a Department of Transportation (BerKDOT) and to use civilian personnel to enforce traffic violations; and

WHEREAS, the City of Berkeley is 17.7 square miles, and the Berkeley Police Department’s Traffic Bureau and Patrol Officers do not have sufficient people power to provide effective speed enforcement in a way that would prevent deaths and injuries while creating greater safety in Berkeley streets; and

---

3 <https://www.berkeleyside.com/2019/01/05/school-board-president-and-wife-in-critical-condition-after-berkeley-crash>

4 <https://www.berkeleyside.com/2020/01/28/berkeleyside-interactive-maps-cyclist-and-pedestrian-injury-crashes-in-2019>

5 <https://www.cityofberkeley.info/visionzero.aspx>

WHEREAS, When speed enforcement is performed by police officers it is a well documented fact that implicit and explicit racial bias can play a detrimental role in making traffic stops inherently unjust; and

WHEREAS, The Center for Policing Equity (CPE) found that Black drivers are 6.5 times as likely as white drivers to be stopped by Berkeley police officers and four times as likely to be searched; an

WHEREAS, Automated Speed Enforcement, a safety technique that has been proven in other cities across the United States and abroad to reduce excessive speeding and severe and fatal injury traffic collisions, is not legal in California; and

WHEREAS, the Insurance Institute for Highway Safety reports traffic cameras are in place in 23 states;

WHEREAS, Alternative Traffic Enforcement, such as civilian personnel enforcement, or automated cameras would create more efficient and equitable enforcement of speeding and vehicle code violations; and

WHEREAS, the City of Oakland passed a resolution advocating for the State Legislature to enact similar legislation;

NOW THEREFORE, BE IT RESOLVED by The City Council of The City of Berkeley That the City Council requests that the California Legislature enact legislation that would give municipalities the flexibility to adopt more effective methods for speeding enforcement; and

BE IT FURTHER RESOLVED, that the City Council of the City of Berkeley directs that this issue be added to our State Legislative lobbying agenda, and that our state lobbyist is directed to work on the matter.





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Support the Installation of a Plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2.

RECOMMENDATION

Adopt a Resolution supporting the installation of a plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2, and refer to the City Manager to start the process.

FISCAL IMPACTS OF RECOMMENDATION

Funding source could be a Relinquishment of Council Office Budget Fund to General Fund and Grant of Such Funds to support this process. The installation of Former State Assemblymember William Byron Rumford's Plaque was estimated at \$2,000.

CURRENT SITUATION AND ITS EFFECTS

One of the City of Berkeley's Strategic Plan goals is to champion and demonstrate social and racial equity. Honoring one of our City's most important African American leaders by raising visibility supports this goal.

BACKGROUND

Vice President-Elect Kamala Harris childhood home is located on Bancroft Avenue in District 2.

Growing up in Berkeley and Oakland, Mrs. Harris had a view of the Civil Rights movement. She was inspired by Thurgood Marshall, Constance Baker Motley, and Charles Hamilton Houston, and learned the kind of character it requires to stand up to the powerful, and was determined to spend her life advocating for those who could not defend themselves.

After earning an undergraduate degree from Howard University and a law degree from the University of California, Hastings, she began her career in the Alameda County District Attorney's Office.

In 2003, Mrs. Harris became the District Attorney of the City and County of San Francisco. Among her achievements as District Attorney, Mrs. Harris started a program that gives first-time drug offenders the chance to earn a high school diploma and find employment.

Having completed two terms as the District Attorney of San Francisco, Mrs. Harris was elected as the first African-American and first woman to serve as California's Attorney General. Over the course of her nearly two terms in office, Mrs. Harris won a \$25 billion settlement for California homeowners hit by the foreclosure crisis, defended California's landmark climate change law, protected the Affordable Care Act, and helped win marriage equality for all Californians.

In 2017, Mrs. Harris was sworn in as a United States Senator for California, the second African-American woman and first South Asian-American senator in history. She serves on the Homeland Security and Governmental Affairs Committee, the Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on the Budget.

In November 2020, Mrs. Harris was elected as Vice President of the United States.

ENVIRONMENTAL SUSTAINABILITY

No environmental implications.

RATIONALE FOR RECOMMENDATION

As the first Black person to be elected as Vice President of the United States, Mrs. Harris made incredibly valuable contributions to our state and our community. Honoring her through placement of an educational plaque in the City helps inspire future generations.

CONTACT PERSON

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

ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA SUPPORTING THE INSTALLATION OF A PLAQUE RECOGNIZING UNITED STATES VICE PRESIDENT-ELECT KAMALA HARRIS IN FRONT OF HER CHILDHOOD HOME IN DISTRICT 2

WHEREAS, Vice President-Elect Kamala Harris childhood home is located on Bancroft Avenue in District 2; and

WHEREAS, Growing up in Berkeley and Oakland, Mrs. Harris had a view of the Civil Rights movement. She was inspired by Thurgood Marshall, Constance Baker Motley, and Charles Hamilton Houston, and learned the kind of character it requires to stand up to the powerful, and was determined to spend her life advocating for those who could not defend themselves; and

WHEREAS, After earning an undergraduate degree from Howard University and a law degree from the University of California, Hastings, she began her career in the Alameda County District Attorney's Office; and

WHEREAS, In 2003, Mrs. Harris became the District Attorney of the City and County of San Francisco. Among her achievements as District Attorney, Mrs. Harris started a program that gives first-time drug offenders the chance to earn a high school diploma and find employment; and

WHEREAS, Having completed two terms as the District Attorney of San Francisco, Mrs. Harris was elected as the first African-American and first woman to serve as California's Attorney General. Over the course of her nearly two terms in office, Mrs. Harris won a \$25 billion settlement for California homeowners hit by the foreclosure crisis, defended California's landmark climate change law, protected the Affordable Care Act, and helped win marriage equality for all Californians; and

WHEREAS, In 2017, Mrs. Harris was sworn in as a United States Senator for California, the second African-American woman and first South Asian-American senator in history. She serves on the Homeland Security and Governmental Affairs Committee, the Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on the Budget; and

WHEREAS, In November 2020, Mrs. Harris was elected as Vice President of the United States.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley supports the installation of a plaque recognizing United States Vice President-Elect Kamala Harris in front of her childhood home in District 2, and referral to the City Manager to start the process.





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila (Author)

Subject: Requesting the California State Legislature to introduce actions to value human life and to condemn racial injustice and police brutality.

#### RECOMMENDATION

1. Adopt a resolution requesting the California State Legislature to introduce legislation incorporating recommendations from the community to value human life and to condemn racial injustice and police brutality.
2. Send copies of this resolution to State Assemblymember Buffy Wicks, State Senator Nancy Skinner, and Governor Gavin Newsom.

#### BACKGROUND

With the deaths of Ahmaud Arbery, Breonna Taylor, and George Floyd, we at the same time are reeling from the devastating effects and challenges of COVID-19 that has disproportionately affected the black community at high rates.

We must now move from protests to substantive policy change. We must be able to respond to our children and their children's children when they ask what we did during these troubled times to impact the community and make a difference?

The Berkeley City Council has a past record of supporting legislation to value human life, and to condemn racial injustice and police brutality.

In December 2018, in the nearby City of Richmond, then Councilmembers Jovanka Beckles and Eduardo Martinez introduced similar legislation requesting the State Legislature to introduce legislation based on recommendations brought forward by the community. The legislation was approved by the Richmond City Council and sent to the State Legislature.

Police officers can occasionally make poor choices that result in implementing harsh enforcement policies, often in extremely stressful and dangerous situations.

The City Council envisions a future where violent encounters between police and civilians are extremely rare.

An alarming number of people are killed by police every year, the majority of those victims were unarmed or were killed for behaviors due to issues that have included mental health that should

not have resulted in death.

Black and Latino teenage males are more likely to be killed by police than white teenage males and unarmed Black and Latino men are more likely to be killed by police than unarmed white men.

Aggressive policing and lack of community representation on police forces, often negatively impact people of color, leading to the use of racial profiling and disproportionate number of deaths of people of color at the hands of the police.

Police departments cannot investigate themselves, and there is a long list of no conviction cases.

There are too many cases where charges are not filed by top officials despite physical evidence and eyewitness testimony, contradicting the police department's statement of events.

In honor of many who have lost their lives advocating for human rights, the City Council supports human rights.

This action is the first step meant to restore integrity in policing and promote accountability for the public.

