



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

MONDAY, MAY 17, 2021

2:30 P.M.

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember 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 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/82547047106>. 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: **825 4704 7106**. 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: May 10, 2021**
- 2. Review and Approve Draft Agenda:**
 - a. 6/1/21 – 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**
- 9. Discussion of the Implementation of Appendix D of the City Council Rules of Procedure**

Unscheduled Items

- 10. Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**

Items for Future Agendas

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

Adjournment – Next Meeting Tuesday, June 1, 2021

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## **Additional items may be added to the draft agenda per Council Rules of Procedure.**

*Rules of Procedure as adopted by Council resolution, Article III, C3c - Agenda - Submission of Time Critical Items*

*Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.*

*If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.*

*The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.*

*Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



### **COMMUNICATION ACCESS INFORMATION:**

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

\* \* \*

I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on May 13, 2021.

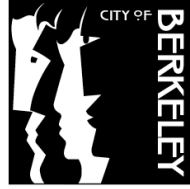


Mark Numainville, City Clerk

## **Communications**

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or [policycommittee@cityofberkeley.info](mailto:policycommittee@cityofberkeley.info).*





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

**MONDAY, MAY 10, 2021**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Lori Droste

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To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **891 1659 3118**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

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

**Public Comment** – 3 speakers

## **Review of Agendas**

**1. Approval of Minutes: April 26, 2021**

**Action:** M/S/C (Wengraf/Hahn) to approve the minutes of 4/26/2021.

**Vote:** All Ayes.

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

a. 5/25/21 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Hahn/Wengraf) to approve the agenda of 5/25/01 with the changes noted below.

- *Item Added: Director of Police Accountability (City Manager) – added to Consent Calendar*
- *Item 27 Support AB 1177 (Arreguin) – Councilmembers Bartlett, Harrison, and Hahn added as co-sponsors*
- *Item 30 Traffic Calming (Wengraf) – Councilmembers Hahn, Harrison, and Droste added as co-sponsors*
- *Item 36a/b Officeholder Accounts (Agenda & Rules Committee) – Revised recommendation; listed as from full committee; Item 36b subsumed into item from Committee*
- *Item 38 Economic Recovery (Hahn) – Revised item submitted; Councilmember Bartlett added as a co-sponsor; Scheduled for 5/25/21 Consent Calendar*
- *Item 39 BMC Amendment (Wengraf) – Scheduled for 5/25/21 Consent Calendar*

**Order of Items on Action Calendar**

Item 33 Environmental Health Fees

Item 34 Camps Fees

Item 32 Proposed Budget

Item 35a/b Grant Allocations

Item 36 Officeholder Accounts

Item 37 Commission Reorganization

**Vote:** All Ayes.

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

- None selected

**4. Adjournments In Memory** – None

## **Scheduling**

**5. Council Worksessions Schedule**

- Police Department presentation scheduled for October 19

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

**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:** 2 speakers. No action taken.

## Unscheduled Items

9. **Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**

## Items for Future Agendas

- Discussion of Implementation of Appendix D added to 5/17/21 agenda

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 3:21 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee hearing held on May 10, 2021.

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Mark Numainville  
City Clerk

## Communications

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## DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, June 1, 2021  
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

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

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/89868895268>. 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: **898 6889 5268**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*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.*

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

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

## Preliminary Matters

### Roll Call:

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

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

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

## Consent Calendar

*The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Three members of the City Council must agree to pull an item from the Consent Calendar for it to move to Action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".*

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

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

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

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

## Consent Calendar

- 1. Waiver of Sanctuary City Ordinance for Westlaw Contract**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution waiving the contract prohibition of Berkeley Municipal Code Chapter 13.105, Sanctuary City Contracting, in order to enter into a contract with Westlaw.  
**Financial Implications:** None  
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 2. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on June 1, 2020**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.  
**Financial Implications:** Various Funds - \$2,270,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 3. Notice of Appropriations Limit for Fiscal Year 2022**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution providing notice that: 1) Council will adopt an appropriations limit for Fiscal Year 2022 at its meeting of June 29, 2021; and 2) the amount of the limit and the background material used in its calculation will be available for public review in the City Clerk's Office on or before June 14, 2021.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 4. Contract No. 32000228 Amendment: Ghilotti Construction Company, Inc. for Berkeley Rose Garden Pergola Reconstruction and Site Improvements Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000228 with Ghilotti Construction, Inc. for the Berkeley Rose Garden Pergola Reconstruction and Site Improvements Project, increasing the amount by \$225,000 for an amended total amount not to exceed \$3,716,917.  
**Financial Implications:** Various Funds - \$225,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

### 5. Multi-Agency Policing Agreement for Grizzly Peak Boulevard

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the Memorandum of Understanding (MOU) entitled "Multi-Agency Policing Agreement Among City of Oakland Police Department, Berkeley University of California Police Department, East Bay Regional Park District, City of Berkeley Police Department, Contra Costa County Sherriff's Department, East Bay Municipal Utilities District, and City of Orinda" to provide for enforcement cooperation regarding problematic behavior and fire prevention on Grizzly Peak Boulevard.

**Financial Implications:** See report.

Contact: Jennifer Louis, Police, (510) 981-5900

## Council Consent Items

### 6. Oppose – Assembly Bill 1139, Net Energy Metering

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

**Recommendation:** Adopt a Resolution in opposition to AB 1139 (Gonzalez): Net energy metering. Send a copy of the Resolution to Senator Skinner, Assemblymembers Wicks and Gonzalez, and Governor Newsom.

**Financial Implications:** Staff time

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

### 7. Referral to the Fiscal Year 2022 Budget Process: Continuing Anti-Displacement Programs

**From: Mayor Arreguin (Author)**

**Recommendation:** Refer to \$900,000 to the FY 2022 Budget Process for continued funding of the following anti-displacement programs (launched in 2017) with the proposed funding source from General Fund tax receipts from the Measure U1 gross receipts tax: 1) Housing Retention Program (administered by the Eviction Defense Center EDC): \$250,000 2) Legal Counseling, Services and Problem Solving for Extremely-Low, Very-Low, Low and Moderate Income Tenants (\$275,000 each to the East Bay Community Law Center and EDC): \$550,000 3) Flexible Housing Subsidies for Homelessness Prevention: \$100,000

**Financial Implications:** See report

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

### 8. Referral to the Fiscal Year 2022 Budget Process: Landlord Incentives for Section 8 Participation

**From: Mayor Arreguin (Author)**

**Recommendation:** Refer to the Fiscal Year 2022 Budget Process, \$100,000 of General Fund revenues to replenish and augment funding for the Section 8 Landlord Incentive Program currently offered by the Berkeley Housing Authority.

**Financial Implications:** General Fund - \$100,000

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

## Council Consent Items

9. **Support – Senate Bill 617, the Solar Access Act**  
**From: Mayor Arreguin (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Councilmember Taplin (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution in support of SB 617 (Wiener): Residential solar energy systems: permitting. Send a copy of the Resolution to Senators Wiener and Skinner, Assemblymember Wicks, and Governor Newsom  
**Financial Implications:** Staff time  
Contact: Jesse Arreguin, Mayor, (510) 981-7100

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

*Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.*

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

10. **Fiscal Year 2022 Proposed Budget Public Hearing #2**  
**From: City Manager**  
**Recommendation:** Conduct a second public hearing on the FY 2022 Proposed Biennial Budget.  
**Financial Implications:** See FY 2022 Proposed Biennial Budget  
Contact: Rama Murty, Budget Office, (510) 981-7000

## Action Calendar – Public Hearings

11. **ZAB Appeal: 2421 Fifth Street, Use Permit #ZP2020-0043**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision and approving Use Permit #ZP2020-0043 to demolish a single-family dwelling and construct two residential buildings: a three-story triplex and a three-story single-family dwelling, for a total of four new dwellings, and dismiss the appeal.  
**Financial Implications:** None  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Action Calendar – New Business

12. **Police Accountability Board – Appointment of Members**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution appointing nine members to the Police Accountability Board nominated by the Mayor and City Councilmembers, and appointing one alternate member.  
**Financial Implications:** See report  
Contact: Mark Numainville, City Clerk, (510) 981-6900
13. **Referral Response: Amending Chapter 19.34 of the Berkeley Municipal Code to Expand Automatic Gas Shut-Off Valve Requirements in Multifamily, Condominium and Commercial Buildings Undergoing Renovations**  
**From: Disaster and Fire Safety Commission**  
**Recommendation:** The proposed ordinance modifications in the referral dated October 29, 2019, shown in Attachment 2 to the staff report (the Referral), can be briefly summarized as:
- Expand the Gas Shut-Off Valve requirements to remove exceptions for multi-family, condominium, and commercial buildings
- The Disaster and Fire Safety Commission (DFSC) recommends that changes of the Berkeley Municipal Code be referred to the City Manager and Planning Department to be modified in accordance with the Referral as part of the 2022 Code adoption cycle, including the following changes:
1. Do not allow excess flow valves to substitute for motion-activated shut-off valves as a way to comply with this ordinance.
  2. Clarify requirements for excess flow valves and motion activated (seismic) valves.
  3. Include a provision to include gas valves for common areas when required for any individual unit of a building.
  4. Do not include any requirements regarding sale or transfer of the building.
  5. Remove the dollar limit on the modifications and replace with a requirement to comply any time a plumbing or mechanical permit is issued.
- In addition, the Commission recommends the inclusion of wording in the Berkeley Emissions Saving Ordinance (BESO) to require that in any transfer of property, that the property be required to be equipped with a seismic gas shutoff valve.
- Financial Implications:** See report  
Contact: Keith May, Commission Secretary, (510) 981-3473

## Action Calendar – New Business

### 14a. Recommendation that the City Council Pass a Resolution Regarding Procurement, Sales and Serving of Sugar-Sweetened Beverages.

**From: Sugar Sweetened Beverage Product Panel of Experts** *(Reviewed by the Health, Life Enrichment, Equity & Community Policy Committee)*

**Recommendation:** The Sugar Sweetened Beverage Product Panel of Experts recommends that the Berkeley City Council adopt a Resolution that City of Berkeley departments and City food services contractors shall not: 1) Serve sugar-sweetened beverages at City meetings and events on City property; 2) Procure sugar-sweetened beverages with City funds; or, 3) Sell sugar-sweetened beverages on City property, including in vending machines.

*Policy Committee Recommendation: M/S/C (Hahn/Bartlett) to move an item to Council recommending approval of the Sugar Sweetened Beverage Product Panel of Experts Resolution regarding procurement, sales and serving of sugar-sweetened beverages with the following changes in the resolved clause and removing the third item:*

*Therefore be it resolved that the City of Berkeley shall not:*

*1. Procure sugar-sweetened beverages with City funds; and 2. Serve or sell sugar-sweetened beverages on City property, including in vending machines.*

*And be it further resolved that the City discourages sugar-sweetened beverages at events on City property that receive City of Berkeley funding, and mandate that these events be required to provide options other than sugar-sweetened beverages.*

*And be it further resolved that in areas or facilities where employees regularly work beyond the core business hours of 8 a.m. – 6 p.m., the City of Berkeley shall provide refrigerators in good working order and of adequate size for the number of employees in that area, to bring and store their own beverages.*

*In addition, ask the City Council to make a referral to the Sugar-Sweetened Beverage Product Panel of Experts to consider how to regulate sugar sweetened beverages at events held on City of Berkeley Property hosted by non-City entities who receive City of Berkeley funds.*

*Vote: All Ayes.*

**Financial Implications:** See report

Contact: Dechen Tsering, Commission Secretary, (510) 981-5300

## Action Calendar – New Business

**14b. Companion Report: Recommendation that the City Council Pass a Resolution Regarding Procurement, Sales, and Serving Sugar-Sweetened Beverages**  
**From: City Manager** *(Reviewed by the Health, Life Enrichment, Equity & Community Policy Committee)*

**Recommendation:** Recommend that the City Council adopt an amended resolution that recognizes the important principles in the Commission recommendation, clarifies the intent of the measure and provides some flexibility for City programs and staff while still emphasizing availability of healthy options. This amended resolution would require that the majority of all beverages provided or sold at any City event or on any City property (including vending machines) be non-sugar sweetened beverages (as defined in chapter 7.72 of the Berkeley Municipal Code) and education materials be provided to all COB staff to actively discourage the consumption of sugar-sweetened beverages and encourage the consumption of water.

*Policy Committee Recommendation: M/S/C (Hahn/Bartlett) to move an item to Council recommending approval of the Sugar Sweetened Beverage Product Panel of Experts Resolution regarding procurement, sales and serving of sugar-sweetened beverages with the following changes in the resolved clause and removing the third item: Therefore be it resolved that the City of Berkeley shall not:*

*1. Procure sugar-sweetened beverages with City funds; and 2. Serve or sell sugar-sweetened beverages on City property, including in vending machines.*

*And be it further resolved that the City discourages sugar-sweetened beverages at events on City property that receive City of Berkeley funding, and mandate that these events be required to provide options other than sugar-sweetened beverages.*

*And be it further resolved that in areas or facilities where employees regularly work beyond the core business hours of 8 a.m. – 6 p.m., the City of Berkeley shall provide refrigerators in good working order and of adequate size for the number of employees in that area, to bring and store their own beverages.*

*In addition, ask the City Council to make a referral to the Sugar-Sweetened Beverage Product Panel of Experts to consider how to regulate sugar sweetened beverages at events held on City of Berkeley Property hosted by non-City entities who receive City of Berkeley funds.*

*Vote: All Ayes.*

**Financial Implications:** See report

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



## Council Action Items

**15. Adopt a Resolution Updating City of Berkeley Street Maintenance and Rehabilitation Policy**

**From: Councilmember Harrison (Author)** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*

**Recommendation:** 1. Adopt a Resolution updating the City's Street Maintenance and Rehabilitation Policy dated June 1, 2021.

2. Refer the exploration of potential bonding and funding opportunities for improving the Paving Condition Index (PCI) of streets and creating a Paving Master Plan back to the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Committee for further review.

*Policy Committee Recommendation: M/S/C (Robinson/Harrison) to move the Public Works supplemental item "City of Berkeley Street Maintenance and Rehabilitation Policy to Council" with a positive recommendation including amendments made during the meeting today, and ask Council to refer the exploration of potential bonding and funding opportunities for improving the PCI of streets and creating a Paving Master Plan back to the FITES Committee for further review. All Ayes.*

**Financial Implications:** Staff time

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

## Action Calendar – Policy Committee Track Items

16. **Berkeley Housing Authority Board of Commissioners Re-Appointments**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution re-appointing Dan Rossi, Christine Schildt, and Adolph Moody to the Berkeley Housing Authority Board of Commissioners.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
17. **Budget Referral and Resolution Establishing A Pilot Existing Building Electrification Incentive Program to Assist New Homeowners, Renters and Existing Homeowners with Transition to Zero-Carbon Buildings**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** 1. Adopt a Resolution establishing: a. a two-year Pilot Existing Building Electrification Incentive Program to Assist New Homeowners, Renters and Existing Homeowners with Transition to Zero-Carbon Buildings; and b. an annual process for the Energy (or successor) Commission and the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee (FITES), in consultation with community groups, to provide input to staff and Council about eligible categories of fund expenditures to maximize equitable emissions reductions and impacts for eligible households while leaving the mechanisms for doing so to staff discretion. 2. Refer to the June, 2021 budget process: a. \$1,500,000 of general fund monies from excess equity as seed funding for the two-year pilot, inclusive of staff costs, for FY 2022.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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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>.

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Office of the Mayor

CONSENT CALENDAR

June 1, 2021

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín (Author), Councilmember Kate Harrison (Co-Sponsor)

Subject: Oppose – AB 1139, Net energy metering

RECOMMENDATION

Adopt a Resolution in opposition to AB 1139 (Gonzalez): Net energy metering. Send a copy of the Resolution to Senator Skinner, Assemblymembers Wicks and Gonzalez, and Governor Newsom.