The following legislative actions require the State Legislature to introduce and act upon in order to make much needed change to save lives:

1. Repeal The California Police Officer Bill of Rights
2. Approve ACA-5: Repeal of Prop 209 that would ensure that fair hiring practices in California are implemented, so that African Americans can have access to public jobs.
3. Establish protection against profiling, and offer alternatives to mental health crises so that they do not have a fatal end.
4. Create a Task Force to Study and Develop Reparations for African Americans.
5. A Review of each jurisdiction's use of force policy and review of its alignment with AB 392: Peace Officers Deadly Force.
6. Allocate yearly funding and resources to ensure that African Americans in the state have access to culturally-based and responsive mental health services.
7. Establish stronger civilian oversight boards that have disciplinary power, so that law enforcement officers are accountable to the communities in which they serve;
8. Reduce the historically high levels of the prison population, through the implementation of community-based policing, smarter sentencing, and better post-incarceration programs for those returning to society, as well as training law enforcement, to better identify mental illness and reducing over forced approach to all Americans;
9. Ensure that the investigation process includes an immediate toxicology exam on all parties involved, including the officers, and unedited civilian video recordings should be considered evidence;
10. Police unions should bear the cost of the paid administrative leave in the form of malpractice insurance;
11. Allocate funding to train police to better identify and confront these problems using de-escalation tactics, and keep track of results through frequent data collection and analysis;
12. All officers of the law receive training to reduce excessive force, and training to assist with interaction with the mentally ill;

13. Train law enforcement officials to appropriately identify and address mental issues and those with addiction, with the aim of guiding members of the said population to treatment programs instead of jail when applicable;
14. An officer should be placed on administrative leave without pay during the investigation process;
15. An officer that is under investigation would not be eligible for CalPERS Disability Insurance or similar benefits as its pre-funded by tax dollars;
16. Tax dollars should not cover the cost of an officer's legal defense when they fire upon an unarmed civilian, who is not in the act of committing a felony offense;
17. Police unions should cover the cost of legal defense, malpractice insurance (similar to a doctor);
18. Police officers who fire upon an unarmed civilian, who is not in the act of committing a felony offense should be reprimanded and prosecuted.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
cdavila@cityofberkeley.info

ATTACHMENTS

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY REQUESTING THE CALIFORNIA STATE LEGISLATURE TO INTRODUCE LEGISLATIVE ACTIONS TO VALUE HUMAN LIFE AND TO CONDEMN RACIAL INJUSTICE AND POLICE BRUTALITY

WHEREAS, For several weeks, African Americans have been processing the recent deaths of Ahmaud Arbery and Breonna Taylor while at the same time, reeling from the devastating effects and challenges of COVID-19 that has disproportionately affected the black community at high rates. Then came the horrific death of George Floyd, in full view of the world that stunned many, adding to the community's unrelenting trauma and grief and disgust; and

WHEREAS, We must now move from protests to substantive policy change. We must be able to respond to our children and their children's children when they ask what we did during these troubled times to impact the community and make a difference; and

WHEREAS, The Berkeley City Council has a past record of supporting legislation to value human life, and to condemn racial injustice and police brutality; and

WHEREAS, the City Council is in support of the State legislature introducing legislation to support and value human life, and to condemn racial injustice and police brutality; and

WHEREAS, tension between police and communities throughout the United States has increased over many years after a series of high profile cases of police brutality and racial profiling; and

WHEREAS, police officers can occasionally make poor choices that result in implementing harsh enforcement policies, often in extremely stressful and dangerous situations; and

WHEREAS, the City Council envisions a future where violent encounters between police and civilians are extremely rare; and

WHEREAS, an alarming number of people are killed by police every year, the majority of those victims were unarmed or were killed for behaviors due to issues that have included mental health that should not have resulted in death; and

WHEREAS, Black and Latino teenage males are more likely to be killed by police than white teenage males and unarmed Black and Latino men are more likely to be killed by police than unarmed white men; and

WHEREAS, aggressive policing and lack of community representation on police forces, often negatively impact people of color, leading to the use of racial profiling and disproportionate number of deaths of people of color at the hands of the police; and

WHEREAS, police departments cannot investigate themselves, and there is a long list of no conviction cases; and

WHEREAS, there are too many cases where charges are not filed by top officials despite physical evidence and eyewitness testimony, contradicting the police department's statement of events; and



WHEREAS, in honor of many who have lost their lives advocating for human rights, the City Council supports human rights; and

WHEREAS, this action is the first step meant to restore integrity in policing and promote accountability for the public; and

NOW, THEREFORE, BE IT RESOLVED that the City Council for the City of Berkeley requests the State Legislature to introduce and approve the following legislative actions:

1. Repeal The California Police Officer Bill of Rights
2. Approve ACA-5: Repeal of Prop 209 that would ensure that fair hiring practices in California are implemented, so that African Americans can have access to public jobs.
3. Establish protection against profiling, and offer alternatives to mental health crises so that they do not have a fatal end.
4. Create a Task Force to Study and Develop Reparations for African Americans.
5. A Review of each jurisdiction's use of force policy and review of its alignment with AB 392: Peace Officers Deadly Force.
6. Allocate yearly funding and resources to ensure that African Americans in the state have access to culturally-based and responsive mental health services.
7. Establish stronger civilian oversight boards that have disciplinary power, so that law enforcement officers are accountable to the communities in which they serve;
8. Reduce the historically high levels of the prison population, through the implementation of community-based policing, smarter sentencing, and better post-incarceration programs for those returning to society, as well as training law enforcement, to better identify mental illness and reducing over forced approach to all Americans;
9. Ensure that the investigation process includes an immediate toxicology exam on all parties involved, including the officers, and unedited civilian video recordings should be considered evidence;
10. Police unions should bear the cost of the paid administrative leave in the form of malpractice insurance;
11. Allocate funding to train police to better identify and confront these problems using de-escalation tactics, and keep track of results through frequent data collection and analysis;
12. All officers of the law receive training to reduce excessive force, and training to assist with interaction with the mentally ill;
13. Train law enforcement officials to appropriately identify and address mental issues and those with addiction, with the aim of guiding members of the said population to treatment programs instead of jail when applicable;
14. An officer should be placed on administrative leave without pay during the investigation process;
15. An officer that is under investigation would not be eligible for CalPERS Disability Insurance or similar benefits as its pre-funded by tax dollars;
16. Tax dollars should not cover the cost of an officer's legal defense when they fire upon an unarmed civilian, who is not in the act of committing a felony offense;
17. Police unions should cover the cost of legal defense, malpractice insurance (similar to a doctor);
18. Police officers who fire upon an unarmed civilian, who is not in the act of committing a felony offense should be reprimanded and prosecuted.

BE IT FURTHER RESOLVED that copies of this resolution is sent to State Assemblywoman Buffy Wicks, State Senator Nancy Skinner, and United States Congresswoman Barbara Lee.





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR

December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.

RECOMMENDATION

Adopt a Resolution calling upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.

BACKGROUND

California's Proposition 12, the Prevention of Cruelty to Farm Animals Act, passed into law on the 2018 ballot; voters approved Proposition 12 by an overwhelming 25-point margin.

71.6% of voters in Alameda county voted in favor of Proposition 12.

Proposition 12 ensures that egg-laying hens, mother pigs, and calves used for veal aren't confined in tiny cages, and that the products sold from these caged animals aren't sold in the California marketplace.

The Proposition 12 mandate came into effect for calves used for veal on December 31, 2019, and the egg-laying hens and mother pigs standards have a compliance date of December 31, 2021.

In passing Proposition 12, California voters sent a strong message that it is cruel and inhumane to lock animals in cramped cages for their whole lives.

By approving Proposition 12, Californians and residents of Berkeley, CA made clear that they do not want eggs, pork and veal sold in the city to be sourced from animals confined in cages.

Proposition 12 builds on the momentum of McDonald's, Walmart, Costco, and 200 other major food companies, as well as numerous small businesses, that have pledged to stop sourcing eggs and other animal products from animals forced to live in extreme confinement.

Multiple food corporations headquartered in California, such as Safeway, Chipotle, Taco Bell, Jack in the Box, IHOP, and Bon Appétit Management Company have adopted cage-free policies.

There is a national trend to help curb factory farm abuses and move toward cage-free housing systems for egg-laying hens, mother pigs and calves used for veal.

In addition to California, eleven states have passed laws to phase out intensive confinement of farm animals.

The conditions required by Proposition 12 confer significant local benefits for food safety, public health and protection of the environment as well as the humane treatment of animals.

Berkeley, CA is known for its social responsibility and humane values, including its adoption of the Fish Prize / Award Ban, Declawing Ban, and Meatless Mondays.

#### FINANCIAL IMPLICATIONS

To be determined.

#### ENVIRONMENTAL SUSTAINABILITY

Confined animal feeding operations (CAFOs, or “factory farms”) pack enormous numbers of animals into small spaces by confining egg-laying hens, mother pigs, and veal calves in cages so restrictive they are rendered virtually immobile. Factory farms are a leading cause of air and water pollution. The prestigious Pew Commission on Industrial Farm Animal Production released the results of a 2.5-year investigation into the problems associated with factory farming. The Commission found that the factory farming system “often poses unacceptable risks to public health, the environment and the welfare of the animals themselves.”

Proposition 12 helps reduce some of the worst environmental impacts of CAFOs. Encouraging companies to come into compliance with Proposition 12 as soon as possible sends a strong message about the importance of protecting rivers, air and land from factory farms.

#### 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 SUPPORT CALLING UPON FOOD COMPANIES WITHIN BERKELEY TO IMPLEMENT THE REQUIREMENTS OF PROPOSITION 12 AS SOON AS POSSIBLE BY ONLY SELLING EGGS AND MEAT FROM CAGE-FREE FACILITIES

WHEREAS, California's Proposition 12, the Prevention of Cruelty to Farm Animals Act, passed into law on the 2018 ballot; voters approved Proposition 12 by an overwhelming 25-point margin; and

WHEREAS, 71.6% of voters in Alameda county voted in favor of Proposition 12; and

WHEREAS, Proposition 12 ensures that egg-laying hens, mother pigs, and calves used for veal aren't confined in tiny cages, and that the products sold from these caged animals aren't sold in the California marketplace; and

WHEREAS, The Proposition 12 mandate came into effect for calves used for veal on December 31, 2019, and the egg-laying hens and mother pigs standards have a compliance date of December 31, 2021; and

WHEREAS, In passing Proposition 12, California voters sent a strong message that it is cruel and inhumane to lock animals in cramped cages for their whole lives; and

WHEREAS, By approving Proposition 12, Californians and residents of Berkeley, CA made clear that they do not want eggs, pork and veal sold in the city to be sourced from animals confined in cages; and

WHEREAS, Proposition 12 builds on the momentum of McDonald's, Walmart, Costco, and 200 other major food companies, as well as numerous small businesses, that have pledged to stop sourcing eggs and other animal products from animals forced to live in extreme confinement; and

WHEREAS, Multiple food corporations headquartered in California, such as Safeway, Chipotle, Taco Bell, Jack in the Box, IHOP, and Bon Appétit Management Company have adopted cage-free policies; and

WHEREAS, There is a national trend to help curb factory farm abuses and move toward cage-free housing systems for egg-laying hens, mother pigs and calves used for veal; and

WHEREAS, In addition to California, eleven states have passed laws to phase out intensive confinement of farm animals; and

WHEREAS, The conditions required by Proposition 12 confer significant local benefits for food safety, public health and protection of the environment as well as the humane treatment of animals; and

WHEREAS, Berkeley, CA is known for its social responsibility and humane values, including its adoption of the Fish Prize / Award Ban, Declawing Ban, and Meatless Mondays.

NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley hereby call upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.

BE IT FURTHER RESOLVED, that the City Council takes the monitoring and enforcement of animal cruelty laws seriously, and is committed to ensuring compliance of this important law.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Support Affirming the Right to Boycott as a Tactic for Social and Political Change

### RECOMMENDATION

Adopt a Resolution with the following actions:

1. Support Affirming the Right to Boycott as a Tactic for Social and Political Change, and celebrate the People of Berkeley for their commitment to Peace, Justice and Equity;
2. The City of Berkeley affirms the right of all people to participate in boycotts of any entity when they have conscientious concerns with the entity's policies or actions;
3. The City of Berkeley condemns attempts by governments to infringe upon the right to peaceful boycotts by criminalizing that participation, denying participants state contracts, or otherwise impeding the freedom of advocacy for all;
4. The City Council encourages City Commissions to recommend boycott policies to the City Council when appropriate, so that the City Council may be well informed in its oversight of City resources
5. Send a copy of this resolution to Governor Gavin Newsom, Attorney General Xavier Becerra, State Assemblymember Buffy Wicks, State Senator Nancy Skinner, United States Senators Bernie Sanders, Kamala Harris, Dianne Feinstein, and United States Congressional Representatives Barbara Lee, Ro Khanna, Alexandria Ocasio-Cortez, Ilhan Omar, Ayanna Pressley, Rashida Harbi Tlaib, and Pramila Jayapal.

### BACKGROUND

Berkeley's municipal code defines "Peace and Justice" as "the goal of creating a world community in which the relations between people are based on equality, respect for human rights, and the abhorrence of exploitation and all forms of oppression" and the city has found that "the residents of Berkeley have continually demonstrated their concern for peace and justice based on equality among all peoples"<sup>1</sup>.

Boycotts have been effectively used in the United States by advocates for equal rights since the Boston Tea Party and include boycotts led by civil rights activists during the 1950s and 1960s in order to advocate for racial equality, such as the Montgomery bus boycott<sup>2</sup>, and promote workers' rights, such as the United Farm Workers-led boycott of table grapes.

---

<sup>1</sup> Ord. 5705-NS § 3, 1986

<sup>2</sup> Anne Brice, B., & Brice, A. (2020, February 18). The Montgomery bus boycott and the women who made it possible. Retrieved November 23, 2020, from <https://news.berkeley.edu/2020/02/11/podcast-montgomery-bus-boycott-womens-political-council/>

Berkeley has a long history of enacting and supporting boycotts on various issues of importance to the People of Berkeley, including boycotts against corporations including Motorola, Kaiser Aluminum, Shell, Honda, IBM, Coca-Cola, Hewlett-Packard, and others, sometimes targeting all companies doing business in a country or area (Burma, Occupied Tibet, Nigeria), or companies supplying weapons technology (a violation of the Nuclear-Free ordinance).

All forms of bigotry, including racism, classism, sexism, Islamophobia, anti-Semitism, homophobia, ableism, and all forms of hatred that target people based on their religion, ethnicity, nationality, disability, gender or sexual orientation, are unacceptable and inconsistent with Berkeley's commitment to equity and justice.

Criticism of the actions of corporations and nations is critical to healthy public discourse and must be protected in a democracy, and criticism of a nation, including by means of a non-violent citizens' boycott, does not constitute bigotry against the citizens of that nation. Rather, boycott is often a strategic and necessary means by which to encourage a government to abandon policies that are inconsistent with the ideals of peace and justice.

Boycotts and their importance are written into the Berkeley Municipal Code, including in the mandate of the Labor commission which reads "...encouraging support for officially sanctioned boycotts".

The right to boycott has repeatedly been reaffirmed as protected free speech by the first amendment of the United States' Constitution<sup>3</sup>, a protection that is of particular pride and importance to the City of Berkeley<sup>4</sup>, as the birthplace of the Free Speech Movement.

Despite its important history in social movements and its constitutional protections, governments and non-governmental organizations alike have sought to criminalize<sup>5</sup>, stigmatize, and delegitimize<sup>6</sup> the use of boycotts in an attempt to stifle constitutionally protected political expression.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

Protecting the community's right to boycott as a Tactic for Social and Political Change is an act of environmental sustainability.

---

<sup>3</sup> The Supreme Court, in the 1966 case *Rosenblatt v. Baer*, held that the First Amendment to the Constitution ensures that "criticism of government is at the very center of the constitutionally protected area of free discussion". Then, in 1982, in *NAACP v. Claiborne Hardware* they held that "the right of the States to regulate economic activity could not justify a complete prohibition against a nonviolent, politically motivated boycott".

<sup>4</sup> UC Berkeley Library. (n.d.). Retrieved November 23, 2020, from <https://www.lib.berkeley.edu/libraries/bancroft-library/oral-history-center/projects/fsm>

<sup>5</sup> Greenwald, G., & Grim, R. (2017, July 19). U.S. Lawmakers Seek to Criminally Outlaw Support for Boycott Campaign Against Israel. Retrieved November 23, 2020, from <https://theintercept.com/2017/07/19/u-s-lawmakers-seek-to-criminally-outlaw-support-for-boycott-campaign-against-israel/>

<sup>6</sup> Carol Morello, S. (2020, November 19). Pompeo sets off debate on boycott of Israel, calling it an anti-Semitic 'cancer'. Retrieved November 23, 2020, from [https://www.washingtonpost.com/national-security/pompeo-israel-bds-movement-boycott/2020/11/19/79fe4c8a-2a7d-11eb-b847-66c66ace1afb\\_story.html](https://www.washingtonpost.com/national-security/pompeo-israel-bds-movement-boycott/2020/11/19/79fe4c8a-2a7d-11eb-b847-66c66ace1afb_story.html)



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  
SUPPORT AFFIRMING THE RIGHT TO BOYCOTT AS A TACTIC FOR SOCIAL AND  
POLITICAL CHANGE

WHEREAS, Berkeley's municipal code defines "Peace and Justice" as "the goal of creating a world community in which the relations between people are based on equality, respect for human rights, and the abhorrence of exploitation and all forms of oppression" and the city has found that "the residents of Berkeley have continually demonstrated their concern for peace and justice based on equality among all peoples"<sup>7</sup>; and

WHEREAS, boycotts have been effectively used in the United States by advocates for equal rights since the Boston Tea Party and include boycotts led by civil rights activists during the 1950s and 1960s in order to advocate for racial equality, such as the Montgomery bus boycott<sup>8</sup>, and promote workers' rights, such as the United Farm Workers-led boycott of table grapes; and

WHEREAS, Berkeley has a long history of enacting and supporting boycotts on various issues of importance to the People of Berkeley, including boycotts against corporations including Motorola, Kaiser Aluminum, Shell, Honda, IBM, Coca-Cola, Hewlett-Packard, and others, sometimes targeting all companies doing business in a country or area (Burma, Occupied Tibet, Nigeria), or companies supplying weapons technology (a violation of the Nuclear-Free ordinance); and

WHEREAS, all forms of bigotry, including racism, sexism, Islamophobia, anti-Semitism, homophobia, ableism, and all forms of hatred that target people based on their religion, ethnicity, nationality, disability, gender or sexual orientation, are unacceptable and inconsistent with Berkeley's commitment to equity and justice; and

WHEREAS, criticism of the actions of corporations and nations is critical to healthy public discourse and must be protected in a democracy, and criticism of a nation, including by means of a non-violent citizens' boycott, does not constitute bigotry against the citizens of that nation. Rather, boycott is often a strategic and necessary means by which to encourage a government to abandon policies that are inconsistent with the ideals of peace and justice; and

WHEREAS, boycotts and their importance are written into the Berkeley Municipal Code, including in the mandate of the Labor commission which reads "...encouraging support for officially sanctioned boycotts"; and

WHEREAS, the right to boycott has repeatedly been reaffirmed as protected free speech by the first amendment of the United States' Constitution<sup>9</sup>, a protection that is of particular pride and importance to the City of Berkeley<sup>10</sup>, as the birthplace of the Free Speech Movement; and

---

<sup>7</sup> Ord. 5705-NS § 3, 1986

<sup>8</sup> Anne Brice, B., & Brice, A. (2020, February 18). The Montgomery bus boycott and the women who made it possible. Retrieved November 23, 2020, from <https://news.berkeley.edu/2020/02/11/podcast-montgomery-bus-boycott-womens-political-council/>

<sup>9</sup> The Supreme Court, in the 1966 case *Rosenblatt v. Baer*, held that the First Amendment to the Constitution ensures that "criticism of government is at the very center of the constitutionally protected area of free discussion". Then, in 1982, in *NAACP v. Claiborne Hardware* they held that "the right of the States to regulate economic activity could not justify a complete prohibition against a nonviolent, politically motivated boycott".