BACKGROUND

Consumers suffer when power is concentrated in the hands of a few. This was the lesson learned from the 2000 electricity crisis and out of that grew California's commitment to consumer solar and localized energy. Over the past two decades, hundreds of thousands of Californians have invested in rooftop solar to combat climate change, lower energy bills, and invest in local communities. The State of California encouraged these investments via policies like net metering, which lets solar users share their extra energy with their neighbors for a bill credit. Today, rooftop solar, often paired with battery storage, is an increasingly affordable investment embraced by working class communities as a common and increasingly affordable solution to wildfires, blackouts, and rate increases.

AB 1139, as written, severely threatens the ability for homeowners and tenants alike to benefit from rooftop solar by establishing, as the default policy of the State of California:

- A monthly fee estimated at \$70/month for an average home solar system.¹

¹ Link to [AB 1139](#); Section 3(b)(4) would require the state to charge solar users a “fixed charges based on the cost to...serve the eligible customer-generator”. The precedent for how the CPUC would calculate this fee is to charge transmission and distribution charges for all the energy generated and consumed on-site by the solar user. In other words, the solar user who becomes more energy efficient, consuming less energy from the grid, would be charged a fee to cover what they would otherwise have bought from the utility. We estimate this fee to be approximately \$70/month for a typical 6 kW solar system. The larger the system, the higher the fee. Non-residential customers would be charged the fee as well as residential.
Net Metering Bill credit: Section 3(b)(5).

- An 80% reduction in the credit given to solar users for surplus energy sent back to the grid.²
- Drastic rule changes applied to all existing solar users within 1 to 10 years, reversing a well-established principle protecting consumer investments for 20 years. Such a policy not only harms existing consumers, including schools, low-income affordable housing, and farms, but it erodes consumer confidence in government-backed programs on clean energy.³

AB 1139 hurts working families the most and therefore interferes with the state's – including Berkeley's – equity goals.

- The fastest growing segment of California's rooftop solar market is in working class communities. Today, over 150,000 solar roofs serve customers in the California Alternate Rates for Energy (CARE) discount program. An additional 30,000 rental units serving more than 100,000 people at multifamily affordable housing projects are under development thanks to net metering. These low-income consumers will be greatly harmed by AB 1139, in some cases paying more for their energy than if they had never invested in solar.⁴
- According to analysis by the Center for Sustainable Energy, AB 1139 proposes to make virtual net energy metering – a principal tool for providing access to renters, particular in affordable housing under programs such as Solar on Multifamily Affordable Housing (SOMAH), with solar-generated energy – more expensive than not providing solar access at all.

	SDG&E	SCE	PG&E
Today	\$178	\$122	\$139
Under AB 1139	\$56	\$37	\$45
Percentage Drop	69%	70%	68%
Years to pay off solar in bill savings	40-50+ years	> 50 years	> 50 years

Table 1: CARE Solar Customer Monthly Savings Before and After AB 1139⁵

AB 1139 is based on flawed premise, promoted primarily by investor-owned utilities - the rooftop solar "cost shift". The real cost shift is wildfires, power outages, the long-distance transmission lines that cause them, as well as the lack of government accountability on those responsible.

- This year alone, ratepayers will be charged more than \$9 billion for power line maintenance and wildfire prevention.
- PG&E's transmission charges to ratepayers increased 68% from 2016 to 2021. Half of these charges were self-approved by PG&E.
- Investor-owned utilities profit by building more and more expensive power lines. The state's investor-owned utilities charged ratepayers nearly \$20 billion in

² Section 3 (b)(5) The average credit for surplus solar power is valued at 23 cents per kilowatt-hour. The bill would require "Credits ... for any electricity exported to the electrical grid at a rate equal to the hourly wholesale market rate..." The average hourly wholesale market rate for electricity is around 3 cents.

³ Section 2(b)(6) & 2(d)(B)(2)

⁴ Neighborhood level adoption data: The Berkeley Lab: [Solar Demographics Tool](#) and [Income Trends among U.S. Residential Rooftop Solar Adopters](#); [CARE data](#)

⁵ Based on a 6 kWh system and a reduction in NEM credits from 17 cents to 3 cents per kWh

transmission line projects between 2010 and 2019 and collected more than \$20 billion in profits over a similar time period.⁶

Rooftop-scale solar reduces costs for all ratepayers, but also cuts utility profits – which has led investor-owned utilities to craft this flawed proposal.

- In 2018 alone, rooftop solar and energy efficiency prompted the state to scale back more than 20 power line projects, saving \$2.6 billion.
- Maximizing rooftop solar could save American households nearly \$500 billion over the next thirty years, while doubling down on our overreliance on long-distance power lines could cost Americans \$350 billion.⁷
- Reducing grid costs cut against utility profits, even if it saves all ratepayers. As the CPUC recently outlined, “IOUs are inherently incentivized to make investments to drive an increase in their rate base and therefore, their profitability.”⁸

Investor-owned utilities have lobbied against every major proposal to help more marginalized communities adopt solar and battery storage: affordable housing solar incentives, community solar, microgrids, on-bill financing and more.⁹

Lawmakers can best help working communities by rejecting AB 1139 and embracing proposals to bring rooftop solar and battery storage to millions more Californians. More affordable rooftop solar, not less, is the path to helping Californians struggling under the burden of skyrocketing energy bills, power outages, and wildfires.¹⁰

FINANCIAL IMPLICATIONS

Limited staff time associated with sending a letter to designated recipients.

ENVIRONMENTAL SUSTAINABILITY

No direct identifiable environmental sustainability savings are associated with this item. However, the passage of SB 1139 is likely to squelch the deployment of rooftop-scale solar and storage in the City of Berkeley, which would interfere with a key strategy in the realization of Berkeley’s Climate Action goals.

⁶ CA Public Utilities Commission: [Utility Costs and Affordability of the Grid of the Future](#) (\$20 billion in transmission costs from 2010-19 pp. 39, Table 11; \$4.336 in 2021 transmission spending and rate of increase p. 36; 1\$/3.50 profit p. 37). \$20B profit figure from utility 10-K filings, [itemized here](#).

⁷ [Utility Dive](#) breakdown of this CA Independent Systems Operator report; Vibrant Clean Energy: [Why Local Solar for All Costs Less](#)

⁸ The Averch-Johnson effect described on page 24 of the CPUC’s “Utility Costs and Affordability of the Grid of the Future.”

⁹ Partial list of initiatives utilities lobbied to kill or defang: Affordable housing solar incentives ([AB 693](#) - Eggman, 2015); Low-income feed in tariff ([AB 1990](#) - Fong); Community solar ([SB 843](#) - Wolk, 2013; [SB 43](#) - Wolk, 2013; CPUC implementation); Microgrids (SB 1339, CPUC implementation)

¹⁰ Save California Solar: [Building Blocks to Equitable Solar & Storage Growth](#)

Oppose – AB 1139, Net energy metering

CONSENT CALENDAR
June 1, 2021

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
2. Text of AB 1139
- 3: AB 1139 Factsheet

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

IN OPPOSITION OF AB 1139, NET ENERGY METERING

WHEREAS, Over the past two decades, hundreds of thousands of Californians have invested in rooftop solar to combat climate change, lower energy bills, and invest in local communities; and

WHEREAS, The State of California encouraged these investments via policies like net metering, which lets solar users share their extra energy with their neighbors for a bill credit; and

WHEREAS, Today, rooftop solar, often paired with battery storage, is an increasingly affordable investment embraced by working class communities as a common and increasingly affordable solution to wildfires, blackouts, and rate increases; and

WHEREAS, AB 1139, as written, severely threatens the ability for homeowners and tenants alike to benefit from rooftop solar by establishing, as the default policy of the State of California; and

WHEREAS, AB 1139 hurts working families the most and therefore interferes with the state's – including Berkeley's – equity goals; and

WHEREAS, AB 1139 is based on flawed premise, promoted primarily by investor-owned utilities - the rooftop solar "cost shift", when the real cost shift is wildfires, power outages, the long-distance transmission lines that cause them, as well as the lack of government accountability on those responsible; and

WHEREAS, Rooftop-scale solar reduces costs for all ratepayers, but also cuts utility profits – which has led investor-owned utilities to craft this flawed proposal; and

WHEREAS, Investor-owned utilities have lobbied against every major proposal to help more marginalized communities adopt solar and battery storage: affordable housing solar incentives, community solar, microgrids, on-bill financing and more; and

WHEREAS, Lawmakers can best help working communities by rejecting AB 1139 and embracing proposals to bring rooftop solar and battery storage to millions more Californians. More affordable rooftop solar, not less, is the path to helping Californians struggling under the burden of skyrocketing energy bills, power outages, and wildfires.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby opposes AB 1139, Net energy metering.

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

AMENDED IN ASSEMBLY MAY 4, 2021

AMENDED IN ASSEMBLY APRIL 8, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1139

**Introduced by Assembly Member Members Lorena Gonzalez and
Carrillo
(Principal coauthor: Assembly Member Quirk)**

February 18, 2021

An act to amend Section 739.1 of, to repeal Sections 2827.1 and 2827.7 of, and to repeal and add Section 2827 of, 2827.1 of, and to add Sections 913.13 and 2827.2 to, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1139, as amended, Lorena Gonzalez. ~~Energy: California Alternate Rates for Energy program: net energy metering: electrical corporation distributed eligible renewable energy resource allocations: interconnections.~~ *Net energy metering.*

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations. Existing law requires the commission to continue a program of assistance to low-income electric and gas customers with annual household incomes that are no greater than 200% of the federal poverty guideline levels, referred to as the California Alternate Rates for Energy (CARE) program, and requires that the cost not be borne solely by any single class of customer. Existing law requires the commission, in establishing CARE discounts for an electrical corporation with 100,000 or more customer accounts in California, to

AB 1139

— 2 —

~~ensure that the average effective CARE discount shall not be less than 30% or more than 35% of the revenues that would have been produced for the same billed usage by non-CARE customers.~~

~~This bill would require the commission, in establishing CARE discounts for an electrical corporation with 100,000 or more customer accounts in California, to ensure that the average effective CARE discount shall not be less than 40% or more than 45% of the revenues that would have been produced for the same billed usage by non-CARE customers. The bill would require that 25% of the cost of the CARE program be paid for exclusively by the residential class of customers.~~

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law requires every electric utility, defined to include electrical corporations, local publicly owned electric utilities, and electrical cooperatives, to develop a standard contract or tariff for net energy metering, as defined, for generation by a renewable electrical generation facility, as defined, and to make this contract or tariff available to eligible customer-generators, as defined, upon request on a first-come-first-served basis until the time that the total rated generating capacity used by eligible customer generators exceeds 5% of the electric utility's aggregate customer peak demand. For a large electrical corporation, as defined, existing law ~~required~~ requires the commission to ~~develop a new~~ have developed a 2nd standard contract or tariff to provide net energy metering to additional eligible customer-generators in its the electrical corporation's service territory and there is imposes no limitation on the number of new eligible customer-generators entitled to receive service pursuant to this new 2nd standard contract or tariff developed by the commission for a large electrical corporation. tariff. Existing law requires the commission to ensure that the 2nd standard contract or tariff made available to eligible customer-generators by large electrical corporations ensures that customer-sited renewable distributed generation continues to grow sustainably. Existing law requires the commission, in developing this standard contract or tariff, to include specific alternatives designed for growth among residential customers in disadvantaged communities.

~~This bill would repeal those provisions and require all electrical corporations to submit, by advice letter, a standard net energy metering contract or tariff that would take effect beginning on July 1, 2022, and apply to all customer self-generators and replace all prior standard contracts and tariffs, except as specified. The bill would require that~~

~~the new net energy metering contract or tariff credit the customer self-generator for any electricity exported by the customer self-generator to the distribution system or transmission system at a rate equal to the hourly wholesale market rate applicable at the time of the export and the location of the customer self-generator and that the customer self-generator shall be charged for electricity imported from the distribution system or transmission system at a rate equal to the otherwise applicable tariff for customers in the same class of service who are not customer self-generators. For customer self-generators taking energy supply service from a community choice aggregator, the bill would authorize the aggregator to determine to provide credits and charges in different amounts. The bill would require that a customer self-generator be charged a monthly grid access charge equal to the costs attributable to the customer's gross electricity usage billed at the otherwise applicable rates for all elements of retail service except for generation, minus the amount the customer paid for nongeneration elements of retail service paid as part of the rate for imported electricity.~~

~~Beginning July 1, 2022, this bill would require the commission to annually allocate up to the following amounts, divided proportionately among the electrical corporations based on the number of residential customers of each electrical corporation, for the following purposes: (1) \$300,000,000 for residential customer self-generators who both participate in the CARE program and live in multifamily housing or in underserved communities to discount the initial purchase cost for the renewable electrical generation facility, (2) \$300,000,000 to eliminate any rate premium required and provide an additional 10% discount for residential customers who participate in the CARE program to participate in a 100% solar option under the Green Tariff Shared Renewables Program, and (3) \$500,000,000 for facilities serving public buildings to discount the initial purchase cost for the renewable electrical generation facility. The bill would require the commission to annually allocate up to 5% of the funds to marketing and customer education designed to maximize participation in those programs. The bill would authorize the electrical corporations to collect the projected annual amounts used to implement these programs as a nonbypassable charge on distribution.~~

~~This bill would require that an electrical corporation ensure that requests for establishment of a customer self-generator interconnection are processed in a time period not exceeding that for similarly situated customers requesting new electric service, but not to exceed 30 working~~

~~days from the date it receives a completed application form for customer self-generator service, and if an electrical corporation is unable to process a request within the allowed time, the bill would require the electrical corporation to notify the customer self-generator and the commission of the reason for its inability to process the request and the expected completion date.~~

This bill would require the commission, no later than February 1, 2022, to develop a replacement for the 2nd standard contract or tariff, which may include net energy metering, for an eligible customer-generator with a renewable electrical generation facility that is a customer of a large electrical corporation, and would require that large electrical corporations offer the standard contract or tariff to eligible customer-generators beginning no later than December 31, 2023. The bill would eliminate the requirement that the large electrical corporation tariff or contract ensure that customer-sited renewable distributed generation continues to grow sustainably. The bill would require that a customer-generator of a large electrical corporation that receives service pursuant to the existing statutory net energy metering tariffs be transferred to the replacement tariff no later than 5 years from the date that customer first received service pursuant to those tariffs, except that an eligible customer-generator participating in the California Alternate Rates for Energy program would have to be transferred to the new tariff no later than 10 years from the date that customer first received service pursuant to those tariffs.

If the commission fails to adopt a replacement net energy metering tariff for large electrical corporations by February 1, 2022, this bill would require the commission to develop a successor net energy metering tariff for large electrical corporations, to take effect no later than December 31, 2023, that does specified things, including having interconnection fees and monthly fixed charges based on the cost to interconnect and serve the eligible customer-generator and crediting the eligible customer-generator for any electricity exported to the electrical grid at a rate equal to the hourly wholesale market rate applicable at the time of the export and at the location of the eligible customer-generator. The bill would require that a customer-generator of a large electrical corporation that receives service pursuant to the existing statutory net energy metering tariffs be transferred to the successor tariff no later than 5 years from the date that customer first received service pursuant to those existing tariffs, except that an eligible customer-generator participating in the California Alternate Rates for

Energy program would have to be transferred to the successor tariff no later than 10 years from the date that customer first received service pursuant to those existing tariffs.

Existing law requires the PUC to submit various reports to the Legislature, as specified.

This bill would require the PUC to annually report to the Legislature, by June 30, on progress made to grow use of distributed energy resources among residential customers in disadvantaged communities.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain provisions of the bill would require an order, decision, rule, direction, demand, or requirement of the commission to implement, this bill would impose a state-mandated local program by creating new crimes.

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

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

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

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

1 SECTION 1. Section 913.13 is added to the Public Utilities
2 Code, to read:

3 913.13. The commission shall annually report, to be included
4 in the assessment required by Section 913.7, on progress made to
5 grow use of distributed energy resources among residential
6 customers in disadvantaged communities.

7 SEC. 2. Section 2827.1 of the Public Utilities Code is amended
8 to read:

9 2827.1. (a) For purposes of this section, “eligible
10 customer-generator,” “large electrical corporation,” and “renewable
11 electrical generation facility” have the same meanings as defined
12 in Section 2827.

13 (b) Notwithstanding any other law, the commission shall develop
14 a standard contract or tariff, which may include net energy
15 metering, for eligible customer-generators with a renewable

1 electrical generation facility that is a customer of a large electrical
 2 corporation no later than ~~December 31, 2015~~. The commission
 3 may develop the standard contract or tariff prior to December 31,
 4 2015, and may require a large electrical corporation that has
 5 reached the net energy metering program limit of subparagraph
 6 ~~(B) of paragraph (4) of subdivision (c) of Section 2827~~ to offer
 7 the standard contract or tariff to eligible customer-generators.
 8 *February 1, 2022*. A large electrical corporation shall offer the
 9 standard contract or tariff to an eligible customer-generator
 10 beginning July 1, 2017, or prior to that date if ordered to do so by
 11 the commission because it has reached the net energy metering
 12 program limit of subparagraph ~~(B) of paragraph (4) of subdivision~~
 13 ~~(c) of Section 2827~~. *no later than December 31, 2023*. The
 14 commission may revise the standard contract or tariff as appropriate
 15 to achieve the objectives of this section. In developing the standard
 16 contract or tariff, the commission shall do all of the following:

17 (1) ~~Ensure that the standard contract or tariff made available to~~
 18 ~~eligible customer-generators ensures that customer-sited renewable~~
 19 ~~distributed generation continues to grow sustainably and include~~
 20 *Ensure* specific alternatives designed for growth among residential
 21 customers in disadvantaged communities.

22 (2) Establish terms of service and billing rules for eligible
 23 customer-generators.

24 (3) Ensure that the standard contract or tariff made available to
 25 eligible customer-generators is based on the costs and benefits of
 26 the renewable electrical generation facility.

27 (4) Ensure that the total benefits of the standard contract or tariff
 28 to all customers and the electrical system are approximately equal
 29 to the total costs.

30 (5) Allow projects greater than one megawatt that do not have
 31 significant impact on the distribution grid to be built to the size of
 32 the onsite load if the projects with a capacity of more than one
 33 megawatt are subject to reasonable interconnection charges
 34 established pursuant to the commission's Electric Rule 21 and
 35 applicable state and federal requirements.

36 ~~(6) Establish a transition period during which eligible~~
 37 ~~customer-generators taking service under a net energy metering~~
 38 ~~tariff or contract prior to July 1, 2017, or until the electrical~~
 39 ~~corporation reaches its net energy metering program limit pursuant~~
 40 ~~to subparagraph (B) of paragraph (4) of subdivision (c) of Section~~

1 ~~2827, whichever is earlier, shall be eligible to continue service~~
 2 ~~under the previously applicable net energy metering tariff for a~~
 3 ~~length of time to be determined by the commission by March 31,~~
 4 ~~2014. Any rules adopted by the commission shall consider a~~
 5 ~~reasonable expected payback period based on the year the customer~~
 6 ~~initially took service under the tariff or contract authorized by~~
 7 ~~Section 2827.~~

8 ~~(7) The commission shall determine~~

9 (6) *Determine* which rates and tariffs are applicable to customer
 10 generators only during a rulemaking proceeding. Any fixed charges
 11 for residential customer generators that differ from the fixed
 12 charges allowed pursuant to subdivision (f) of Section 739.9 shall
 13 be authorized only in a rulemaking proceeding involving every
 14 large electrical corporation. The commission shall ensure customer
 15 generators are provided electric service at rates that are just and
 16 reasonable.

17 (c) ~~Beginning July 1, 2017, or when ordered to do so by the~~
 18 ~~commission because the large electrical corporation has reached~~
 19 ~~its capacity limitation of subparagraph (B) of paragraph (4) of~~
 20 ~~subdivision (e) of Section 2827, all~~ *All* new eligible
 21 customer-generators *of a large electrical corporation* shall be
 22 subject to the standard contract or tariff developed by the
 23 commission and any rules, terms, and rates developed pursuant to
 24 subdivision ~~(b)~~. *(b) by no later than December 31, 2023.* There
 25 shall be no limitation on the amount of generating capacity or
 26 number of new eligible customer-generators entitled to receive
 27 service pursuant to the standard contract or tariff ~~after July 1, 2017.~~
 28 ~~An eligible customer-generator that has received service under a~~
 29 ~~net energy metering standard contract or tariff pursuant to Section~~
 30 ~~2827 that is no longer eligible to receive service shall be eligible~~
 31 ~~to receive service pursuant to the standard contract or tariff~~
 32 ~~developed by the commission pursuant to this section.~~ *tariff.*

33 (d) (1) *For purposes of this subdivision, the following terms*
 34 *have the following meanings:*

35 (A) *“Prior tariff” means a net energy metering tariff approved*
 36 *by the commission pursuant to either Section 2827 or this section*
 37 *as it read prior to the addition of this subdivision.*

38 (B) *“Replacement tariff” means the contract or tariff that the*
 39 *commission is required to develop and adopt for large electrical*
 40 *corporations by February 1, 2022, pursuant to subdivision (b).*

1 (2) An eligible customer-generator of a large electrical
2 corporation receiving service pursuant to a prior tariff shall be
3 transferred to receive service pursuant to the replacement tariff
4 no later than five years from the date that customer first received
5 service pursuant to the prior tariff, except that an eligible
6 customer-generator participating in the California Alternate Rates
7 for Energy program shall be transferred to the replacement tariff
8 no later than 10 years from the date that customer first received
9 service pursuant to the prior tariff.

10 (e) Notwithstanding paragraph (1) of subdivision (a) of Section
11 1720 of the Labor Code, construction of any renewable electrical
12 generation facility after December 31, 2023, that is to receive
13 service pursuant to the replacement tariff, shall constitute a public
14 works project for purposes of Article 2 (commencing with Section
15 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code. For
16 purposes of this subdivision, “replacement tariff” has the same
17 meaning as defined in subdivision (d).

18 SEC. 3. Section 2827.2 is added to the Public Utilities Code,
19 to read:

20 2827.2. (a) For purposes of this section, the following terms
21 have the following meanings:

22 (1) “Eligible customer-generator,” “large electrical
23 corporation,” and “renewable electrical generation facility” have
24 the same meanings as defined in Section 2827.

25 (2) “Prior tariff” means a net energy metering tariff approved
26 by the commission pursuant to either Section 2827 or 2728.1 as
27 it read on December 31, 2021.

28 (3) “Replacement tariff” means the contract or tariff that the
29 commission is required to develop and adopt for large electrical
30 corporations by February 1, 2022, pursuant to subdivision (b) of
31 Section 2827.1.

32 (b) If the commission fails to adopt a replacement tariff for large
33 electrical corporations by February 1, 2022, the commission shall
34 develop a net energy metering tariff for large electrical
35 corporations, to take effect no later than December 31, 2023, that
36 does all of the following:

37 (1) Cost-effectively achieves the policy goals and objectives of
38 the state described in Sections 454.51, 454.52, and 454.53, and
39 includes specific alternatives designed for growth among
40 residential customers in disadvantaged communities.

1 (2) *Is based on the costs and benefits of the renewable electrical*
2 *generation facility for nonparticipating ratepayers.*

3 (3) *Ensures that the nonparticipating ratepayer benefits of the*
4 *standard contract or tariff exceeds or is approximately equal to*
5 *the benefits to participating eligible customer-generators.*

6 (4) *Has interconnection fees and monthly fixed charges based*
7 *on the cost to interconnect and serve the eligible*
8 *customer-generator.*

9 (5) *Credits the eligible customer-generator for any electricity*
10 *exported to the electrical grid at a rate equal to the hourly*
11 *wholesale market rate applicable at the time of the export and at*
12 *the location of the eligible customer-generator.*

13 (c) *An eligible customer-generator of a large electrical*
14 *corporation receiving service pursuant to a prior tariff shall be*
15 *transferred to receive service pursuant to the tariff adopted*
16 *pursuant to subdivision (b) no later than 5 years from the date*
17 *that customer first received service pursuant to the prior tariff,*
18 *except that an eligible customer-generator participating in the*
19 *California Alternate Rates for Energy program shall be transferred*
20 *to the tariff adopted pursuant to subdivision (b) no later than 10*
21 *years from the date that customer first received service pursuant*
22 *to the prior tariff.*

23 (d) *Notwithstanding paragraph (1) of subdivision (a) of Section*
24 *1720 of the Labor Code, construction of any renewable electrical*
25 *generation facility after December 31, 2023, that is to receive*
26 *service pursuant to the tariff adopted pursuant to subdivision (b),*
27 *shall constitute a public works project for purposes of Article 2*
28 *(commencing with Section 1770) of Chapter 1 of Part 7 of Division*
29 *2 of the Labor Code.*

30 SEC. 4. (a) *For purposes of this section, the following terms*
31 *have the following meanings:*

32 (1) *“Prior tariff” means a net energy metering tariff approved*
33 *by the Public Utilities Commission pursuant to Section 2827.1 of*
34 *the Public Utilities Code, as it read prior to the operative date of*
35 *this section.*

36 (2) *“Replacement tariff” means the contract or tariff that the*
37 *Public Utilities Commission is required to develop and adopt for*
38 *large electrical corporations by February 1, 2022, pursuant to*
39 *subdivision (b) of Section 2827.1 of, or the tariff developed*
40 *pursuant to Section 2827.2 of, the Public Utilities Code.*

1 (b) *Until a replacement tariff is adopted and takes effect, all*
 2 *prior tariffs adopted by the Public Utilities Commission shall*
 3 *remain in operation.*

4 *SEC. 5. No reimbursement is required by this act pursuant to*
 5 *Section 6 of Article XIII B of the California Constitution because*
 6 *the only costs that may be incurred by a local agency or school*
 7 *district will be incurred because this act creates a new crime or*
 8 *infraction, eliminates a crime or infraction, or changes the penalty*
 9 *for a crime or infraction, within the meaning of Section 17556 of*
 10 *the Government Code, or changes the definition of a crime within*
 11 *the meaning of Section 6 of Article XIII B of the California*
 12 *Constitution.*

13 ~~SECTION 1. This act shall be known, and may be cited, as the~~
 14 ~~Solar Equity and Ratepayer Relief Act.~~

15 ~~SEC. 2. The Legislature finds and declares all of the following:~~

16 ~~(a) When the net energy metering program was initially enacted~~
 17 ~~in 1995 (Chapter 369 of the Statutes of 1995), it was reasonable~~
 18 ~~for most electrical service customers to subsidize the small minority~~
 19 ~~of customers who participated in the rooftop solar program. This~~
 20 ~~cost shift was just and reasonable because the fledgling rooftop~~
 21 ~~photovoltaic solar energy industry needed a public subsidy to~~
 22 ~~become established and to create a big enough market to drive~~
 23 ~~down costs.~~

24 ~~(b) Those goals have been accomplished. There are now one~~
 25 ~~million net energy metering customers with solar energy systems~~
 26 ~~with a generating capacity of nearly 10,000 megawatts. The cost~~
 27 ~~of solar energy systems has dropped more than 70 percent.~~

28 ~~(c) While the cost of solar energy systems has dropped, the~~
 29 ~~subsidy to the rooftop solar industry has grown to \$3,000,000,000~~
 30 ~~in 2021. This means that in 2021 customers without rooftop solar~~
 31 ~~are each spending more than \$200 per customer every year to~~
 32 ~~subsidize those with rooftop solar energy systems. The subsidy is~~
 33 ~~projected to grow to more than \$4,500,000,000 by 2030, or more~~
 34 ~~than \$300 per customer per year.~~

35 ~~(d) The subsidy is not cost effective for ratepayers. According~~
 36 ~~to the January 21, 2021, Net Energy Metering 2.0 Lookback Study~~
 37 ~~prepared at the request of the Public Utilities Commission, the~~
 38 ~~benefit-cost ratio of the current net energy metering program is~~
 39 ~~only 0.37, meaning that the costs to ratepayers not participating~~
 40 ~~in the program are almost triple the benefits.~~

1 ~~(e) This cost shift is unreasonably increasing electrical service~~
2 ~~rates for customers without rooftop solar energy systems.~~

3 ~~(f) This cost shift is economically unjust. The median income~~
4 ~~of those with rooftop solar energy systems using net energy~~
5 ~~metering is much higher than the median income of those who do~~
6 ~~not participate in the program.~~

7 ~~(g) According to a study published in the journal Nature~~
8 ~~Sustainability, even after accounting for household income, rooftop~~
9 ~~solar has been disproportionately installed in majority White~~
10 ~~communities compared to communities of color.~~

11 ~~(h) Section 451 of the Public Utilities Code requires that all~~
12 ~~charges by public utilities to customers be just and reasonable.~~
13 ~~Unjust or unreasonable charges are unlawful.~~

14 ~~(i) To remedy the growing unjust and unreasonable charges,~~
15 ~~the Legislature enacted Assembly Bill 327 (Chapter 611 of the~~
16 ~~Statutes of 2013). Certain provisions of that act required the~~
17 ~~commission to revise the net energy metering program so that~~
18 ~~nonparticipating customers do not subsidize rooftop solar energy~~
19 ~~system customers. The commission has not done so, resulting in~~
20 ~~a continuation of this unsustainable and unjust cost shift.~~

21 ~~(j) It is time to reduce rates for electrical service for all~~
22 ~~customers and particularly for lower income customers.~~

23 ~~(k) It is time to make California's net energy metering programs~~
24 ~~fairer to lower income customers. Customers who have been~~
25 ~~burdened by high rates and shut out of solar energy system~~
26 ~~programs deserve lower rates and more opportunities to participate~~
27 ~~in the solar energy system revolution.~~

28 ~~(l) This act replaces the current net energy metering structure~~
29 ~~for residential customers with a fairer net energy metering structure.~~

30 ~~(m) Rooftop solar customers will continue to see economic~~
31 ~~benefits from their solar energy systems in two ways. Rooftop~~
32 ~~solar customers will be paid the wholesale market rate for~~
33 ~~electricity they export to the electrical grid and will continue to~~
34 ~~self-supply their own usage, rather than buying electricity from~~
35 ~~their electrical utility or community choice aggregator. This will~~
36 ~~allow rooftop solar customers to continue to have lower electrical~~
37 ~~service bills than nonparticipating customers.~~

38 ~~(n) To the extent they obtain their electricity over the electrical~~
39 ~~grid, rooftop solar customers will also pay for their usage of the~~

1 transmission and distribution grid they rely on just like customers
2 that do not participate in net energy metering.