<sup>10</sup> UC Berkeley Library. (n.d.). Retrieved November 23, 2020, from <https://www.lib.berkeley.edu/libraries/bancroft-library/oral-history-center/projects/fsm>

WHEREAS, despite its important history in social movements and its constitutional protections, governments and non-governmental organizations alike have sought to criminalize<sup>11</sup>, stigmatize, and delegitimize<sup>12</sup> the use of boycotts in an attempt to stifle constitutionally protected political expression.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley hereby support Affirming the Right to Boycott as a Tactic for Social and Political Change, and celebrate the People of Berkeley for their commitment to Peace, Justice and Equity; and

BE IT FURTHER RESOLVED, The City of Berkeley affirms the right of all people to participate in boycotts of any entity when they have conscientious concerns with the entity's policies or actions;

BE IT FURTHER RESOLVED, The City of Berkeley condemns attempts by governments to infringe upon the right to peaceful boycotts by criminalizing that participation, denying participants state contracts, or otherwise impeding the freedom of advocacy for all;

BE IT FURTHER RESOLVED, The City Council encourages City Commissions to recommend boycott policies to the City Council when appropriate, so that the City Council may be well informed in its oversight of City resources

BE IT FURTHER RESOLVED, Send a copy of this resolution to Governor Gavin Newsom, Attorney General Xavier Becerra, State Assemblymember Buffy Wicks, State Senator Nancy Skinner, United States Senators Bernie Sanders, Kamala Harris, Dianne Feinstein, and United States Congressional Representatives Barbara Lee, Ro Khanna, Alexandria Ocasio-Cortez, Ilhan Omar, Ayanna Pressley, Rashida Harbi Tlaib, and Pramila Jayapal.

---

<sup>11</sup> Greenwald, G., & Grim, R. (2017, July 19). U.S. Lawmakers Seek to Criminally Outlaw Support for Boycott Campaign Against Israel. Retrieved November 23, 2020, from <https://theintercept.com/2017/07/19/u-s-lawmakers-seek-to-criminally-outlaw-support-for-boycott-campaign-against-israel/>

<sup>12</sup> Carol Morello, S. (2020, November 19). Pompeo sets off debate on boycott of Israel, calling it an anti-Semitic 'cancer'. Retrieved November 23, 2020, from [https://www.washingtonpost.com/national-security/pompeo-israel-bds-movement-boycott/2020/11/19/79fe4cba-2a7d-11eb-b847-66c66ace1afb\\_story.html](https://www.washingtonpost.com/national-security/pompeo-israel-bds-movement-boycott/2020/11/19/79fe4cba-2a7d-11eb-b847-66c66ace1afb_story.html)





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
December 15, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Cheryl Davila  
Subject: Support Loan Forgiveness to Berkeley Youth Alternatives

#### RECOMMENDATION

Adopt a Resolution supporting the forgiveness of the City's \$100,000 loan to Berkeley Youth Alternatives (BYA), and direct the City Manager or her designee to process the loan forgiveness to BYA and release the deed of trust.

#### CURRENT SITUATION AND ITS EFFECTS

BYA has contacted the City to request forgiveness of the City's \$100,000 loan made to BYA in 1994. The loan was used for rehabilitation and seismic safety of BYA's 33,000 sq. ft. building at 2141 Bonar, which had been constructed in 1912. The purpose of the rehabilitation was to comply with local building standards, as well as with the Americans with Disabilities Act of 1990. As an important addition to other resources from the California Youth Center and Shelter Act of 1990, the City's loan helped BYA to transform its building from a former bread factory to a safe, comprehensive youth and family center.

BYA is in the final stages of securing new capital financing which will support its multiple programs and services. The City's deed of trust from 1994 is the only impediment to closing the financing.

BYA's tentative plans for the new financing include the hiring of or contracting with a Chief Financial Officer, contracting with a Fund Development firm to secure major grants and gifts, installing solar panels to reduce its greenhouse gas emissions, and improving its data system. In addition, Berkeley Youth Alternatives would like to develop a microenterprise operated by young adults, which generates income for them and enables its organization to self-fund activities as much as possible.

#### BACKGROUND

Berkeley Youth Alternatives (BYA) is a community based 501(c) 3 organization established in 1969 as a runaway youth shelter. BYA has since expanded its operations to include support for youth and families, with an emphasis on education, health/well-being, and economic self-sufficiency. BYA provides quality-of-life services such as mental health, case management, academic support, mentoring, health education, sports, fitness, recreation, job training and youth internships.

BYA's holistic services are designed to shift so-called "individuals at-risk" into "individuals with promise" by utilizing a continuum of care approach that emphasizes 3 core areas: Education, Health and Well-Being, and Economic Self-Sufficiency. To do this work, BYA creates teams of diverse professionals from the fields of education, mental health, workforce development, and recreation that work collaboratively to meet the psycho-social, emotional, and economic needs of those most vulnerable in our community.

FISCAL IMPACTS OF RECOMMENDATION

Loans such as this are sometimes forgiven and the benefits of supporting BYAs future outweigh pursuing it more than 25 years later

ENVIRONMENTAL SUSTAINABILITY

Supporting our youth is itself an act of environmental sustainability.

CONTACT PERSON

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

ATTACHMENT:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY SUPPORTING  
LOAN FORGIVENESS TO BERKELEY YOUTH ALTERNATIVES

WHEREAS, BYA has contacted the City to request forgiveness of the City's \$100,000 loan made to BYA in 1994. The loan was used for rehabilitation and seismic safety of BYA's 33,000 sq. ft. building at 2141 Bonar, which had been constructed in 1912. The purpose of the rehabilitation was to comply with local building standards, as well as with the Americans with Disabilities Act of 1990. As an important addition to other resources from the California Youth Center and Shelter Act of 1990, the City's loan helped BYA to transform its building from a former bread factory to a safe, comprehensive youth and family center; and

WHEREAS, BYA is in the final stages of securing new capital financing which will support its multiple programs and services. The City's deed of trust from 1994 is the only impediment to closing the financing; and

WHEREAS, BYA's tentative plans for the new financing include the hiring of or contracting with a Chief Financial Officer, contracting with a Fund Development firm to secure major grants and gifts, installing solar panels to reduce its greenhouse gas emissions, and improving its data system. In addition, Berkeley Youth Alternatives would like to develop a microenterprise operated by young adults, which generates income for them and enables its organization to self-fund activities as much as possible; and

WHEREAS, Berkeley Youth Alternatives (BYA) is a community based 501(c) 3 organization established in 1969 as a runaway youth shelter. BYA has since expanded its operations to include support for youth and families, with an emphasis on education, health/well-being, and economic self-sufficiency. BYA provides quality-of-life services such as mental health, case management, academic support, mentoring, health education, sports, fitness, recreation, job training and youth internships; and

WHEREAS, BYA's holistic services are designed to shift so-called "individuals at-risk" into "individuals with promise" by utilizing a continuum of care approach that emphasizes 3 core areas: Education, Health and Well-Being, and Economic Self-Sufficiency. To do this work, BYA creates teams of diverse professionals from the fields of education, mental health, workforce development, and recreation that work collaboratively to meet the psycho-social, emotional, and economic needs of those most vulnerable in our community; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley to forgive the City's \$100,000 loan to Berkeley Youth Alternatives (BYA), and direct the City Manager or her designee to process the loan forgiveness to BYA and release the deed of trust.





**SOPHIE HAHN**

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

CONSENT CALENDAR  
 December 15, 2020

To: Honorable Members of the City Council  
 From: Mayor Jesse Arreguin, Vice Mayor Sophie Hahn (Co-Authors)  
 Subject: Earmarking \$2.5M in Housing Trust Funds to the Small Sites Program

RECOMMENDATION

Adopt a Resolution earmarking \$2.5 million in Housing Trust Funds for the Small Sites Program.

BACKGROUND

On February 14, 2017, in response to a December 15, 2015 referral from then-Councilmember Arreguín, the Berkeley City Council established an Affordable Housing Small Sites Program, creating a streamlined process for the allocation of Housing Trust Fund dollars to assist non-profits in acquiring existing “Small Sites” properties, with an emphasis on 5-25 unit multi-family buildings, particularly properties with strong potential for conversion to resident ownership, those in which no-fault evictions have been filed, or those at high risk of speculative purchase.<sup>1</sup>

The Small Sites Program is a program of the Housing Trust Fund. Funding for the Small Sites Program can be allocated from a variety of sources, including Measure U1 funds, or by earmarking existing HTF monies for the Small Site Program. In 2018, the City Council allocated \$1 million in U1 Funds “to start a Small Sites Program and begin the process of supporting acquisition and rehabilitation of properties with up to 25 units.”<sup>2</sup> In 2020, the Council allocated another \$1 million in U1 funds for the Small Sites Program.

To date, Small Sites Program funds have been used for the following purposes: \$1,603,598 has been awarded to the McGee Avenue Baptist Church project at 1638 Stuart Street, and \$50,000 was granted through a competitive process to Bay Area

<sup>1</sup> City of Berkeley Referral Response: Establishment of Affordable Housing Small Sites Program, [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/02\\_Feb/Documents/2017-02-14\\_Item\\_18a\\_Referral\\_Response\\_Establishment.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/02_Feb/Documents/2017-02-14_Item_18a_Referral_Response_Establishment.aspx); Mayor Arreguin, Referral to City Manager, Small Sites Acquisition Program and Tenant Opportunity to Purchase, [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/02\\_Feb/Documents/2017-02-14\\_Item\\_18b\\_Small\\_Sites\\_Acquisition.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/02_Feb/Documents/2017-02-14_Item_18b_Small_Sites_Acquisition.aspx).

<sup>2</sup> Berkeley City Manager’s Companion Report and Referral Response: Creation of a Small Sites Program, [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/10\\_Oct/Documents/2018-10-02\\_Item\\_Gb\\_Companion\\_Report\\_and\\_Referral\\_Response.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/10_Oct/Documents/2018-10-02_Item_Gb_Companion_Report_and_Referral_Response.aspx).