3 ~~(o) California must continue to expand solar generation to~~
4 ~~advance the state's environmental and climate change goals for~~
5 ~~the electrical industry. This act will enable California to increase~~
6 ~~solar generation by targeting subsidies to lower income customers,~~
7 ~~reduce rates for all customers, reduce rates even further for lower~~
8 ~~income customers, and enable lower income Californians to~~
9 ~~participate in solar energy system generation.~~

10 ~~(p) Targeted solar energy system subsidies will create tens of~~
11 ~~thousands of good jobs.~~

12 ~~SEC. 3.— Section 739.1 of the Public Utilities Code is amended~~
13 ~~to read:~~

14 ~~739.1.—(a) The commission shall continue a program of~~
15 ~~assistance to low-income electric and gas customers with annual~~
16 ~~household incomes that are no greater than 200 percent of the~~
17 ~~federal poverty guideline levels. Except as provided in paragraph~~
18 ~~(4) of subdivision (c), the cost of the program shall not be borne~~
19 ~~solely by any single class of customer. For one-person households,~~
20 ~~program eligibility shall be based on two-person household~~
21 ~~guideline levels. The program shall be referred to as the California~~
22 ~~Alternate Rates for Energy or CARE program. The commission~~
23 ~~shall ensure that the level of discount for low-income electric and~~
24 ~~gas customers correctly reflects the level of need.~~

25 ~~(b) The commission shall establish rates for CARE program~~
26 ~~participants, subject to both of the following:~~

27 ~~(1) That the commission ensure that low-income ratepayers are~~
28 ~~not jeopardized or overburdened by monthly energy expenditures,~~
29 ~~pursuant to subdivision (b) of Section 382.~~

30 ~~(2) That the level of the discount for low-income electricity and~~
31 ~~gas ratepayers correctly reflects the level of need as determined~~
32 ~~by the needs assessment conducted pursuant to subdivision (d) of~~
33 ~~Section 382.~~

34 ~~(c) In establishing CARE discounts for an electrical corporation~~
35 ~~with 100,000 or more customer accounts in California, the~~
36 ~~commission shall ensure all of the following:~~

37 ~~(1) The average effective CARE discount shall not be less than~~
38 ~~40 percent or more than 45 percent of the revenues that would~~
39 ~~have been produced for the same billed usage by non-CARE~~
40 ~~customers. The average effective discount determined by the~~

1 commission shall reflect any charges not paid by CARE customers,
2 including payments for the California Solar Initiative, payments
3 for the self-generation incentive program made pursuant to Section
4 379.6, payment of the separate rate component to fund the CARE
5 program made pursuant to subdivision (a) of Section 381, payments
6 made to the Department of Water Resources pursuant to Division
7 27 (commencing with Section 80000) of the Water Code, and any
8 discount in a fixed charge. The average effective CARE discount
9 shall be calculated as a weighted average of the CARE discounts
10 provided to individual customers.

11 (2) If an electrical corporation provides an average effective
12 CARE discount in excess of the maximum percentage specified
13 in paragraph (1), the electrical corporation shall not reduce, on an
14 annual basis, the average effective CARE discount by more than
15 a reasonable percentage decrease below the discount in effect on
16 January 1, 2013, or that the electrical corporation had been
17 authorized to place in effect by that date.

18 (3) The entire discount shall be provided in the form of a
19 reduction in the overall bill for the eligible CARE customer.

20 (4) Twenty-five percent of the CARE program shall be paid for
21 exclusively by the residential class of customers.

22 (d) The commission shall work with electrical and gas
23 corporations to establish penetration goals. The commission shall
24 authorize recovery of all administrative costs associated with the
25 implementation of the CARE program that the commission
26 determines to be reasonable, through a balancing account
27 mechanism. Administrative costs shall include, but are not limited
28 to, outreach, marketing, regulatory compliance, certification and
29 verification, billing, measurement and evaluation, and capital
30 improvements and upgrades to communications and processing
31 equipment.

32 (e) The commission shall examine methods to improve CARE
33 enrollment and participation. This examination shall include, but
34 need not be limited to, comparing information from CARE and
35 the Universal Lifeline Telephone Service (ULTS) to determine
36 the most effective means of utilizing that information to increase
37 CARE enrollment, automatic enrollment of ULTS customers who
38 are eligible for the CARE program, customer privacy issues, and
39 alternative mechanisms for outreach to potential enrollees. The
40 commission shall ensure that a customer consents prior to

1 enrollment. The commission shall consult with interested parties,
2 including ULTS providers, to develop the best methods of
3 informing ULTS customers about other available low-income
4 programs, as well as the best mechanism for telephone providers
5 to recover reasonable costs incurred pursuant to this section.

6 ~~(f) (1) The commission shall improve the CARE application~~
7 ~~process by cooperating with other entities and representatives of~~
8 ~~California government, including the California Health and Human~~
9 ~~Services Agency and the Secretary of California Health and Human~~
10 ~~Services, to ensure that all gas and electric customers eligible for~~
11 ~~public assistance programs in California that reside within the~~
12 ~~service territory of an electrical corporation or gas corporation,~~
13 ~~are enrolled in the CARE program. The commission may determine~~
14 ~~that gas and electric customers are categorically eligible for CARE~~
15 ~~assistance if they are enrolled in other public assistance programs~~
16 ~~with substantially the same income eligibility requirements as the~~
17 ~~CARE program. To the extent practicable, the commission shall~~
18 ~~develop a CARE application process using the existing ULTS~~
19 ~~application process as a model. The commission shall work with~~
20 ~~electrical and gas corporations and the Low-Income Oversight~~
21 ~~Board established in Section 382.1 to meet the low-income~~
22 ~~objectives in this section.~~

23 ~~(2) The commission shall ensure that an electrical corporation~~
24 ~~or gas corporation with a commission-approved program to provide~~
25 ~~discounts based upon economic need in addition to the CARE~~
26 ~~program, including a Family Electric Rate Assistance program,~~
27 ~~utilize a single application form, to enable an applicant to~~
28 ~~alternatively apply for any assistance program for which the~~
29 ~~applicant may be eligible. It is the intent of the Legislature to allow~~
30 ~~applicants under one program, that may not be eligible under that~~
31 ~~program, but that may be eligible under an alternative assistance~~
32 ~~program based upon economic need, to complete a single~~
33 ~~application for any commission-approved assistance program~~
34 ~~offered by the public utility.~~

35 ~~(g) It is the intent of the Legislature that the commission ensure~~
36 ~~CARE program participants receive affordable electric and gas~~
37 ~~service that does not impose an unfair economic burden on those~~
38 ~~participants.~~

39 ~~(h) The commission's program of assistance to low-income~~
40 ~~electric and gas customers shall, as soon as practicable, include~~

1 nonprofit group living facilities specified by the commission, if
 2 the commission finds that the residents in these facilities
 3 substantially meet the commission's low-income eligibility
 4 requirements and there is a feasible process for certifying that the
 5 assistance shall be used for the direct benefit, such as improved
 6 quality of care or improved food service, of the low-income
 7 residents in the facilities. The commission shall authorize utilities
 8 to offer discounts to eligible facilities licensed or permitted by
 9 appropriate state or local agencies, and to facilities, including
 10 women's shelters, hospices, and homeless shelters, that may not
 11 have a license or permit but provide other proof satisfactory to the
 12 utility that they are eligible to participate in the program.

13 (i) (1) In addition to existing assessments of eligibility, an
 14 electrical corporation may require proof of income eligibility for
 15 those CARE program participants whose electricity usage, in any
 16 monthly or other billing period, exceeds 400 percent of baseline
 17 usage. The authority of an electrical corporation to require proof
 18 of income eligibility is not limited by the means by which the
 19 CARE program participant enrolled in the program, including if
 20 the participant was automatically enrolled in the CARE program
 21 because of participation in a governmental assistance program. If
 22 a CARE program participant's electricity usage exceeds 400
 23 percent of baseline usage, the electrical corporation may require
 24 the CARE program participant to participate in the Energy Savings
 25 Assistance Program (ESAP), which includes a residential energy
 26 assessment, in order to provide the CARE program participant
 27 with information and assistance in reducing their energy usage.
 28 Continued participation in the CARE program may be conditioned
 29 upon the CARE program participant agreeing to participate in
 30 ESAP within 45 days of notice being given by the electrical
 31 corporation pursuant to this paragraph. The electrical corporation
 32 may require the CARE program participant to notify the utility of
 33 whether the residence is rented, and if so, a means by which to
 34 contact the landlord, and the electrical corporation may share any
 35 evaluation and recommendation relative to the residential structure
 36 that is made as part of an energy assessment, with the landlord of
 37 the CARE program participant. Requirements imposed pursuant
 38 to this paragraph shall be consistent with procedures adopted by
 39 the commission.

1 ~~(2) If a CARE program participant's electricity usage exceeds~~
 2 ~~600 percent of baseline usage, the electrical corporation shall~~
 3 ~~require the CARE program participant to participate in ESAP,~~
 4 ~~which includes a residential energy assessment, in order to provide~~
 5 ~~the CARE program participant with information and assistance in~~
 6 ~~reducing their energy usage. Continued participation in the CARE~~
 7 ~~program shall be conditioned upon the CARE program participant~~
 8 ~~agreeing to participate in ESAP within 45 days of a notice made~~
 9 ~~by the electrical corporation pursuant to this paragraph. The~~
 10 ~~electrical corporation may require the CARE program participant~~
 11 ~~to notify the utility of whether the residence is rented, and if so, a~~
 12 ~~means by which to contact the landlord, and the electrical~~
 13 ~~corporation may share any evaluation and recommendation relative~~
 14 ~~to the residential structure that is made as part of an energy~~
 15 ~~assessment, with the landlord of the CARE program participant.~~
 16 ~~Following the completion of the energy assessment, if the CARE~~
 17 ~~program participant's electricity usage continues to exceed 600~~
 18 ~~percent of baseline usage, the electrical corporation may remove~~
 19 ~~the CARE program participant from the program if the removal~~
 20 ~~is consistent with procedures adopted by the commission. Nothing~~
 21 ~~in this paragraph shall prevent a CARE program participant with~~
 22 ~~electricity usage exceeding 600 percent of baseline usage from~~
 23 ~~participating in an appeals process with the electrical corporation~~
 24 ~~to determine whether the participant's usage levels are legitimate.~~

25 ~~(3) A CARE program participant in a rental residence shall not~~
 26 ~~be removed from the program in situations where the landlord is~~
 27 ~~nonresponsive when contacted by the electrical corporation or~~
 28 ~~does not provide for ESAP participation.~~

29 ~~SEC. 4. Section 2827 of the Public Utilities Code is repealed.~~

30 ~~SEC. 5. Section 2827 is added to the Public Utilities Code, to~~
 31 ~~read:~~

32 ~~2827. (a) As used in this section, the following terms have the~~
 33 ~~following meanings:~~

34 ~~(1) "Customer self-generator" means a residential, commercial,~~
 35 ~~industrial, or agricultural customer of an electrical corporation,~~
 36 ~~who uses a renewable electrical generation facility, or a~~
 37 ~~combination of those facilities, that is located behind the customer's~~
 38 ~~meter, and is interconnected and operates in parallel with the~~
 39 ~~electrical grid, and whose capacity is sized to primarily offset part~~
 40 ~~or all of the customer's own electrical requirements, but which~~

1 shall not exceed one megawatt unless, as of December 31, 2021,
2 it was eligible for, and receiving service pursuant to, a net energy
3 metering contract or tariff approved by the commission pursuant
4 to former Section 2827 or former Section 2827.1, as those sections
5 existed on that date.

6 ~~(2) “Gross electricity usage” means that total usage of a~~
7 ~~customer self-generator that is served by either imports from the~~
8 ~~grid or production from an onsite renewable electrical generation~~
9 ~~facility.~~

10 ~~(3) “Renewable electrical generation facility” means a facility~~
11 ~~that generates electricity from a renewable source listed in~~
12 ~~paragraph (1) of subdivision (a) of Section 25741 of the Public~~
13 ~~Resources Code. A small hydroelectric generation facility is not~~
14 ~~an eligible renewable electrical generation facility if it will cause~~
15 ~~an adverse impact on instream beneficial uses or cause a change~~
16 ~~in the volume or timing of streamflow.~~

17 ~~(b) The commission shall require all electrical corporations to~~
18 ~~submit by advice letter a standard net energy metering contract or~~
19 ~~tariff that shall take effect beginning on July 1, 2022, and apply~~
20 ~~to all customer self-generators. The standard contract or tariff shall~~
21 ~~replace all prior standard contracts and tariffs and shall provide~~
22 ~~for all of the following:~~

23 ~~(1) The customer self-generator shall be credited for any~~
24 ~~electricity exported by the customer self-generator to the~~
25 ~~distribution system or transmission system, as applicable, at a rate~~
26 ~~equal to the hourly wholesale market rate applicable at the time~~
27 ~~of the export and the location of the customer self-generator. These~~
28 ~~credits shall be applied to the customer self-generator’s other bill~~
29 ~~obligations.~~

30 ~~(2) The customer self-generator shall be charged for electricity~~
31 ~~imported by the customer self-generator from the distribution~~
32 ~~system or transmission system, as applicable, at a rate equal to the~~
33 ~~otherwise applicable tariff for customers in the same class of~~
34 ~~service who are not customer self-generators.~~

35 ~~(3) Notwithstanding paragraphs (1) and (2), for customer~~
36 ~~self-generators taking energy supply service from a community~~
37 ~~choice aggregator, the aggregator may determine to provide credits~~
38 ~~and charges in different amounts.~~

39 ~~(4) Notwithstanding the limitations of subdivision (f) of Section~~
40 ~~739.9, the customer self-generator shall be charged a monthly grid~~

1 access charge equal to the costs attributable to the customer's gross
2 electricity usage billed at the otherwise applicable rates for all
3 elements of retail service except for generation, including all
4 nonbypassable charges, such as those authorized by Sections 366.1,
5 366.2, and 380, minus the amount the customer paid for
6 nongeneration elements of retail service paid as part of the rate for
7 imported electricity.

8 (5) Notwithstanding paragraphs (1) through (4), inclusive, any
9 customer self-generator that previously began service under a net
10 energy metering contract or tariff prior to January 1, 2022, may
11 continue to take service under that contract or tariff as follows

12 (A) If the original net energy metering interconnection was prior
13 to January 1, 2014, a customer self-generator may continue to take
14 service under that contract or tariff until July 1, 2022.

15 (B) If the original net energy metering interconnection was after
16 January 1, 2014, and prior to January 1, 2017, a customer
17 self-generator may continue to take service under that contract or
18 tariff until July 1, 2023.

19 (C) If the original net energy metering interconnection was after
20 January 1, 2017, and prior to January 1, 2022, a customer
21 self-generator may continue to take service under that contract or
22 tariff until July 1, 2024.

23 (6) Notwithstanding paragraphs (1) to (4), inclusive, a
24 nonresidential customer self-generator that pays a demand charge
25 may take service under the tariff for customer self-generators that
26 existed as of December 31, 2021. The commission may revise the
27 tariff, if the revised tariff requires the customer self-generator to
28 pay a demand charge or grid benefit charge that ensures that there
29 are no costs shifted from that customer to any other customers or
30 customer classes.

31 (e) (1) Beginning July 1, 2022, the commission shall do all the
32 following:

33 (A) Annually allocate up to three hundred million dollars
34 (\$300,000,000) statewide, divided proportionately among the
35 electrical corporations based on the number of residential customers
36 of each electrical corporation, which shall be used for residential
37 customer self-generators who both participate in the California
38 Alternative Rates for Energy program implemented pursuant to
39 Section 739.1 and live in multifamily housing or in underserved
40 communities, as defined in Section 1601, to discount the initial

1 purchase cost for the renewable electrical generation facility. The
 2 discount to the initial purchase cost shall be designed to maximize
 3 the number of participating customers. The renewable electrical
 4 generation facilities serving these customer self-generators shall
 5 be newly constructed, behind the customer meter, and located on
 6 or near their housing.

7 (B) Annually allocate up to three hundred million dollars
 8 (\$300,000,000) statewide, divided proportionately among the
 9 electrical corporations based on the number of residential customers
 10 of each electrical corporation, which shall be used to eliminate
 11 any rate premium required and provide an additional 10-percent
 12 discount for residential customers who participate in the California
 13 Alternative Rates for Energy program implemented pursuant to
 14 Section 739.1 to participate in a 100-percent solar option under
 15 the Green Tariff Shared Renewables Program provided in Section
 16 2833. The premium elimination and 10-percent discount shall be
 17 in addition to the discount provided in Section 739.1. All renewable
 18 electric generating facilities supplying electricity pursuant to this
 19 subparagraph shall be newly constructed to supply electricity for
 20 this program and shall meet the product content category
 21 requirements of paragraph (1) of subdivision (b) of Section 399.16
 22 in addition to the requirement of subdivision (e) of Section 2833.
 23 The facility size and program size limits in subdivisions (b) and
 24 (d) of Section 2833 shall not apply to participation in the Green
 25 Tariff Shared Renewables Program under this subparagraph. Funds
 26 shall be allocated pursuant to this subparagraph notwithstanding
 27 subdivision (q) of Section 2833.

28 (C) Annually allocate up to five hundred million dollars
 29 (\$500,000,000) statewide, divided proportionately among the
 30 electrical corporations based on the number of residential customers
 31 of each electrical corporation, which shall be used for facilities
 32 serving public buildings to discount the initial purchase cost for
 33 the renewable electrical generation facility. The discount to the
 34 initial purchase cost shall be designed to maximize the number of
 35 facilities served. The renewable electrical generation facilities
 36 serving these customer self-generators shall be newly constructed,
 37 behind the customer meter, and located on or near the public
 38 building. For purposes of this subparagraph, a public building is
 39 any building owned by the state or a political subdivision of the

1 state, as defined in subdivision (a) of Section 8698 of the
2 Government Code.

3 ~~(D) Annually allocate up to 5 percent of the funds described in
4 this paragraph to marketing and customer education designed to
5 maximize participation in these programs.~~

6 ~~(E) Authorize the electrical corporations to collect the projected
7 annual amounts used to implement this paragraph as a
8 nonbypassable charge on distribution. Any revenue authorized and
9 collected but not used for this purpose shall be trued up and
10 credited back to distribution customers of the electrical corporation.~~

11 ~~(2) Notwithstanding paragraph (1) of subdivision (a) of Section
12 1720 of the Labor Code, construction of any renewable electrical
13 generation facility to supply power for the programs described in
14 paragraph (1) shall constitute a public works project for purposes
15 of Article 2 (commencing with Section 1770) of Chapter 1 of Part
16 7 of Division 2 of the Labor Code.~~

17 ~~(d) (1) Every electrical corporation shall ensure that requests
18 for establishment of a customer self-generator interconnection are
19 processed in a time period not exceeding that for similarly situated
20 customers requesting new electric service, but not to exceed 30
21 working days from the date it receives a completed application
22 form for customer self-generator service, including a signed
23 interconnection agreement from a customer self-generator and the
24 electric inspection clearance from the governmental authority
25 having jurisdiction.~~

26 ~~(2) Every electrical corporation shall ensure that requests for
27 an interconnection agreement from a customer self-generator are
28 processed in a time period not to exceed 30 working days from
29 the date it receives a completed application form from the customer
30 self-generator for an interconnection agreement.~~

31 ~~(3) If an electrical corporation is unable to process a request
32 within the allowed time pursuant to paragraph (1) or (2), it shall
33 notify the customer self-generator and the commission of the reason
34 for its inability to process the request and the expected completion
35 date.~~

36 ~~(e) (1) If a customer participates in direct transactions pursuant
37 to paragraph (1) of subdivision (b) of Section 365, or Section 365.1,
38 with an electric service provider that does not provide distribution
39 service for the direct transactions, the electrical corporation that
40 provides distribution service for the eligible customer-generator~~

1 is not obligated to provide the standard contract or tariff provided
2 in this section to the customer.

3 (2) ~~If a customer participates in direct transactions pursuant to
4 paragraph (1) of subdivision (b) of Section 365 or 365.1 with an
5 electric service provider, and the customer is a customer
6 self-generator, the electrical corporation that provides distribution
7 service for the direct transactions may recover from the customer's
8 electric service provider the incremental costs of metering and
9 billing service related to the standard contract or tariff provided
10 in this section in an amount set by the commission.~~

11 (f) ~~A renewable electrical generation facility used by a customer
12 self-generator shall meet all applicable safety and performance
13 standards established by the National Electrical Code, the Institute
14 of Electrical and Electronics Engineers, and accredited testing
15 laboratories, including Underwriters Laboratories Incorporated
16 and, where applicable, rules of the commission regarding safety
17 and reliability.~~

18 (g) ~~A customer self-generator shall reimburse the Department
19 of Water Resources for all charges that would otherwise be
20 imposed on the customer's gross electricity usage by the
21 commission to recover bond-related costs pursuant to an agreement
22 between the commission and the Department of Water Resources
23 pursuant to Section 80110 or Division 28 (commencing with
24 Section 80500) of the Water Code, as well as the costs of the
25 department equal to the share of the department's estimated net
26 unavoidable power purchase contract costs attributable to the
27 customer. The commission shall ensure that the charges are
28 nonbypassable.~~

29 (h) ~~The commission may authorize distributed resources located
30 on the customer side of the meter to participate in any wholesale
31 energy market transactions permitted by federal or state law.
32 Distributed resources may be aggregated for this purpose.
33 Notwithstanding Section 769, the commission shall not authorize
34 or permit any distributed resources located on the customer side
35 of the meter to be used to defer investment by an electrical
36 corporation in the distribution system. For purposes of this
37 subdivision, "distributed resources" has the same meaning as in
38 subdivision (a) of Section 769.~~

39 SEC. 6. ~~Section 2827.1 of the Public Utilities Code is repealed.~~

40 SEC. 7. ~~Section 2827.7 of the Public Utilities Code is repealed.~~

1 ~~SEC. 8. No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
6 ~~for a crime or infraction, within the meaning of Section 17556 of~~
7 ~~the Government Code, or changes the definition of a crime within~~
8 ~~the meaning of Section 6 of Article XIII B of the California~~
9 ~~Constitution.~~

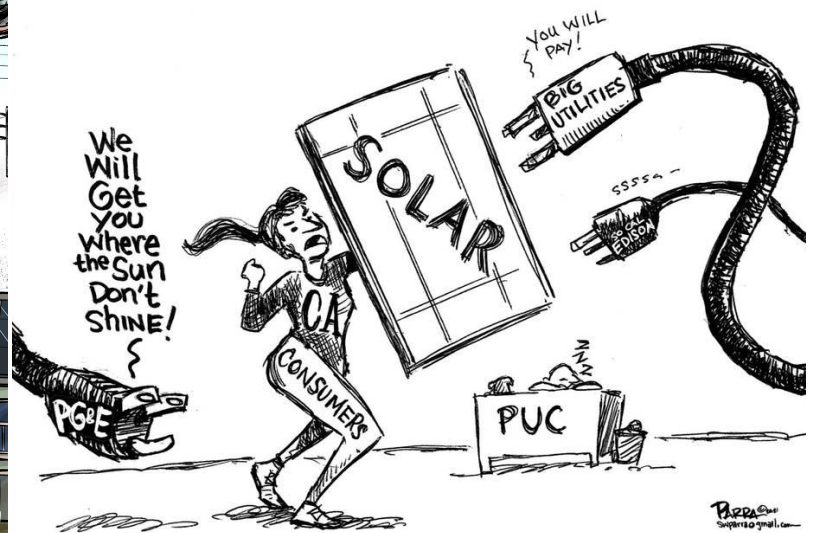
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Fact Sheet:

AB 1139 (Gonzalez) is a Utility Profit Grab to Kill Rooftop Solar Just When It Is Taking Off In Working and Middle Class Communities



Credit: Ben Slyngslad



Credit: Fresno Bee, SW Parra

Consumers suffer when power is concentrated in the hands of a few. This was the lesson learned from the 2000 electricity crisis and out of that grew California's commitment to consumer solar and localized energy. Over the past two decades, hundreds of thousands of Californians have invested in rooftop solar to combat climate change, lower energy bills, and invest in local communities.

The state encouraged these investments via policies like net metering, which lets solar users share their extra energy with their neighbors for a bill credit.

Today, utilities are threatened by this people-centered movement because it cuts at their profits. Rooftop solar is no longer niche but an increasingly affordable investment embraced by working class communities as a no-brainer solution to wildfires, blackouts, and rate increases. Utilities see this trend and want to end it by coming after the most powerful policy driving rooftop solar: net metering.

AB 1139 will kill rooftop solar by establishing, as the default policy of the State of California:

- A monthly fee estimated at \$70/month for an average home solar system. [1]
- An 80% reduction in the credit given to solar users for surplus energy sent back to the grid. [2]
- Drastic rule changes applied to all existing solar users within 1 to 10 years, reversing a well-established principle protecting consumer investments for 20 years. Such a policy not only harms existing consumers, including schools, low-income affordable housing, and farms, but it erodes consumer confidence in government-backed programs on clean energy. [3]

AB 1139 hurts working families the most

- The fastest growing segment of California's rooftop solar market is in working class communities. Today, over 150,000 solar roofs serve customers in the CARE discount program. An additional 30,000 rental units serving more than 100,000 people at multifamily affordable housing projects are under development thanks to net metering. These low-income consumers will be greatly harmed by AB 1139, in some cases paying more for their energy than if they had never invested in solar. [4]

CARE Solar Customer Monthly Savings Before and After AB 1139 [5]

	SDG&E	SCE	PG&E
Today	\$178	\$122	\$139
Under AB 1139	\$56	\$37	\$45
Percentage Drop	69%	70%	68%
Years to pay off solar in bill savings	40-50+ years	> 50 years	> 50 years

AB 1139 is premised on a utility-invented falsehood - the rooftop solar "cost shift". The real cost shift is wildfires, power outages, the long-distance transmission lines that cause them, as well as the lack of government accountability on those responsible.

- This year alone, ratepayers will be charged more than \$9 billion for power line maintenance and wildfire prevention.
- PG&E's transmission charges to ratepayers increased 68% from 2016 to 2021. Half of these charges were self-approved by PG&E.
- Utilities profit by building more and more expensive power lines. The state's investor-owned utilities charged ratepayers nearly \$20 billion in transmission line projects between 2010 and 2019 and collected more than \$20 billion in profits over a similar time period. [6]

Rooftop solar reduces costs for all ratepayers. This saves everyone money, but also cuts utility profits. That's what this is all about.

- In 2018 alone, rooftop solar and energy efficiency prompted the state to scale back more than 20 power line projects, saving \$2.6 billion.
- Maximizing rooftop solar could save American households nearly \$500 billion over the next thirty years, while doubling down on our overreliance on long-distance power lines could cost Americans \$350 billion. [7]
- Reducing grid costs cut against utility profits, even if it saves all ratepayers. As the CPUC recently outlined, "IOUs are inherently incentivized to make investments to drive an increase in their rate base and therefore, their profitability." [8]

Utilities care about profits, not equity.

- Utilities have lobbied against every major proposal to help more marginalized communities adopt solar and battery storage: affordable housing solar incentives, community solar, microgrids, on-bill financing and more. [9]

More solar, not less

- Lawmakers can best help working communities by rejecting AB 1139 and embracing proposals to bring rooftop solar and battery storage to millions more Californians. More affordable rooftop solar, not less, is the path to helping Californians struggling under the burden of skyrocketing energy bills, power outages and wildfires. [10]

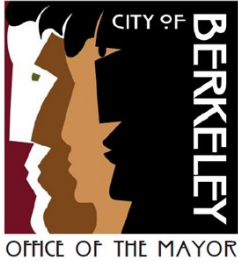
[1] Link to [AB 1139](#); Section 3(b)(4) would require the state to charge solar users a "fixed charges based on the cost to...serve the eligible customer-generator". The precedent for how the CPUC would calculate this fee is to charge transmission and distribution charges for all the energy generated and consumed on-site by the solar user. In other words, the solar user who becomes more energy efficient, consuming less energy from the grid, would be charged a fee to cover what they would otherwise have bought from the utility. We estimate this fee to be approximately \$70/month for a typical 6 kW solar system. The larger the system, the higher the fee. Non-residential customers would be charged the fee as well as residential.

Net Metering Bill credit: Section 3(b)(5)

[2] Section 3 (b)(5) The average credit for surplus solar power is valued at 23 cents per kilowatt-hour. The bill would require "Credits ... for any electricity exported to the electrical grid at a rate equal to the hourly wholesale market rate..." The average hourly wholesale market rate for electricity is around 3 cents.

[3] Section 2(b)(6) & 2(d)(B)(2)

- [4] Neighborhood level adoption data: The Berkeley Lab: [Solar Demographics Tool](#) and [Income Trends among U.S. Residential Rooftop Solar Adopters](#); [CARE data](#)
- [5] Based on a 6 kWh system and a reduction in NEM credits from 17 cents to 3 cents per kWh
- [6] CA Public Utilities Commission: [Utility Costs and Affordability of the Grid of the Future](#) (\$20 billion in transmission costs from 2010-19 pp. 39, Table 11; \$4.336 in 2021 transmission spending and rate of increase p. 36; 1\$/3.50 profit p. 37). \$20B profit figure from utility 10-K filings, [itemized here](#).
- [7] [Utility Dive](#) breakdown of this CA Independent Systems Operator report; Vibrant Clean Energy: [Why Local Solar for All Costs Less](#)
- [8] The Averch-Johnson effect described on page 24 of the CPUC's "Utility Costs and Affordability of the Grid of the Future."
- [9] Partial list of initiatives utilities lobbied to kill or defang: Affordable housing solar incentives ([AB 693](#) - Eggman, 2015); Low-income feed in tariff ([AB 1990](#) - Fong); Community solar ([SB 843](#) - Wolk, 2013; [SB 43](#) - Wolk, 2013; CPUC implementation); Microgrids (SB 1339, CPUC implementation)
- [10] Save California Solar: [Building Blocks to Equitable Solar & Storage Growth](#)



CONSENT CALENDAR
June 1, 2021

To: Members of the City Council
From: Mayor Jesse Arreguín
Subject: Referral to the FY 22 Budget Process: Continuing Anti-Displacement Programs

RECOMMENDATION

Refer to \$900,000 to the FY 2022 Budget Process for continued funding of the following anti-displacement programs (launched in 2017) with the proposed funding source from General Fund tax receipts from the Measure U1 gross receipts tax:

- 1) Housing Retention Program (administered by the Eviction Defense Center EDC): \$250,000
- 2) Legal Counseling, Services and Problem Solving for Extremely-Low, Very-Low, Low and Moderate Income Tenants (\$275,000 each to the East Bay Community Law Center and EDC): \$550,000
- 3) Flexible Housing Subsidies for Homelessness Prevention: \$100,000

BACKGROUND

Housing Retention Program/COVID Emergency Rental Assistance

The Housing Retention Program is an essential tool in preventing tenant displacement and preserving Berkeley’s racial, economic and cultural diversity. In 1993, the City of Berkeley began the Homeless Prevention Grants Program, which in 2008 became the Housing Retention Program (HRP).

The program was reconstituted and bolstered in 2017 with an increased allocation of \$250,000 annually which was continued in the FY 2019, FY 2020 and FY 2021 budgets.

At the onset of the COVID-19 pandemic and resulting shelter in place, the City Council launched the Berkeley Relief Fund and allocated \$3 Million to initially capitalize the fund, to be split three ways between rental assistance, grants for arts non-profits and grants to small businesses. Tenant rent assistance was additionally funded \$1,000,000 to expand the Housing Retention Program during this emergency with an additional \$900,000 added as private donations came in through the East Bay Community Foundation. Approved households were eligible to receive up to \$5,000 as a one-time grant, and an additional one-time grant of up to \$10,000 during the specified COVID-19 emergency. Additional funding was provided through CBDG funding from the Federal Government. The fund has been exhausted and to date the program has helped:

Initial Funding:	\$1,018,654	173 households
EBCF private donations:	\$ 933,610	142 households
CDBG	\$1,800,000	124 households (135 total, 124 unduplicated)
Total:		439 unduplicated households as of 4/29/2021

CONSENT CALENDAR

Referral to the FY 22 Budget Process:
Continuing Anti-Displacement Programs

June 1, 2021

There is currently an extensive waiting list of households that require assistance.