Community Land Trust to be used for capacity building. There remains \$346,402 available of funds that have already been formally allocated or earmarked for the Small Sites Program.

This item proposes to earmark additional funds, \$2.5M of existing Housing Trust Fund monies, for the Small Sites Program. Because Small Sites is a program of the Housing Trust Fund, this measure constitutes a reservation of a portion of existing HTF funds, not a formal allocation, as was the case when U1 monies were appropriated to the Small Sites Program.

In recent months, due in part to the Covid downturn, small multi-unit buildings are becoming available in Berkeley. To ensure the City is able to respond to potential applications for such sites, the Council should earmark a portion of existing Housing Trust Fund monies for the Small Sites Program.

On January 16, 2019, the City of Berkeley issued a Notice of Funding Availability (NOFA) for \$950,000, announcing the availability of monies to support projects meeting the requirements of the Small Sites Program.<sup>3</sup> Because the NOFA references a “2019” program, and available funds of “\$950,000,” a new or amended NOFA may need to be issued by the City Manager, once the earmarking of \$2.5 million in Housing Trust Fund dollars for the Small Sites program has taken place.

In summary, to accomplish the important goals of the Small Sites Program, and make sure the City can take advantage, through its non-profit affordable housing partners, of opportunities to purchase and protect small sites, the City Council should earmark \$2.5 million of Housing Trust Fund monies to the Small Sites Program.

Any project applying for Small Sites dollars must comply with Small Sites Program requirements.<sup>4</sup> Applications will be reviewed on a case-by-case basis, and can be approved by the HHCS Director if they are consistent with the program purpose, project feasibility, and sustainable housing operations. Full details of the Small Sites Program are available for review in the Small Sites Program, 2019 Notice of Funding Availability.<sup>5</sup>

### FISCAL IMPACTS

\$2.5 million of funds already available in the Housing Trust Fund will be earmarked for a specific program of the Housing Trust Fund.

---

<sup>3</sup> City of Berkeley, Small Sites Program, 2019 Notice of Funding Availability, [https://www.cityofberkeley.info/uploadedFiles/Housing/Level\\_3\\_-\\_General/01-FINAL%20SSP%20NOFA%20Application%20and%20Exhibits.pdf](https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/01-FINAL%20SSP%20NOFA%20Application%20and%20Exhibits.pdf).

<sup>4</sup> City of Berkeley, Small Sites Program, 2019 Notice of Funding Availability, [https://www.cityofberkeley.info/uploadedFiles/Housing/Level\\_3\\_-\\_General/01-FINAL%20SSP%20NOFA%20Application%20and%20Exhibits.pdf](https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/01-FINAL%20SSP%20NOFA%20Application%20and%20Exhibits.pdf).

<sup>5</sup> City of Berkeley, Small Sites Program, 2019 Notice of Funding Availability, [https://www.cityofberkeley.info/uploadedFiles/Housing/Level\\_3\\_-\\_General/01-FINAL%20SSP%20NOFA%20Application%20and%20Exhibits.pdf](https://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/01-FINAL%20SSP%20NOFA%20Application%20and%20Exhibits.pdf).

CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (cell)

ATTACHMENTS

1. Resolution

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

ALLOCATION/RESERVATION OF \$2.5 MILLION IN  
HOUSING TRUST FUNDS FOR THE SMALL SITES PROGRAM

WHEREAS, the City Council established a Housing Trust Fund Program (HTF) to assist in the development and preservation of affordable housing for low- and moderate-income households in order to maintain and enhance the ethnic and economic diversity of the City; and

WHEREAS, the HTF addresses the substantial need for affordable and special needs housing documented in the City's General Plan, Housing Element, and Consolidated Plan; and

WHEREAS, the HTF has funds available; and

WHEREAS, the City Council established a Small Sites Program (SSP), a program of the HTF, for the acquisition and rehabilitation of small, multifamily rental housing properties with up to 25 units, supporting the conversion of vacant or rent-controlled properties to affordable housing with 55-year regulatory agreements, ensuring long-term affordability for current and future residents; and

WHEREAS, the SSP has established program requirements related to eligibility, project funding, scope of renovation, project proformas and budget, affordability, existing tenants, rental assistance vouchers, and developer requirements; and

WHEREAS, in the current COVID-19 economic downturn, small multi-unit properties in Berkeley have come onto the market, whose purchase could be financed through the SSP; and

WHEREAS, the SSP allows for existing housing to be preserved or converted to affordable housing more quickly, and often at a lower cost, than new-build Affordable Housing; and

WHEREAS, for potential applications to the SSP to be viable, the City must reserve a reasonable amount of funds to the program;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the \$2,500,000 from the Housing Trust Fund be reserved for the Small Sites Program.

| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                                                                               |
|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scheduled Dates                                                               |                                                                                                                                                                               |
| Feb. 16                                                                       | <ol style="list-style-type: none"> <li>1. BMASP/Berkeley Pier-WETA Ferry</li> <li>2. Systems Realignment</li> </ol>                                                           |
| March 16                                                                      | <ol style="list-style-type: none"> <li>1. Capital Improvement Plan (Parks &amp; Public Works)</li> <li>2. Digital Strategic Plan/FUND\$ Replacement/Website Update</li> </ol> |
| May 18                                                                        | <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>                                                                                                              |

| Unscheduled Workshops                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> <li>2. 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. Undergrounding Task Force Update</li> <li>2. Update: Zero Waste Priorities</li> <li>3. Ballot Measure Implementation Planning (tentatively scheduled for 1/19/2020 at 4:00 p.m.)</li> </ol> |

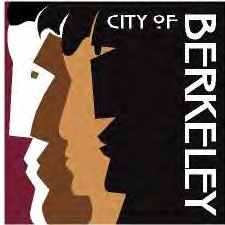
|    | <b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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</p> <p>Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140</p> <p><i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p> |
| 2. | <p><b>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers</b> <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p><b>From: City Manager</b></p> <p><b>Recommendation:</b> Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.</p> <p><b>Financial Implications:</b> None</p> <p>Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000</p> <p><i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>                                                                                                                                                                                                                             |
| 3. | <p><b>18. Presentation: Report on Homeless Outreach during COVID 19 Pandemic</b></p> <p><b>From: City Manager</b></p> <p>Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400</p> <p><i>Note: Item referred to the Agenda &amp; Rules Committee as unfinished business from the 11/10/20 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 2/11/21.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 4. | <p><b>20. Annual Commission Attendance and Meeting Frequency Report</b> <i>(Continued from October 27, 2020. Item contains supplemental material)</i></p> <p><b>From: City Manager</b></p> <p><b>Recommendation:</b> Review and accept the annual Commission Attendance and Meeting Frequency Report.</p> <p><b>Financial Implications:</b> None</p> <p>Contact: Mark Numainville, City Clerk, (510) 981-6908</p> <p><i>Note: Item referred to the Agenda &amp; Rules Committee as unfinished business from the 11/10/20 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 2/11/21.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                    |

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. | <p><b>21. Support Community Refrigerators</b> <i>(Continued from September 22, 2020)</i><br/> <b>From: Councilmember Davila (Author)</b><br/> <b>Recommendation:</b><br/> 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.<br/> 2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.<br/> <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 11/10/20 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 2/11/21.</i></p> |
| 6. | <p><b>22. Vote of No Confidence in the Police Chief</b> <i>(Continued from September 15, 2020)</i><br/> <b>From: Councilmember Davila (Author)</b><br/> <b>Recommendation:</b> Adopt a resolution taking a Vote of No Confidence in the Police Chief.<br/> <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 11/10/20 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 2/11/21.</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>                                            |                      |                       |                                         |                   |
| 2136-54 San Pablo Ave - The Borg Building (Landmark designation)            | ZAB                  | 12/1/2020             |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Public Hearings Scheduled</b>                                            |                      |                       |                                         |                   |
| 0 (2435) San Pablo Ave (construct mixed-use building)                       | ZAB                  |                       |                                         | 1/21/2021         |
| 1915 Berryman St (Payson House)                                             | LPC                  |                       |                                         | 1/21/2021         |
| 1850 Arch St (add bedrooms to multi-family residential building)            | ZAB                  |                       |                                         | 1/26/2021         |
| 1862 Arch St (add bedrooms to multi-family residential building)            | ZAB                  |                       |                                         | 1/26/2021         |
|                                                                             |                      |                       |                                         |                   |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Notes</b>                                                                |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |

11/24/2020





Office of the City Manager

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

**Meeting Date:** November 10, 2020

**Item Number:** 20

**Item Description:** Annual Commission Attendance and Meeting Frequency Report

**Submitted by:** Mark Numainville, City Clerk

The attached memo responds to issues and questions raised at the October 26 Agenda & Rules Committee Meeting and the October 27 City Council Meeting regarding the ability of city boards and commissions to resume regular meeting schedules.



Office of the City Manager

November 9, 2020, 2020

To: Mayor and Council  
From: Dee Williams-Ridley, City Manager  
Subject: Commission Meetings Under COVID-19 Emergency (Item 20)

---

This memo provides supplemental information for the discussion on Item 20 on the November 10, 2020 Council agenda. Below is a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration and the data collected by the City Manager on the ability of commissions to resume meetings in 2021.

On March 10, 2020 the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020 the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020 Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to

complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

In response to questions from the Agenda & Rules Committee and the Council, the City Manager polled all departments that support commissions to obtain information on their capacity to support the resumption of regular commission meetings. The information in Attachment 1 shows the information received from the departments and notes each commission's ability to resume a regular, or semi-regular, meeting schedule in 2021.

In summary, there are 24 commissions that have staff resources available to support a regular meeting schedule in 2021. Seven of these 24 commissions have been meeting regularly during the pandemic. There are five commissions that have staff resources available to support a limited meeting schedule in 2021. There are seven commissions that currently do not have staff resources available to start meeting regularly at the beginning of 2021. Some of these seven commissions will have staff resources available later in 2021 to support regular meetings. Please see Attachment 1 for the full list of commissions and their status.