The pandemic has left low-income households in massive debt that has accrued over a 15-month period, with no end in sight. Additionally, funding from the Alameda County ERAP that pays overdue utility bills and wifi, will be exhausted. Utilizing Tenant Preservation Fund funds to pay these other related COVID-19 impact costs, that could lead to eviction, can help tenants retain their housing.

Legal Counseling, Services and Problem Solving for Extremely-Low, Very-Low, Low and Moderate Income Tenants

The unprecedented rental housing crisis has resulted in increased displacement and eviction of low-income residents in Berkeley. One of the priorities of the City Council is to provide services to low-income households to prevent displacement.

At the June 25, 2019 City Council Meeting, the FY 2020-21 Biennial Budget was approved, allocating \$900,000 each year for anti-displacement programs. Of this, \$550,000 will be used for eviction defense and housing counseling each year. Council initially authorized an annual funding of \$300,000 for this purpose for both the 2018 and 2019 Fiscal Years at its July 25, 2017 meeting. These funds were transferred to the Rent Board whose staff administered, monitored, and reported to Council regarding the program funding during those years.

When this item was initially considered in 2017, Council expressed interest in expanding the scope of services provided by Eviction Defense Center (EDC) and East Bay Community Law Center (EBCLC) under their existing Rent Board Contracts to provide counseling and advocacy to tenants seeking to avoid displacement by exercise of rights afforded by local law other than the Rent Ordinance. The funding provided by the Rent Board is not adequate to achieve the Council's objective of fully preventing displacement during the current housing emergency, when low and middle-income tenants are particularly vulnerable to displacement if not provided with sufficient and competent legal defense. There is also a need for additional funding to provide counseling and representation to tenants relating to city ordinances such as the Tenant Protection Ordinance and Tenant Buyout Ordinance. Both EDC and EBCLC have once again requested \$275,000 to cover this expanded scope of work to serve the broadest number of Berkeley tenants.

Flexible Housing Subsidy Pool

In June 2017, the City Council established the Flexible Housing Subsidy Pool as a new anti-displacement tool. These funds can be used for a variety of purposes, including emergency rental subsidies for people who are facing an eviction. Since the fund was established it has helped tenants with emergency funding of up to \$1,500 per incident and \$5,000 maximum per household in grants. The continuation of this pool of funds will help those tenant that have a need for emergency help to keep them from losing their home.

CONSENT CALENDAR

Referral to the FY 22 Budget Process:
Continuing Anti-Displacement Programs

June 1, 2021

FINANCIAL IMPLICATIONS

Total allocation of \$900,000 from General Fund revenues. It is projected that at least \$6 Million in General Fund tax revenues will be coming from the Measure U1 gross receipts tax on rental property. Since 2017, the City has funded these three programs out of Measure U1 tax receipts, and it is recommended that the Council continue this funding for another fiscal year.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT

Mayor Jesse Arreguín 510-981-7100

CONSENT CALENDAR

June 1, 2021

To: Members of the City Council

From: Mayor Jesse Arreguín

SUBJECT: Referral to the FY 22 Budget Process: Landlord Incentives for Section 8 Participation

RECOMMENDATION

Refer to the Fiscal Year 2022 Budget Process, \$100,000 of General Fund revenues to replenish and augment funding for the Section 8 Landlord Incentive Program currently offered by the Berkeley Housing Authority.

BACKGROUND

During the FY 2018 budget process, the City Council authorized \$50,000 to the Berkeley Housing Authority (BHA) to be used to provide incentives to Landlords to lease units to Section 8 tenants. The funds were disbursed to BHA in June of 2020. This funding could *only* be used for repairs to ready a unit for occupancy by a Section 8 tenant, either letting or re-letting of units to those searching for housing in Berkeley utilizing a Housing Choice Voucher (Section 8). The funds are not used to incentivize units in luxury buildings, or those with institutional ownership, or with long term contracts with BHA, guaranteeing HAP subsidy, such as the Project-based or Mod Rehab./SRO properties.

Beginning July 1, 2020, BHA began promoting the Landlord Incentive Unit Turnover program. BHA reached out to the Berkeley Property Owners Association (BPOA), and landlords currently participating with BHA who may have additional vacancies, to promote these incentives. Over the past ten months this program will have assisted 33 landlords by expanding the pool of units that house families with Section 8 housing subsidy in the City of Berkeley. BHA is working on processing and reviewing applications/receipts and expects the funds from the initial \$50,000 to be fully depleted by the end of June 2021.

CONSENT CALENDAR

June 1, 2021

Referral to the FY 21/22 Budget Process:
Landlord Incentives for Section 8 Tenants

Currently there are 58 Section 8 families/tenants that are seeking housing within Berkeley, with more new voucher holder households coming online regularly. Providing additional funds to the Landlord Incentive pool would expand the Section 8 opportunities within the City for those with incomes between 0% - 50% of the Area Median Income, and who would not be able to afford living in Berkeley without the benefit of deep rental subsidy that BHA's Housing Choice Vouchers provide.

The maximum award for the Unit Turnover Program is \$1,500; with a \$100,000 allocation to BHA, an additional 66 units could be incentivized to house our most vulnerable populations.

FINANCIAL IMPLICATIONS

\$100,000 from the General Fund

ENVIRONMENTAL SUSTAINABILITY

The Housing Choice Voucher Program (Section 8) is instrumental in helping our unhoused population off of our streets and into long term subsidized housing.

CONTACT

Mayor Jesse Arreguín, 510-981-7100



Office of the Mayor

CONSENT CALENDAR

June 1, 2021

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín (Author), Councilmembers Ben Bartlett, Kate Harrison, and Terry Taplin (Co-Sponsors)

Subject: Support – SB 617, the Solar Access Act

RECOMMENDATION

Adopt a Resolution in support of SB 617 (Wiener): Residential solar energy systems: permitting. Send a copy of the Resolution to Senators Wiener and Skinner, Assemblymember Wicks, and Governor Newsom

BACKGROUND

Last year, the National Renewable Energy Laboratory (NREL), under contract to the federal Department of Energy, developed software called SolarAPP+ that processes permits for solar and solar-plus-storage systems. SolarAPP+ asks the contractor a series of questions to verify the solar system's design is safe, and then issues a permit automatically. SolarAPP+, developed in partnership with building safety experts and the solar industry, helps local governments and installers operate more efficiently without compromising the safety or quality of solar systems. SolarAPP+ is free for cities and counties, integrates with their existing software systems, and can be adjusted to the characteristics of the area (e.g., snowfall). Jurisdictions, such as San Jose and Los Angeles have deployed automated permitting software similar to SolarAPP+, with great success. San Jose saw a six-fold increase in solar systems installed after they adopted automated permitting.

California needs to accelerate its transition to clean energy in order to increase local resilience and meet its climate emissions targets by 2045. While rooftop solar systems have been a major driving force behind California's ongoing transition, the potential growth of these systems has been diminished by administrative burdens. Across the state, rooftop solar and storage permitting processes are often inefficient and time-consuming, and can add thousands of dollars to the cost of installing solar. As a result, fewer Californians add solar to their roofs who otherwise would. Meanwhile, the workload for building department officials continues to increase, and government staff are increasingly unable to manage the permitting application process in a timely fashion. Relief is needed across the board, and the technology to accomplish that is now widely available, and should be implemented as quickly as possible.

SB 617 is supported by numerous environmental and other community organizations, including SPUR, Environment California, the Sierra Club, the Center for Sustainable

Energy, the Local Government Commission, the Housing Action Coalition, and Grid Alternatives.

FINANCIAL IMPLICATIONS

Limited staff time associated with sending a letter to designated recipients.

ENVIRONMENTAL SUSTAINABILITY

No direct identifiable environmental sustainability savings are associated with this item. However, the passage of SB 617 is likely to lead to a more rapid deployment of rooftop-scale solar and storage in the City of Berkeley, which is a key strategy in the realization of Berkeley's Climate Action goals.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
2. Text of SB 617
3. SB617 Fact Sheet

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

IN SUPPORT OF SB 617, THE SOLAR ACCESS ACT

WHEREAS, Last year, the National Renewable Energy Laboratory (NREL), under contract to the federal Department of Energy, developed software called SolarAPP+ that processes permits for solar and solar-plus-storage systems; and

WHEREAS, SolarAPP+ asks the contractor a series of questions to verify the solar system's design is safe, and then issues a permit automatically; and

WHEREAS, SolarAPP+, developed in partnership with building safety experts and the solar industry, helps local governments and installers operate more efficiently without compromising the safety or quality of solar systems; and

WHEREAS, SolarAPP+ is free for cities and counties, integrates with their existing software systems, and can be adjusted to the characteristics of the area (e.g., snowfall); and

WHEREAS, California needs to accelerate its transition to clean energy in order to increase local resilience and meet its climate emissions targets by 2045; and

WHEREAS, While rooftop solar systems have been a major driving force behind California's ongoing transition, the potential growth of these systems has been diminished by administrative burdens; and

WHEREAS, Across the state, rooftop solar and storage permitting processes are often inefficient and time-consuming, and can add thousands of dollars to the cost of installing solar; and

WHEREAS, As a result, fewer Californians add solar to their roofs who otherwise would; and

WHEREAS, Meanwhile, the workload for building department officials continues to increase, and government staff are increasingly unable to manage the permitting application process in a timely fashion; and

WHEREAS, Relief is needed across the board, and the technology to accomplish that is now widely available, and should be implemented as quickly as possible.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 617, the Solar Access Act.

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

AMENDED IN SENATE MAY 4, 2021
AMENDED IN SENATE APRIL 19, 2021
AMENDED IN SENATE APRIL 12, 2021
AMENDED IN SENATE APRIL 5, 2021
AMENDED IN SENATE MARCH 18, 2021

SENATE BILL

No. 617

Introduced by Senator Wiener
(Principal coauthor: Assembly Member Chiu)
(Coauthors: Senators Becker, Newman, and Stern)
(Coauthor: Assembly Member Robert Rivas)

February 18, 2021

An act to add Section 65850.52 to the Government Code, relating to solar energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 617, as amended, Wiener. Residential solar energy systems: permitting.

Existing law requires a city or county to administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Existing law requires every city, county, or city and county, to develop a streamlined permitting process for the installation of small residential rooftop solar energy systems, as that term is defined. Existing law prescribes and limits permit fees that a city or county may charge for a residential and commercial solar energy system.

Existing law grants the Public Utilities Commission (PUC) regulatory authority over public utilities, including electrical corporations, as

defined. Decisions of the PUC adopted the California Solar Initiative, which is administered by electrical corporations and subject to the PUC's supervision. Existing law requires the PUC and the State Energy Resources Conservation and Development Commission (Energy Commission) to undertake certain steps in implementing the California Solar Initiative. A violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

~~Existing law specifies that the financial components of the California Solar Initiative include, among other programs, programs for the installation of solar energy systems on new construction, which collectively are known as the New Solar Homes Partnership Program. Existing law requires the program, which is administered by the Energy Commission, to be funded by charges in the amount of \$400,000,000 collected from customers of the state's 3 largest electrical corporations. If specified moneys are exhausted, existing law authorizes the PUC to require each of those electrical corporations to continue the program pursuant to guidelines established by the Energy Commission for the program until the \$400,000,000 monetary limit is reached. If the PUC requires the continuation of the program, existing law requires any funding made available to be encumbered no later than June 1, 2018, and disbursed no later than December 31, 2021. Existing law makes the provisions of the program inoperative on June 1, 2018.~~

This bill would require every city and county to implement an online, automated permitting platform that verifies code compliance and instantaneously issues permits for a solar energy system that is no larger than 38.4 kilowatts alternating current nameplate rating and an energy storage system paired with a solar energy system that is no larger than 38.4 kilowatts alternating current nameplate rating, as specified. The bill would require a city or county to amend a certain ordinance to authorize a residential solar energy system and an energy storage system to use the online, automated permitting platform. The bill would prescribe a compliance schedule for satisfying these requirements, which would exempt a county with a population of less than 150,000 and all cities within a county with a population of less than 150,000. The bill would require a city with a population of 50,000 or less that is not otherwise exempt to satisfy these requirements by September 30, 2023, while cities and counties with populations greater than 50,000 that are not otherwise exempt would be required to satisfy the requirements by September 30, 2022. The bill would require a city,

county, or a fire department, district, or authority to report to the Energy Commission when it is in compliance with specified requirements, in addition to other information. By increasing the duties of local officials, this bill would impose a state-mandated local program. The bill would prohibit the provision of specified funding sources to cities and counties not in compliance with certain provisions relating to solar energy systems and fees charged for their installation or if they are not in compliance with provisions of the bill.

The bill would ~~authorize~~ *require* the Energy ~~Commission~~ *Commission*, *upon provision of sufficient funding*, to provide technical assistance and grant funding to cities and counties in order to support the above-described requirements. The bill would require the commission to develop grant guidelines and other requirements, as specified, by May 1, 2022, and make applications available no later than ~~June~~ *July* 1, 2022. ~~The bill would require the PUC to require the Pacific Gas and Electric Company, the Southern California Edison Company, and the San Diego Gas and Electric Company to repurpose \$20,000,000 supporting the New Solar Homes Partnership Program, as specified, to providing technical assistance and grant funding and to pay the Energy Commission's program administrative costs, as specified.~~ Because this requirement would expand the definition of a crime, this bill would impose a state-mandated local program. The bill would require the Energy Commission to set guidelines for cities and counties to report to the commission on the number of permits issued for solar energy systems and an energy storage system paired with a solar energy system and the relevant characteristics of those systems.

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

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. Section 65850.52 is added to the Government
2 Code, to read:
3 65850.52. (a) For purposes of this section:
4 (1) “Energy Commission” means the State Energy Resources
5 Conservation and Development Commission.
6 (2) “Energy storage system” means commercially available
7 technology, located behind a customer’s utility meter, that is
8 capable of absorbing electricity generated from a colocated
9 electricity generator or from the electric grid, storing it for a period
10 of time, and thereafter discharging it to meet the energy or power
11 needs of the host customer or for export.
12 (3) “Solar energy system” means any configuration of solar
13 energy devices that collects and distributes solar energy for the
14 purpose of generating electricity and that has a single
15 interconnection with the electric utility transmission or distribution
16 network.
17 (4) “SolarAPP” means the most recent version of a web-based
18 portal, developed by the National Renewable Energy Laboratory,
19 United States Department of Energy, that automates plan review,
20 produces code-compliant approvals, and issues permits for solar
21 energy systems and energy storage systems paired with solar
22 energy systems.
23 (b) Pursuant to the compliance schedule in subdivision (d), a
24 city, county, or city and county, in consultation with the local fire
25 department, district, or authority shall implement an online,
26 automated permitting platform, such as SolarAPP, that verifies
27 code compliance and issues permits in real time to a licensed
28 contractor for a solar energy system that is no larger than 38.4
29 kilowatts alternating current nameplate rating and an energy storage
30 system paired with a solar energy system that is no larger than
31 38.4 kilowatts alternating current nameplate rating, and is
32 consistent with the system parameters and configurations, including
33 an inspection checklist, of SolarAPP. Consistent with the same
34 compliance schedule, a city, county, or city and county shall amend
35 its ordinance adopted pursuant to subdivision (g) of Section
36 65850.5 to authorize a residential solar energy system and an
37 energy storage system to use the online, automated permitting
38 platform.

1 (c) (1) A county with a population of less than 150,000, and
2 all cities within a county with a population of less than 150,000,
3 are exempt from subdivision (b).

4 (2) A city with a population of 50,000 or less that is not exempt
5 pursuant to paragraph (1) shall satisfy the requirements of
6 subdivision (b) no later than September 30, 2023.

7 (3) A city, county, or city and county with a population of
8 greater than 50,000 that is not exempt pursuant to paragraph (1)
9 shall satisfy the requirements of subdivision (b) no later than
10 September 30, 2022.

11 (d) ~~The~~ *Upon provision of sufficient funding, the* Energy
12 Commission may provide technical assistance and grant funding
13 to city, county, or city and county, in order to support the
14 implementation of online, automated permitting for a solar energy
15 system and an energy storage system paired with a solar energy
16 system and for compliance with the requirements of subdivision
17 (b) in a timely manner.

18 (1) The Energy Commission shall develop grant guidelines and
19 other requirements in a public process by May 1, 2022, and make
20 applications available no later than ~~June~~ July 1, 2022.

21 (2) The Energy Commission shall prioritize processing grant
22 applications from local jurisdictions serving low-income
23 communities, disadvantaged communities as defined by the
24 California Communities Environmental Health Screening Tool,
25 also known as CalEnviroScreen 3.0, or those containing high
26 fire-threat districts as defined in subdivision (h) of Section 3280
27 of the Public Utilities Code.

28 ~~(3) The Public Utilities Commission shall require Pacific Gas~~
29 ~~and Electric Company, Southern California Edison Company, and~~
30 ~~San Diego Gas and Electric Company to repurpose twenty million~~
31 ~~dollars (\$20,000,000) of funds supporting the New Solar Homes~~
32 ~~Partnership Program, pursuant to paragraph (3) of subdivision (e)~~
33 ~~of Section 2851 of the Public Utilities Code, for providing the~~
34 ~~technical assistance and grant funding described in this subdivision~~
35 ~~and to provide for the Energy Commission's costs to administer~~
36 ~~the program. Notwithstanding subparagraph (B) of paragraph (3)~~
37 ~~of subdivision (e) of Section 2851 of the Public Utilities Code,~~
38 ~~these funds may be disbursed after December 31, 2021.~~

SB 617

— 6 —

1 (e) A city, county, city and county, or a fire department, district,
 2 or authority shall report to the Energy Commission when it is in
 3 compliance with subdivision (b).

4 (f) The Energy Commission shall set guidelines for cities and
 5 counties to report to the commission on the number of permits
 6 issued for solar energy systems and an energy storage system
 7 paired with a solar energy system and the relevant characteristics
 8 of those systems. A city, county, or city and county shall report
 9 annually to the Energy Commission pursuant to those guidelines
 10 within a year of implementing the automated solar permitting
 11 system pursuant to subdivision (b).

12 (g) (1) A city, county, or city and county that is not in
 13 compliance with Section 65850.5 or 66015 is not eligible to receive
 14 the funding available pursuant to subdivision ~~(e)~~ (d). A city,
 15 county, or city and county shall self-certify its compliance with
 16 Section 65850.5 or 66015 when applying for funds from a
 17 state-sponsored or state-administered grant or loan program.

18 (2) A city, county, or city and county that is not in compliance
 19 with subdivision (b) is not eligible to receive funds from a
 20 state-sponsored or state-administered solar or energy storage grant
 21 or loan program, other than the funding available in subdivision
 22 ~~(e)~~ (d). A city, county, or city and county shall certify its
 23 compliance with the requirements of subdivision (b) when applying
 24 for funds from a state-sponsored or state-administered grant or
 25 loan program.

26 (h) Nothing in this section shall be construed to limit or
 27 otherwise affect the generator interconnection requirements and
 28 approval process for a local publicly owned electric utility, as
 29 defined in Section 224.3 of the Public Utilities ~~Code~~ Code, or an
 30 electrical corporation, as defined in Section 218 of the Public
 31 Utilities Code.

32 (i) Nothing in this section shall be construed to increase or
 33 otherwise affect the liability of a local agency pertaining to a solar
 34 energy system or an energy storage system paired with a solar
 35 energy system installed pursuant to this section.

36 SEC. 2. No reimbursement is required by this act pursuant to
 37 Section 6 of Article XIII B of the California Constitution for certain
 38 costs that may be incurred by a local agency or school district
 39 because, in that regard, this act creates a new crime or infraction,
 40 eliminates a crime or infraction, or changes the penalty for a crime

1 or infraction, within the meaning of Section 17556 of the
2 Government Code, or changes the definition of a crime within the
3 meaning of Section 6 of Article XIII B of the California
4 Constitution.

5 However, if the Commission on State Mandates determines that
6 this act contains other costs mandated by the state, reimbursement
7 to local agencies and school districts for those costs shall be made
8 pursuant to Part 7 (commencing with Section 17500) of Division
9 4 of Title 2 of the Government Code.

O



Senator Scott Wiener, 11th Senate District

Senate Bill 617 – Solar Access Act

SUMMARY

To increase the number of homes installing safe solar energy systems, Senate Bill 617, the Solar Access Act, would certain sized require jurisdictions to provide an online instant solar permitting process, like SolarAPP+, for residential solar and solar-plus-storage systems.

BACKGROUND

Last year, the National Renewable Energy Laboratory (NREL), a division of the federal Department of Energy, developed software called SolarAPP+ that processes permits for solar and solar-plus-storage systems. SolarAPP+ asks the contractor a series of questions to verify the solar system’s design is safe, and then issues a permit automatically. SolarAPP+, developed in partnership with building safety experts and the solar industry, helps local governments and installers operate more efficiently without compromising the safety or quality of solar systems. SolarAPP+ is free for cities and counties, integrates with their existing software systems, and can be adjusted to the characteristics of the area (e.g., snowfall). Jurisdictions, such as San Jose and Los Angeles have deployed automated permitting software similar to SolarAPP+, with great success. San Jose saw a six-fold increase in solar systems installed after they adopted automated permitting.

PROBLEM

California needs to accelerate its transition to clean energy in order to increase local resilience and meet its climate emissions targets by 2045. While rooftop solar systems have been a major driving force behind California’s ongoing transition, the potential growth of these systems has been diminished by administrative burdens. Red tape and the ‘soft costs’ of permitting and installing often prevents homeowners from putting solar on their roofs. Before a contractor can install a solar system, they need to apply for a permit from the local building department. These permitting processes are often inefficient and time-consuming, and can add thousands of dollars to the cost of installing solar. As a result, fewer Californians add solar to their roofs who otherwise would. Meanwhile, the workload for building department officials continues to increase, and government staff are increasingly unable to manage the permitting application process in a timely fashion. Relief is needed across the board, and the technology to accomplish that is now widely available, and should be implemented as quickly as possible.

SOLUTION

SB 617 will allow more homeowners to install solar by streamlining the permitting and inspection processes. The bill will require counties with populations over 150,000 to allow homeowners’ contractors to receive an instant online permit for standard solar and solar-plus-storage

systems, via software such as the SolarAPP+. Further, the bill will create a program at the California Energy Commission that provides technical assistance and grants to help cities and counties comply with these requirements. The funds would come from leftover money in the now-defunct New Solar Homes Partnership Program (subsidies for new homes to install solar).

Overall, the bill would increase the number of households installing solar and storage systems, help California meet its greenhouse gas emissions reduction goals, increase the resiliency of homes (especially during public safety power shutoffs), reduce electricity costs to homeowners, reduce administrative costs for local governments, and create solar installation jobs.

SUPPORT

- **SPUR (Sponsor)**
- **Environment California (Sponsor)**
- Sierra Club
- Center for Sustainable Energy
- Local Government Commission
- Housing Action Coalition
- Grid Alternatives
- Vote Solar
- Solar Rights Alliance
- SunPower Corporation
- Solar United Neighbors
- Natural Resources Defense Council
- Environmental Defense Fund
- NextGen California
- The Climate Center
- Habitat for Humanity – Greater San Francisco Chapter
- Local Solar for All
- Solar and Fire Education (SAFE)
- Advanced Energy Economy
- Town of Windsor

- Gabriel Quinto, Mayor Pro Tem of El Cerrito
- Dianne Martinez, Mayor of Emeryville
- Tom Butt, Mayor of Richmond
- Michael Vargas, Mayor of Perris
- Dan Kalb, Oakland City Councilmember
- Bay Area Council
- Elders Climate Action Norcal Chapter
- Elders Climate Action SoCal Chapter
- Silicon Valley Youth Climate Action
- California Solar & Storage Association
- Sunrun
- Tesla

FOR MORE INFORMATION

Tate Hanna, Legislative Aide

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Phone: (916) 651-4011



Disaster and Fire Safety Commission

ACTION CALENDAR

June 1, 2021

To: Honorable Mayor and Members of the City Council

From: Disaster and Fire Safety Commission

Submitted by: Jose Bedolla, Chairperson, Disaster and Fire Safety Commission

Subject: Referral Response: Amending Chapter 19.34 of the Berkeley Municipal Code to Expand Automatic Gas Shut-Off Valve Requirements in Multifamily, Condominium and Commercial Buildings Undergoing Renovations

RECOMMENDATION

The proposed ordinance modifications in the referral dated October 29, 2019, shown in Attachment 2 to the staff report (the Referral), can be briefly summarized as:

- Expand the Gas Shut-Off Valve requirements to remove exceptions for multi-family, condominium, and commercial buildings

The Disaster and Fire Safety Commission (DFSC) recommends that changes of the Berkeley Municipal Code be referred to the City Manager and Planning Department to be modified in accordance with the Referral as part of the 2022 Code adoption cycle, including the following changes:

1. Do not allow excess flow valves to substitute for motion-activated shut-off valves as a way to comply with this ordinance.
2. Clarify requirements for excess flow valves and motion activated (seismic) valves.
3. Include a provision to include gas valves for common areas when required for any individual unit of a building.
4. Do not include any requirements regarding sale or transfer of the building.
5. Remove the dollar limit on the modifications and replace with a requirement to comply any time a plumbing or mechanical permit is issued.

In addition, the Commission recommends the inclusion of wording in the Berkeley Emissions Saving Ordinance (BESO) to require that in any transfer of property, that the property be required to equipped with a seismic gas shutoff valve.

FISCAL IMPACTS OF RECOMMENDATION

Staff savings realized from first responders not having to shut off valves manually in case of emergency.

Costs will include staff time to submit ordinance to the Building Standards Commission. In addition, building inspector staff time will be necessary to ensure compliance with new provisions.

CURRENT SITUATION AND ITS EFFECTS

Currently, BMC 19.34.040 requires automatic gas shut-off valves in all new construction or existing buildings that undergo repair or alteration exceeding \$50,000 consistent with sewer lateral requirements. However, it makes several exceptions for multi-unit buildings, as described in Attachment 2. As a result, residents of multi-unit buildings as well as neighboring buildings that may be impacted by a gas-driven fire after an earthquake, are not protected by a gas shut-off valve requirement.

BACKGROUND

In October of 2019 the Disaster and Fire Safety Commission received a referral from Councilmembers Harrison, Wengraf, Hahn, and Bartlett on modifications to the BMC 19.34.040 Gas Shut-Off Valves ordinance.

The Referral's proposed ordinance modifications expands the Gas Shut-Off Valves requirement by removing several exceptions, including an exception for multi-unit buildings.

The Referral was discussed by the DFSC in the 12/4/19, 1/22/20, and 2/26/20 meetings. Several meetings subsequent were cancelled due to Covid-19.

At the March 24, 2021 regular meeting of the Disaster and Fire Safety Commission, the commission took the following action:

Action: Recommend that changes of the Berkeley Municipal Code be referred to the City Manager and Planning Department to be modified in accordance with the Referral as part of the 2022 Code adoption cycle: Couzin

Second: Stein

Vote: 9 Ayes - Couzin, Dean, Bradstreet, Degenkolb, Grimes, Bedolla, Simmons, Rader, Stein.

Additional background can be found in the Referral, Attachment 1.

ENVIRONMENTAL SUSTAINABILITY

In addition to potentially saving lives and property, increasing gas shut-off valve use may reduce the spread of house-fires and wildland-urban interface fires, reducing the pollution, hazardous waste, loss of habitat, and other environmental damage caused by uncontrolled fires, and reducing greenhouse gas emissions caused by gas leaks after an earthquake.

RATIONALE FOR RECOMMENDATION

The DFSC generally concurs with the rationale for this recommendation described in the Referral. The modifications to the ordinance are intended to increase the use of automatic gas shutoff valves to help reduce or prevent gas-related fires in the event of an earthquake.

In a major earthquake, gas piping is subjected to forces which may result in significant leaks of natural gas. These leaks can in turn result in serious fires or explosions.

A good article about the dangers of gas fires in an earthquake and the performance of Motion Activated Gas Shutoff Valves can be found here:

<http://www.strandearthquake.com/psgsv.html>.

The DFSC differs from the Referral regarding excess flow valves:

The ordinance modifications in the Referral allow the use of excess flow shut-off valves in place of motion-activated shut-off valves. The DFSC recommends against allowing excess flow valves to substitute for motion-activated shut-off valves.

Excess flow valves are appropriate for connection to individual appliances and are readily available incorporated in appliance connection lines. However, these valves would have to allow for a very large flow if connected to a whole house, and the leaks resulting from an earthquake may not be adequate to trigger an excess flow valve, while still being large enough to create a severe potential for fire or explosion.

Therefore, we recommend against allowing excess flow valves at the whole-house level to satisfy the requirements of the ordinance. Our edits in Attachment 1 incorporate this suggestion.

The DFSC believes that setting a minimum project value to trigger the installation of seismic gas shutoff valves is not the right way to trigger that requirement. In practice, the installation of a Seismic Gas Shutoff Valve is a simple task for a plumbing or mechanical contractor, however it is not within the designated ability of many other contractors. The \$10,000 minimum value set could easily be exceeded by work done by persons not approved to contract for such work, which could add significantly to the cost of a contract. On the other hand, the work required to install a seismic shutoff valve is generally less than an hour for a mechanical or plumbing contractor and the valve itself will usually cost less than \$150. The change in cost to the property owner should be minor compared to the cost of the other work performed under mechanical or plumbing permits. Therefore, it makes sense to require that having an operational seismic gas shutoff valve in place to receive a final signoff on a permit is not a significant burden to the property owner.

Finally, the DFSC has been informed that the building department does not get involved with transfer of property except as permit applications are filed. Any requirements affecting the transfer of property, especially those involving natural gas service, should be addressed through the Office of Energy and Sustainable Development.

ALTERNATIVE ACTIONS CONSIDERED

n/a This is in response to a City Council referral.

CITY MANAGER

The City Manager concurs the content and recommendations of the Commission's Report.

CONTACT PERSON

Keith May, Secretary, Disaster and Fire Safety Commission, 510-981-5508

Attachments:

1. 10/19/2019 referral to the Disaster and Fire Safety Commission



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
October 29, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Harrison, Wengraf, Hahn, and Bartlett
Subject: Amending Chapter 19.34 of the Berkeley Municipal Code to Expand Automatic Gas Shut-Off Valve Requirements in Multifamily, Condominium and Commercial Buildings Undergoing Renovations and to All Existing Buildings Prior to Execution of a Contract for Sale or Close of Escrow

RECOMMENDATION

Refer to the Disaster and Fire Safety Commission to consider an ordinance amending Berkeley Municipal Code (BMC) 19.34.040 to expand requirements for automatic natural gas shut-off valves or excess flow valves in multifamily, condominium and commercial buildings undergoing renovations and in all existing buildings prior to execution of a contract for sale or close of escrow. Ask the Commission to consider other triggers as appropriate.