With regards to commission subcommittees, there has been significant discussion regarding the ability of staff to support these meetings in a virtual environment. Under normal circumstances, the secretary's responsibilities regarding subcommittees is limited to posting the agenda and reserving the meeting space (if in a city building). With the necessity to hold the meetings in a virtual environment and be open to the public, it is likely that subcommittee meetings will require significantly more staff resources to schedule, train, manage, and support the work of subcommittees on Zoom or a similar platform. This additional demand on staff resources to support commission subcommittees is not feasible for any commission at this time.

One possible option for subcommittees is to temporarily suspend the requirement for ad hoc subcommittees of city commissions to notice their meetings and require public participation. Ad hoc subcommittees are not legislative bodies under the Brown Act and are not required to post agendas or allow for public participation. These requirements are specific to Berkeley and are adopted by resolution in the Commissioners' Manual. If it is the will of the Council, staff could introduce an item to temporarily suspend these

requirements which will allow subcommittees of all commissions to meet as needed to develop recommendations that will be presented to the full commission.

The limitations on the meetings of certain commissions are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Some of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new duties specifically related to the impacts of the pandemic.

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager and the Health Officer in consultation with Department Heads and the City Council.

Attachments:

1. List of Commissions with Meeting Status
2. Resolution 69,331-N.S.

**November 10, 2020 - Item 20  
Supplemental Information**

| <b><u>Boards and Commissions</u></b>              | <b><u>Meetings Held Under COVID March - Oct</u></b> | <b><u>Regular Mtg. Date</u></b> | <b><u>Secretary</u></b> | <b><u>Dept.</u></b> | <b><u>Resume Regular Schedule in January 2021?</u></b> | <b><u>Note</u></b>                                |
|---------------------------------------------------|-----------------------------------------------------|---------------------------------|-------------------------|---------------------|--------------------------------------------------------|---------------------------------------------------|
| Fair Campaign Practices Commission                | 9                                                   | 3rd Thur.                       | Sam Harvey              | CA                  | YES                                                    | Have been meeting regularly under COVID Emergency |
| Open Government Commission                        | 6                                                   | 3rd Thur.                       | Sam Harvey              | CA                  | YES                                                    | Have been meeting regularly under COVID Emergency |
| Animal Care Commission                            | 0                                                   | 3rd Wed.                        | Amelia Funghi           | CM                  | YES                                                    |                                                   |
| Police Review Commission                          | 10                                                  | 2nd & 4th Wed.                  | Katherine Lee           | CM                  | YES                                                    | Have been meeting regularly under COVID Emergency |
| Disaster and Fire Safety Commission               | 4                                                   | 4th Wed.                        | Keith May               | FES                 | YES                                                    |                                                   |
| Community Health Commission                       | 0                                                   | 4th Thur.                       | Roberto Terrones        | HHCS                | YES                                                    |                                                   |
| Homeless Commission                               | 0                                                   | 2nd Wed.                        | Josh Jacobs             | HHCS                | YES                                                    |                                                   |
| Homeless Services Panel of Experts                | 5                                                   | 1st Wed                         | Josh Jacobs             | HHCS                | YES                                                    |                                                   |
| Human Welfare & Community Action Commission       | 0                                                   | 3rd Wed.                        | Mary-Claire Katz        | HHCS                | YES                                                    |                                                   |
| Mental Health Commission                          | 1                                                   | 4th Thur.                       | Jamie Works-Wright      | HHCS                | YES                                                    |                                                   |
| Sugar-Sweetened Beverage Product Panel of Experts | 0                                                   | 3rd Thur.                       | Dechen Tsering          | HHCS                | YES                                                    |                                                   |
| Civic Arts Commission                             | 2                                                   | 4th Wed.                        | Jennifer Lovvorn        | OED                 | YES                                                    |                                                   |
| Elmwood BID Advisory Board                        | 1                                                   | Contact Secretary               | Kieron Slaughter        | OED                 | YES                                                    |                                                   |
| Loan Administration Board                         | 0                                                   | Contact Secretary               | Kieron Slaughter        | OED                 | YES                                                    |                                                   |
| Solano Avenue BID Advisory Board                  | 2                                                   | Contact Secretary               | Eleanor Hollander       | OED                 | YES                                                    |                                                   |
| Design Review Committee                           | 6                                                   | 3rd Thur.                       | Anne Burns              | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Energy Commission                                 | 0                                                   | 4th Wed.                        | Billi Romain            | PLD                 | YES                                                    |                                                   |
| Landmarks Preservation Commission                 | 6                                                   | 1st Thur.                       | Fatema Crane            | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Planning Commission                               | 3                                                   | 1st Wed.                        | Alene Pearson           | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Zoning Adjustments Board                          | 11                                                  | 2nd & 4th Thur.                 | Shannon Allen           | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Parks and Waterfront Commission                   | 4                                                   | 2nd Wed.                        | Roger Miller            | PRW                 | YES                                                    |                                                   |
| Commission on Disability                          | 0                                                   | 1st Wed.                        | Dominika Bednarska      | PW                  | YES                                                    |                                                   |
| Public Works Commission                           | 4                                                   | 1st Thur.                       | Joe Enke                | PW                  | YES                                                    |                                                   |
| Zero Waste Commission                             | 0                                                   | 4th Mon.                        | Heidi Obermeit          | PW                  | YES                                                    |                                                   |
| Commission on the Status of Women                 | 0                                                   | 4th Wed.                        | Shallon Allen           | CM                  | YES - LIMITED                                          | Secretary has intermittent COVID assignments      |

November 10, 2020 - Item 20  
Supplemental Information

| <u>Boards and Commissions</u>               | <u>Meetings Held Under COVID March - Oct</u> | <u>Regular Mtg. Date</u> | <u>Secretary</u>   | <u>Dept.</u> | <u>Resume Regular Schedule in January 2021?</u> | <u>Note</u>                                            |
|---------------------------------------------|----------------------------------------------|--------------------------|--------------------|--------------|-------------------------------------------------|--------------------------------------------------------|
| Commission on Aging                         | 0                                            | 3rd Wed.                 | Richard Castrillon | HHCS         | REDUCED FREQUENCY                               | Significant Dept. resources assigned to COVID response |
| Housing Advisory Commission                 | 0                                            | 1st Thur.                | Mike Uberti        | HHCS         | REDUCED FREQUENCY                               | Significant Dept. resources assigned to COVID response |
| Measure O Bond Oversight Committee          | 0                                            | 3rd Monday               | Amy Davidson       | HHCS         | REDUCED FREQUENCY                               | Significant Dept. resources assigned to COVID response |
| Transportation Commission                   | 2                                            | 3rd Thur.                | Farid Javandel     | PW           | REDUCED FREQUENCY                               | Staff assigned to COVID response                       |
| Children, Youth, and Recreation Commission  | 0                                            | 4th Monday               | Stephanie Chu      | PRW          | NO - SEPT 2021                                  | Staff assigned to COVID response                       |
| Youth Commission                            | 0                                            | 2nd Mon.                 | Ginsi Bryant       | PRW          | NO - SEPT 2021                                  | Staff assigned to COVID response                       |
| Community Environmental Advisory Commission | 0                                            | 2nd Thur.                | Viviana Garcia     | PLD          | NO - JUNE 2021                                  | Staff assigned to COVID response                       |
| Cannabis Commission                         | 0                                            | 1st Thur.                | VACANT             | PLD          | NO - JAN. 2022                                  | Staff vacancy                                          |
| Peace and Justice Commission                | 0                                            | 1st Mon.                 | VACANT             | CM           | NO                                              | Staff vacancy                                          |
| Commission on Labor                         | 0                                            | 3rd Wed., alternate mon  | Kristen Lee        | HHCS         | NO                                              | Staff assigned to COVID response                       |
| Personnel Board                             | 1                                            | 1st Mon.                 | La Tanya Bellow    | HR           | NO                                              | Staff assigned to COVID response                       |

## 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





Office of the City Manager

October 22, 2020

To: Berkeley Boards and Commissions

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

Subject: Commission Meetings During COVID-19 Emergency

This memo serves to provide a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration.

On March 10, 2020, the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020, the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020, Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

To assist commissions with the development of their work plan and to provide the City Council with a consistent framework to review the work plans, the City Manager has developed the following items to consider in developing the work plan that is submitted to the City Council agenda.

Prompts for Commissions to use in work plan:

- What commission items for 2021 have a direct nexus with the COVID-19 response or are the result of a City Council referral pertaining to COVID-19?
- What commission items for 2021 are required for statutory reasons?
- What commission items for 2021 are required for budgetary or fund allocation reasons?
- What commission items for 2021 support council-adopted or voter-adopted mission critical projects or programs?
- What are the anticipated staff demands (above and beyond baseline) for analysis, data, etc., to support commission work in 2021 (baseline duties = posting agendas, creating packets, attend meetings, minutes, etc.)?

The limitations on commission meetings are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Many of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new specific duties related to the impacts of the pandemic.

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager in consultation with Department Heads and the City Council. More frequent meetings by commissions will be permitted as the conditions under COVID-19 dictate.

Thank you for your service on our boards and commissions. The City values the work of our commissions and we appreciate your partnership and understanding as we address this pandemic as a resilient and vibrant community.

Attachments:

1. Resolution 69,331-N.S.
2. List of Commissions with Meeting Data

cc: Mayor and City Councilmembers  
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.



Cheryl Davila  
Councilmember  
District 2

## REVISED AGENDA MATERIAL

**Meeting Date:** November 16, 2020  
**Item:** Agenda Committee Item #10  
**Subject:** Implement Protocols for managing the City Council Meetings on Zoom  
**Submitted by:** Councilmember Cheryl Davila

**Revisions:**

Updated Recommendation to have a timer protocol for the Mayor and Councilmembers when they speak.

Blue font and lines are tracked changes.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
November 10, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Implement Protocols for managing the City Council Meetings on Zoom

### RECOMMENDATION

Adopt a Resolution with the following actions:

1. Implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures:

- A. Gallery view showing the list of all participants and attendees.
- B. Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking.
- C. Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded;
- D. The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order.
- E. Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off;
- F. Allow chat and reactions capabilities for attendees and participants.
- G. The chat should be saved and part of the public record.
- H. When the Mayor or a Councilmember speak, the timer shall be displayed. The timer countdown shall start when the Mayor or a Councilmember starts speaking, and shall be notified their time has exceeded the allotted time; but will stop when the Mayor or a Councilmember stops speaking. In the event of technical difficulties, the timer will stop and will resume when the Mayor or Councilmember resumes speaking.

2. Designate a third party community organization to host and manage the meeting with neutrality.

### BACKGROUND

Since March 2020, the Berkeley City Council has held its Council Meetings on Zoom due to the COVID-19 pandemic. For the last several Council meetings, many community members and public commenters have expressed concerns how the meetings are handled, currently.



Community members do not feel there's full transparency of the meetings:

- There is no attendee list present nor gallery view of attendees;
- The meeting setup doesn't allow members of the audience to yield their time to a current member of the public while in line, as was the case prior to COVID;
- Timer inequities where the on-screen timer handled by the City for Public Comment would start early or late as community members speak;
- Some speakers receive more time and/or less time, or are cut off;
- There is no transparent way to know when the public raise their hand to speak on Zoom, how they were chosen and in what order?

Prior to the COVID-19 pandemic, when the City Council was holding its meeting in public, any member of the public who would like to give public comment to the City Council on any agenda item had to line up in order. Also, the public was able to see who was in the City Council meeting room. Finally, audience members were able to yield their time to the speaker on public comment.

Other protocols to consider for all zoom meetings throughout the COB:

- Implement the recorded message at the beginning of all meetings including commission meetings and eliminate it being read by individuals;
- All meeting utilize timers for all items, on consent and action calendars throughout the City in all zoom meetings;

Currently, Berkeley Community Media has a contract with the City of Berkeley to conduct the broadcast of the City Council meetings, whether they were held in person or on Zoom. Berkeley Community Media could be considered to manage the neutrality of the City Council Meetings on Zoom and implement the protocols.

It is imperative that we must conduct our City Council meetings as accessible, equitable, fair, and transparent.

#### FINANCIAL IMPLICATIONS

To be determined.

#### ENVIRONMENTAL SUSTAINABILITY

City Council must honor and respect the voices of our community, especially the most marginalized, in order to make sound policy decisions to protect our communities during this health and climate crisis.

#### 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

#### REFERENCE:

1. [Berkeley City Council Rules of Procedure and order effective June 16, 2020](#)

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
IMPLEMENTING PROTOCOLS MANAGING CITY COUNCIL MEETINGS ON ZOOM

WHEREAS, Since March 2020, the Berkeley City Council has held its Council Meetings on Zoom due to the COVID-19 pandemic. For the last several Council meetings, many community members and public commenters have expressed concerns how the meetings are handled, currently; and

WHEREAS, Community members do not feel there's full transparency of the meetings:

- There is no attendee list present nor gallery view of attendees;
- The meeting setup doesn't allow members of the audience to yield their time to a current member of the public while in line, as was the case prior to COVID;
- Timer inequities where the on-screen timer handled by the City for Public Comment would start early or late as community members speak;
- Some speakers receive more time and/or less time, or are cut off;
- There is no transparent way to know when the public raise their hand to speak on Zoom, how they were chosen and in what order?

WHEREAS, Prior to the COVID-19 pandemic, when the City Council was holding its meeting in public, any member of the public who would like to give public comment to the City Council on any agenda item had to line up in order. Also, the public was able to see who was in the City Council meeting room. Finally, audience members were able to yield their time to the speaker on public comment; and

WHEREAS, Other protocols to consider for all zoom meetings throughout the COB:

- Implement the recorded message at the beginning of all meetings including commission meetings and eliminate it being read by individuals;
- All meeting utilize timers for all items, on consent and action calendars throughout the City in all zoom meetings;

WHEREAS, Currently, Berkeley Community Media has a contract with the City of Berkeley to conduct the broadcast of the City Council meetings, whether they were held in person or on Zoom. Berkeley Community Media could be considered to manage the neutrality of the City Council Meetings on Zoom and implement the protocols.

WHEREAS, It is imperative that we must conduct our City Council meetings as accessible, equitable, fair, and transparent.

NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley hereby implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures:

- A. Gallery view showing the list of all participants and attendees;
- B. Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking.

- C. Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded;
- D. The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order.
- E. Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off;
- F. Allow chat and reactions capabilities for attendees and participants;
- G. The chat should be saved and part of the public record.
- H. When the Mayor or a Councilmember speak, the timer shall be displayed. The timer countdown shall start when the Mayor or a Councilmember starts speaking, and shall be notified their time has exceeded the allotted time; but will stop when the Mayor or a Councilmember stops speaking. In the event of technical difficulties, the timer will stop and will resume when the Mayor or Councilmember resumes speaking.

BE IT FURTHER RESOLVED, that the City Council designate a third party community organization to host and manage the meeting with neutrality.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
November 10, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Implement Protocols for managing the City Council Meetings on Zoom

### RECOMMENDATION

Adopt a Resolution with the following actions:

1. Implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures:

- I. Gallery view showing the list of all participants and attendees.
- J. Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking.
- K. Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded;
- L. The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order.
- M. Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off;
- N. Allow chat and reactions capabilities for attendees and participants.
- O. The chat should be saved and part of the public record.
- P. When the Mayor or a Councilmember speak, the timer shall be displayed. The timer countdown shall start when the Mayor or a Councilmember starts speaking, and shall be notified their time has exceeded the allotted time; but will stop when the Mayor or a Councilmember stops speaking. In the event of technical difficulties, the timer will stop and will resume when the Mayor or Councilmember resumes speaking.

2. Designate a third party community organization to host and manage the meeting with neutrality.

### BACKGROUND

Since March 2020, the Berkeley City Council has held its Council Meetings on Zoom due to the COVID-19 pandemic. For the last several Council meetings, many community members and public commenters have expressed concerns how the meetings are handled, currently.

Community members do not feel there's full transparency of the meetings:

- There is no attendee list present nor gallery view of attendees;
- The meeting setup doesn't allow members of the audience to yield their time to a current member of the public while in line, as was the case prior to COVID;
- Timer inequities where the on-screen timer handled by the City for Public Comment would start early or late as community members speak;
- Some speakers receive more time and/or less time, or are cut off;
- There is no transparent way to know when the public raise their hand to speak on Zoom, how they were chosen and in what order?

Prior to the COVID-19 pandemic, when the City Council was holding its meeting in public, any member of the public who would like to give public comment to the City Council on any agenda item had to line up in order. Also, the public was able to see who was in the City Council meeting room. Finally, audience members were able to yield their time to the speaker on public comment.

Other protocols to consider for all zoom meetings throughout the COB:

- Implement the recorded message at the beginning of all meetings including commission meetings and eliminate it being read by individuals;
- All meeting utilize timers for all items, on consent and action calendars throughout the City in all zoom meetings;

Currently, Berkeley Community Media has a contract with the City of Berkeley to conduct the broadcast of the City Council meetings, whether they were held in person or on Zoom. Berkeley Community Media could be considered to manage the neutrality of the City Council Meetings on Zoom and implement the protocols.

It is imperative that we must conduct our City Council meetings as accessible, equitable, fair, and transparent.

#### FINANCIAL IMPLICATIONS

To be determined.

#### ENVIRONMENTAL SUSTAINABILITY

City Council must honor and respect the voices of our community, especially the most marginalized, in order to make sound policy decisions to protect our communities during this health and climate crisis.

#### 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

#### REFERENCE:

1. Berkeley City Council Rules of Procedure and order effective June 16, 2020

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
IMPLEMENTING PROTOCOLS MANAGING CITY COUNCIL MEETINGS ON ZOOM

WHEREAS, Since March 2020, the Berkeley City Council has held its Council Meetings on Zoom due to the COVID-19 pandemic. For the last several Council meetings, many community members and public commenters have expressed concerns how the meetings are handled, currently; and

WHEREAS, Community members do not feel there's full transparency of the meetings:

- There is no attendee list present nor gallery view of attendees;
- The meeting setup doesn't allow members of the audience to yield their time to a current member of the public while in line, as was the case prior to COVID;
- Timer inequities where the on-screen timer handled by the City for Public Comment would start early or late as community members speak;
- Some speakers receive more time and/or less time, or are cut off;
- There is no transparent way to know when the public raise their hand to speak on Zoom, how they were chosen and in what order?

WHEREAS, Prior to the COVID-19 pandemic, when the City Council was holding its meeting in public, any member of the public who would like to give public comment to the City Council on any agenda item had to line up in order. Also, the public was able to see who was in the City Council meeting room. Finally, audience members were able to yield their time to the speaker on public comment; and

WHEREAS, Other protocols to consider for all zoom meetings throughout the COB:

- Implement the recorded message at the beginning of all meetings including commission meetings and eliminate it being read by individuals;
- All meeting utilize timers for all items, on consent and action calendars throughout the City in all zoom meetings;

WHEREAS, Currently, Berkeley Community Media has a contract with the City of Berkeley to conduct the broadcast of the City Council meetings, whether they were held in person or on Zoom. Berkeley Community Media could be considered to manage the neutrality of the City Council Meetings on Zoom and implement the protocols.

WHEREAS, It is imperative that we must conduct our City Council meetings as accessible, equitable, fair, and transparent.

NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley hereby implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures:

- I. Gallery view showing the list of all participants and attendees;
- J. Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking.

- K. Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded;
- L. The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order.
- M. Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off;
- N. Allow chat and reactions capabilities for attendees and participants;
- O. The chat should be saved and part of the public record.
- P. When the Mayor or a Councilmember speak, the timer shall be displayed. The timer countdown shall start when the Mayor or a Councilmember starts speaking, and shall be notified their time has exceeded the allotted time; but will stop when the Mayor or a Councilmember stops speaking. In the event of technical difficulties, the timer will stop and will resume when the Mayor or Councilmember resumes speaking.

BE IT FURTHER RESOLVED, that the City Council designate a third party community organization to host and manage the meeting with neutrality.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
November 10, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Implement Protocols for managing the City Council Meetings on Zoom

RECOMMENDATION

Adopt a Resolution with the following actions:

1. Implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures:

- A. Gallery view showing the list of all participants and attendees;
- B. Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking.
- C. Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded;
- D. The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order.
- E. Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off;
- F. Allow chat and reactions capabilities for attendees and participants;
- G. The chat should be saved and part of the public record.

2. Designate a third party community organization to host and manage the meeting with neutrality.

BACKGROUND

Since March 2020, the Berkeley City Council has held its Council Meetings on Zoom due to the COVID-19 pandemic. For the last several Council meetings, many community members and public commenters have expressed concerns how the meetings are handled, currently.

Community members do not feel there's full transparency of the meetings:

- There is no attendee list present nor gallery view of attendees;



- The meeting setup doesn't allow members of the audience to yield their time to a current member of the public while in line, as was the case prior to COVID;
- Timer inequities where the on-screen timer handled by the City for Public Comment would start early or late as community members speak;
- Some speakers receive more time and/or less time, or are cut off;
- There is no transparent way to know when the public raise their hand to speak on Zoom, how they were chosen and in what order?

Prior to the COVID-19 pandemic, when the City Council was holding its meeting in public, any member of the public who would like to give public comment to the City Council on any agenda item had to line up in order. Also, the public was able to see who was in the City Council meeting room. Finally, audience members were able to yield their time to the speaker on public comment.

Other protocols to consider for all zoom meetings throughout the COB:

- Implement the recorded message at the beginning of all meetings including commission meetings and eliminate it being read by individuals;
- All meeting utilize timers for all items, on consent and action calendars throughout the City in all zoom meetings;

Currently, Berkeley Community Media has a contract with the City of Berkeley to conduct the broadcast of the City Council meetings, whether they were held in person or on Zoom. Berkeley Community Media could be considered to manage the neutrality of the City Council Meetings on Zoom and implement the protocols.

It is imperative that we must conduct our City Council meetings as accessible, equitable, fair, and transparent.

#### FINANCIAL IMPLICATIONS

To be determined.

#### ENVIRONMENTAL SUSTAINABILITY

City Council must honor and respect the voices of our community, especially the most marginalized, in order to make sound policy decisions to protect our communities during this health and climate crisis.

#### 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

#### REFERENCE:

1. [Berkeley City Council Rules of Procedure and order effective June 16, 2020](#)

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
IMPLEMENTING PROTOCOLS MANAGING CITY COUNCIL MEETINGS ON ZOOM

WHEREAS, Since March 2020, the Berkeley City Council has held its Council Meetings on Zoom due to the COVID-19 pandemic. For the last several Council meetings, many community members and public commenters have expressed concerns how the meetings are handled, currently; and

WHEREAS, Community members do not feel there's full transparency of the meetings:

- There is no attendee list present nor gallery view of attendees;
- The meeting setup doesn't allow members of the audience to yield their time to a current member of the public while in line, as was the case prior to COVID;
- Timer inequities where the on-screen timer handled by the City for Public Comment would start early or late as community members speak;
- Some speakers receive more time and/or less time, or are cut off;
- There is no transparent way to know when the public raise their hand to speak on Zoom, how they were chosen and in what order?

WHEREAS, Prior to the COVID-19 pandemic, when the City Council was holding its meeting in public, any member of the public who would like to give public comment to the City Council on any agenda item had to line up in order. Also, the public was able to see who was in the City Council meeting room. Finally, audience members were able to yield their time to the speaker on public comment; and

WHEREAS, Other protocols to consider for all zoom meetings throughout the COB:

- Implement the recorded message at the beginning of all meetings including commission meetings and eliminate it being read by individuals;
- All meeting utilize timers for all items, on consent and action calendars throughout the City in all zoom meetings;

WHEREAS, Currently, Berkeley Community Media has a contract with the City of Berkeley to conduct the broadcast of the City Council meetings, whether they were held in person or on Zoom. Berkeley Community Media could be considered to manage the neutrality of the City Council Meetings on Zoom and implement the protocols.

WHEREAS, It is imperative that we must conduct our City Council meetings as accessible, equitable, fair, and transparent.

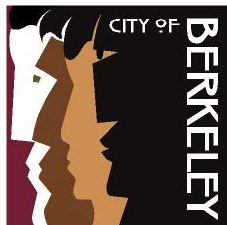
NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley hereby implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures:

- A. Gallery view showing the list of all participants and attendees;
- B. Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking.

- C. Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded;
- D. The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order.
- E. Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off;
- F. Allow chat and reactions capabilities for attendees and participants;
- G. The chat should be saved and part of the public record.

BE IT FURTHER RESOLVED, that the City Council designate a third party community organization to host and manage the meeting with neutrality.





[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

---

<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.

---

<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*

---

<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.

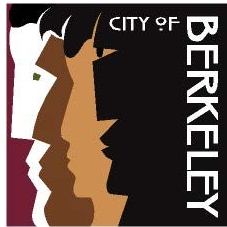
By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of 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

---

<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

PAUSERSUBEL2\offhldr.mem.doc

<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.

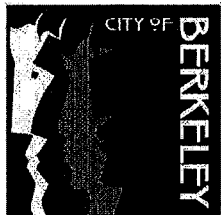
However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since 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

---

<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

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

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

---

### **PURPOSE**

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

### **POLICY**

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

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

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

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

### PROCEDURE

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

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

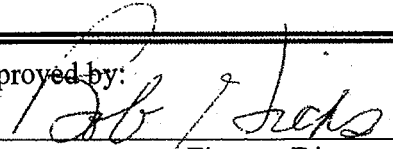
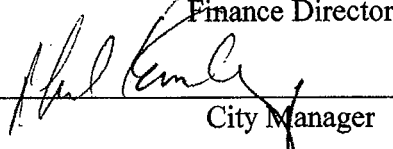
### DEFINITIONS

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

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

**Attachments:**

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

|                                                                                                                   |                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><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**

---

## PURPOSE

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

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

## POLICY

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

## Table of Contents

|                                                                                                           |   |
|-----------------------------------------------------------------------------------------------------------|---|
| I. APPROVALS.....                                                                                         | 2 |
| II. EXPENDITURES BASICS .....                                                                             | 2 |
| III. ALLOWABLE EXPENSES .....                                                                             | 3 |
| IV. PAYMENTS BY CHECK USING A PURCHASE ORDER .....                                                        | 5 |
| V. ADVANCE PAYMENTS & RECONCILIATION .....                                                                | 5 |
| VI. EXPENSE REIMBURSEMENT .....                                                                           | 7 |
| VII. OTHER EXCEPTIONS.....                                                                                | 7 |
| VIII. DEFINITIONS (related to Attendance at Conferences, Workshops, Training,<br>Seminars, Meetings)..... | 8 |
| IX. ATTACHMENTS/LINKS .....                                                                               | 9 |



## I. APPROVALS

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

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

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

## II. EXPENDITURES BASICS

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

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

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

In addition:

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

See item V. Advance Payments and Reconciliation.

### III. ALLOWABLE EXPENSES

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

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

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

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

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

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

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

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

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

#### V. ADVANCE PAYMENTS & RECONCILIATION

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

---

In addition:

- Registration or meals, and other transportation expenses may not be advanced to any employee.
- Advances to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- Departments must maintain a Tracking Worksheet that documents employees' advance requests and reconciliations. These Worksheets must be submitted to the Auditor's Office by the 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).

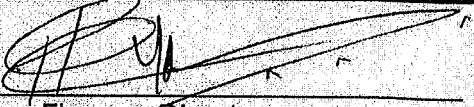
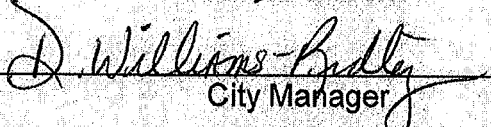
**Payment Documentation**: Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original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

---

**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)\*

---

<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.

---

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.

---

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

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

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

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

C. Invoice Information

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

**Additional Instructions for all FN-024 Payment Vouchers**

A. Account Codes & Project Code

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

B. Authorized Signatures

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

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

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



### **Check Printing & Disbursement**

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

---

**EXCEPTIONS**

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

|                                                              |                                                                                                                                   |
|--------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| <p><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>                      |

---

**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.

---

<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


[Home](#)
[Bill Information](#)
[California Law](#)
[Publications](#)
[Other Resources](#)
[My Subscriptions](#)
[My Favorites](#)

 Code: 

 Section: 


[Up^](#)   [<< Previous](#)   [Next >>](#)
[cross-reference chaptered bills](#)
[PDF](#)
[Add To My Favorites](#)

 Search Phrase: 


## 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

PAUSERSUBEL2\offhldr.mem.doc

<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

~~~~~  
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.