POLICY COMMITTEE RECOMMENDATION

On October 3, 2019, the Facilities, Infrastructure, Technology, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to send the item with a Positive Qualified Recommendation back to the City Council with the following amendments.

Amend the recommendation revised to read as follows:

1. Refer to the Disaster and Fire Safety Commission to consider an ordinance amending Berkeley Municipal Code (BMC) 19.34.040 to expand requirements for automatic natural gas shut-off valves or excess flow valves in multifamily, condominium and commercial buildings undergoing renovations and in all existing buildings prior to execution of a contract for sale or close of escrow and to ask the Commission to consider other triggers as appropriate.

Amend the Financial Implications to read:

Staff savings realized from responders not having to shut off gas in an emergency.

Vote: All Ayes.

BACKGROUND

The California Building Standards Code, or Title 24 of the California Code of Regulations, specifies the standards for buildings and other structures in California. Title 24 is intended to protect public health, safety, and general welfare building occupants, and is updated at the state level and adopted by local jurisdictions every three years. Municipalities are permitted to make local amendments to the Building Standards Code¹ as deemed necessary for general welfare, as long as they are submitted to the California Building Standards Commission with the necessary findings. The ideal time to update local buildings codes is before the next code cycle. Berkeley will adopt the 2019 code on January 1, 2020.

Natural gas in buildings poses significant risks to health and safety. A recent ordinance adding Chapter 12.80 to the Berkeley Municipal Code phases out natural gas in new buildings.² This will make Berkeley's new building stock safer and greener over time, but there is an outstanding need to prevent seismic and other disasters in existing buildings.

Gas shut-off valves are a component of a plumbing system capable of preventing the flow within a gas piping system. Shut-off valves allow for a resident to stop the flow of gas in their homes in case of an emergency, such as an earthquake or a gas leak.

All existing buildings, if they have natural gas, should have a shut-off valve of some kind. However, manual shut-off valves require timely attention during a seismic event, physical access and exertion, and mechanical knowledge to operate. In case of a natural disaster, relying purely on manual shut-off valves can be dangerous. For example, following the 2010 San Bruno explosion, Pacific Gas & Electric officials testified before the National Transportation Safety Board that "gas feeding the flames could have been shut off an hour earlier if PG&E had automatic or remotely controlled valves on the pipeline that exploded."³ Since the San Bruno explosion, gas companies across California have urged a fast transfer to automatic shut-off valves.

Currently, BMC 19.34.040 requires automatic gas shut-off valves in all new construction or existing buildings that undergo repair or alteration exceeding \$50,000 consistent with sewer lateral requirements. However, it makes blanket exceptions for buildings with individually metered residential units when the building contains five or more residential units, unless the units are condominiums, putting renters at risk of physical harm.

¹ "Local Amendments to Building Standards—Ordinances," California Building Standards Commission, <https://www.dgs.ca.gov/BSC/Codes/Local-Jurisdictions-Code-Ordinances>.

² Susie Cagle, "Berkeley became first US city to ban natural gas. Here's what that may mean for the future," The Guardian, <https://www.theguardian.com/environment/2019/jul/23/berkeley-natural-gas-ban-environment>.

³ Paul Rogers, "PG&E officials grilled about automatic shut of valves," Mercury News, March 1, 2011, <https://www.mercurynews.com/2011/03/01/pge-officials-grilled-about-automatic-shut-off-valves-3/>.

In recommending this exception for multi-unit buildings in 2010, City staff intended to reduce the cost burden to property owners. For example, City staff were concerned that the ordinance would require very large multifamily buildings to install shut-off valves in every unit in a 50 unit building when completing a \$50,000 renovation.⁴

While financial costs are important, there will also likely be significant costs to human life and property resulting from natural gas infrastructure during seismic events that far outweigh the costs to property owners for installing shut-off valves. A more-tailored and comprehensive approach was adopted by the City of Los Angeles's 1997 policy in the wake of the Northridge Earthquake, requiring valves in all multifamily, condominium and commercial units when a permit for any addition, alteration or repair valued in excess of \$10,000 is taken out affecting the entire building, or in specific units affected by work in excess of \$10,000.⁵

This item proposes to apply the \$50,000 threshold for all work affecting multifamily, condominium and commercial buildings exclusive of work affecting the units and apply a \$10,000 threshold to work in excess of \$10,000 inclusive of any individual unit. In addition, this item proposes maintaining the current single-family home requirement when a permit is taken out of any addition, alteration or repair valued in excess of \$50,000.

Consistent with the Los Angeles code, the item removes the exception for commercial occupancies and uses in mixed use buildings of residential and non-residential occupancies with a single gas service line larger than 1 1/2 inches that serves the entire building. Berkeley City staff in 2010 previously suggested that pipes larger than 1 1/2 inches were marginally more expensive to retrofit with valves and therefore warranted an exception. Though upon further review, the few additional hundred dollars in labor and materials per valve does not warrant an exception due to ongoing risks to health and safety.

Berkeley is on top of one of California's most dangerous fault lines, the Hayward fault, making it prone to earthquakes. The extreme fire risk associated with natural gas infrastructure is illustrated by the 2017 U.S. Geological Survey stimulation of "a 7.0 quake on the Hayward fault line with the epicenter in Oakland." The agency's report predicted that "about 450 large fires could result in a loss of residential and commercial building floor area equivalent to more than 52,000 single-family homes and cause

⁴ "Installation of Automatic Gas Shut-off Valves," Berkeley Planning and Development Department, July 13, 2010, <https://www.cityofberkeley.info/recordsonline/api/Document/Af7NhvRQQKZ1%C3%81%C3%89xY9QpwmChW6QBqKp%C3%89scsKBclRXOVsvA1QlgXjP%C3%89Rs2zLVn2kCnCNjn918yaZSDbGqiogM WpBM%3D/>

⁵ City of Los Angeles Ordinance No. 171874, December 16, 1997, http://clkrep.lacity.org/onlinedocs/1995/95-0217-S1_ORD_171874_02-05-1998.pdf; See also, City of Los Angeles Plumbing Code Section 94.1217.0.

property (building and content) losses approaching \$30 billion.”⁶ The report identified ruptured gas lines as a key fire risk factor. This finding mirrors the destructive gas fires resulting from the Loma Prieta (1989) and Northridge (1994) earthquakes. According to the most recent census, 59.1% of units in Berkeley are occupied by renters.⁷ It is vital to extend the shut-off valve requirement to rental units to prioritize the health and safety of all Berkeley residents and the broader community.

Beyond extending this protection to large rental buildings during major renovations, this ordinance amends BMC 19.34 to mirror the City of Los Angeles’s code to require installing automatic shut-off valves prior to execution of a contract for sale in all buildings and units therein.

The transfer of property triggers various state and local building code requirements. For example, at time of sale the state health and safety code requires that, gas water heaters are seismically braced, anchored, or strapped.⁸ Other local ordinances related to environment, such as the BMC 19.81: the Building Energy Saving Ordinance, require energy efficiency reports prior to time of sale. The intention of Section 1209.4.2 is to ensure that all buildings that are sold in Berkeley include automatic gas shut-off valves, therefore enhancing seismic safety across the existing building stock.

FINANCIAL IMPLICATIONS

Staff savings realized from first responders not having to shut off valves manually in case of emergency.

Staff time to submit ordinance to the Building Standards Commission. In addition, building inspector staff time will be necessary to compliance with new provisions.

ENVIRONMENTAL SUSTAINABILITY

Mandating shut-off valves in rental units undergoing renovation and all units at sale will prevent the excess release of greenhouse gases (methane) due to gas leaks and fires during seismic events and other related emergencies.

CONTACT PERSON

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

ATTACHMENTS

1: Ordinance

⁶ “The HayWired earthquake scenario—Engineering implications,” U.S. Geological Survey, April 18, 2018, <https://pubs.er.usgs.gov/publication/sir20175013v2>.

⁷ “Bay Area Census: City of Berkeley” <http://www.bayareacensus.ca.gov/cities/Berkeley.htm>

⁸ Health and Safety Code § 18031.7, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=18031.7.&lawCode=HSC

AMENDING CHAPTER 19.34 OF THE BERKELEY MUNICIPAL CODE TO EXPAND
AUTOMATIC GAS SHUT-OFF VALVE REQUIREMENTS IN MULTIFAMILY,
CONDOMINIUM AND COMMERCIAL BUILDINGS UNDERGOING RENOVATIONS
AND TO ALL EXISTING BUILDINGS PRIOR TO EXECUTION OF A CONTRACT FOR
SALE OR CLOSE OF ESCROW

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

Section 1. That Berkeley Municipal Code Section 19.36.040 is hereby amended to read as follows:

19.34.040 Gas Shut-Off Valves.

Chapter 12 of the 2016~~9~~ California Plumbing Code is adopted in its entirety subject to the modifications thereto which are set forth below.

1209.2 General Requirements for Gas Shut-Off Valves. Automatic gas shut-off valves installed either in compliance with this Section or voluntarily pursuant to a plumbing permit issued on or after the effective date of this Section, shall comply with the following:

1209.2.1 All valves shall:

1. Comply with all applicable requirements of the Berkeley Plumbing Code.
2. Be tested and listed by recognized testing agencies such as the Independent Laboratory of the International Approval Services (IAS), Underwriter's Laboratory (UL), International Association of Plumbing and Mechanical Officials (IAPMO) or any other agency approved by the State of California Office of the State Architect (OSA).
3. Be listed by the State of California Office of the State Architect (OSA).
4. Be installed on downstream side of the gas utility meter.
5. Be installed in accordance with the manufacturer's instructions.
6. Be installed in accordance with a plumbing permit issued by the City of Berkeley.
7. Provide a method for expedient and safe gas shut-off in an emergency.
8. Provide a capability for ease of consumer or owner resetting in a safe manner.

1209.2.2 Motion activated seismic gas shut-off valves shall be mounted rigidly to the exterior of the building or structure containing the fuel gas piping, unless otherwise specified in the manufacturer's installation instructions.

1209.3 Definitions

For the purpose of this Section terms shall be defined as follows:

AUTOMATIC GAS SHUT-OFF VALVE shall mean either a motion activated gas shut-off valve or device or an excess flow gas shut-off valve or device.

DOWNSTREAM OF GAS UTILITY METER shall mean all gas piping on the property owner's side of the gas meter and after the service tee.

EXCESS FLOW GAS SHUT-OFF VALVE shall mean an approved valve or device that is activated by significant gas leaks or overpressure surges that can occur when pipes rupture inside a structure. Such valves are installed at each appliance, unless otherwise specified by the manufacturer's installation instructions.

MOTION ACTIVATED GAS SHUT OFF VALVE shall mean an approved gas valve activated by motion. Valves are set to activate in the event of a moderate or strong seismic event greater than 5.0 on the Richter scale.

UPSTREAM OF GAS UTILITY METER shall mean all gas piping installed by the utility up to and including the meter and the utility's service tee.

1209.4 Devices When Required. Approved automatic gas shut-off or excess flow valves shall be installed as follows:

1209.4.1 New Construction. In any new building construction containing gas piping for which a building permit is first issued on or after the effective date of this Section.

1209.4.2 Existing Buildings. In any existing building, when any addition, alteration or repair is made for which a building permit is issued on or after the effective date of this Section and the valuation for the work exceeds \$50,000.

1209.4.2.1 Multifamily, Condominium and Commercial Buildings.

1. In any existing commercial, multifamily and condominium and commercial building, and applicable to all units and tenant spaces therein if the building is individually metered and lacks a central automatic shut-off valve downstream of the utility delivery point, when any addition, alteration or repair exclusive of individual units or tenant spaces is made for which a building permit is issued on or after the effective date of this Section and the valuation for the work exceeds \$50,000.
2. In any existing commercial, multifamily and condominium unit for all gas piping serving only those individual units, when any addition, alteration or repair inclusive of individual units or tenant spaces is made for which a building permit is issued on or after the effective date of this Section and the valuation for the work exceeds \$10,000.

1209.4.3 Sale of Existing Buildings.

The requirement to install seismic gas shutoff or excess flow shutoff valves shall apply

prior to entering into a contract of sale, or prior to the close of escrow when an escrow agreement has been executed in connection with a sale as follows:

1. in any building or structure, and all units therein when gas piping serving those units lacks a central automatic shut-off valve downstream of the utility delivery point; or
2. in an individual condominium unit for all gas piping serving that individual unit.

1209.4.4 Exceptions:

~~1.—Buildings with individually metered residential units when the building contains 5 or more residential units, unless the units are condominiums.~~

~~2.—For residential or mixed use condominium buildings, valves are required when the value of the work exceeds \$50,000 in any single condominium unit or when any work done outside of the units exceeds \$50,000.~~

~~3.—Commercial occupancies and uses in mixed use buildings of residential and non-residential occupancies with a single gas service line larger than 1 1/2 inches that serves the entire building.~~

14. Automatic gas shut-off valves installed with a building permit on a building prior to the effective date of this Section provided the valves remain installed on the building or structure and are adequately maintained for the life of the building or structure.

25. Automatic gas shut-off valves installed on a gas distribution system owned or operated by a public utility.

Section 2. The effective date of this amendment shall be January 1, 2020, or the effective adoption date of the 2019 California Building Standards Code, whichever is sooner.

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.



Office of the City Manager

ACTION CALENDAR

June 1, 2021

To: Honorable Mayor and Members of the City Council
 From: Sugar Sweetened Beverage Product Panel of Experts (SSBPPE)
 Submitted by: Poki Namkung, Chairperson, SSBPPE Commission
 Subject: Recommendation that the City Council Pass a Resolution Regarding Procurement, Sales and Serving of Sugar-Sweetened Beverages.

RECOMMENDATION

The Sugar Sweetened Beverage Product Panel of Experts recommends that the Berkeley City Council adopt a Resolution that City of Berkeley departments and City food services contractors shall not:

- 1) Serve sugar-sweetened beverages at City meetings and events on City property;
- 2) Procure sugar-sweetened beverages with City funds; or,
- 3) Sell sugar-sweetened beverages on City property, including in vending machines.

POLICY COMMITTEE RECOMMENDATION

On February 24, 2020, the Health, Life Enrichment, Equity & Community Committee moved an item to Council recommending approval of the Sugar Sweetened Beverage Product Panel of Experts Resolution regarding procurement, sales and serving of sugar-sweetened beverages with the following changes in the resolved clause:

Therefore be it resolved that the City of Berkeley shall not:

1. Procure sugar-sweetened beverages with City funds; and
2. Serve or sell sugar-sweetened beverages on City property, including in vending machines.

And be it further resolved that the City discourages sugar-sweetened beverages at events on City property that receive City of Berkeley funding, and mandate that these events be required to provide options other than sugar-sweetened beverages.

And be it further resolved that in areas or facilities where employees regularly work beyond the core business hours of 8 a.m. – 6 p.m., the City of Berkeley shall provide refrigerators in good working order and of adequate size for the number of employees in

that area, to bring and store their own beverages.

In addition, ask the City Council to make a referral to the Sugar-Sweetened Beverage Product Panel of Experts to consider how to regulate sugar sweetened beverages at events held on City of Berkeley Property hosted by non-City entities who receive City of Berkeley funds.

M/S/C (Hahn/Bartlett). All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

Cost of promulgating information, notifying City Departments and revising clauses in City contracts.

CURRENT SITUATION AND ITS EFFECTS

Currently, the City of Berkeley has no policy regarding either the procurement of sugar-sweetened beverages with City funds or the sales or distribution of sugar-sweetened beverages at City meetings and events or on City property.

On September 19, 2019, the SSBPPE Commission voted as follows:

Moved to approve and adopt the SSB Resolution (version #13) and the accompanying Council Report and forward to the City Council.

M/S/C: Commissioners Scheider/Rose

Ayes: Commissioners Browne, Crawford, Moore, Rose, Ishii, and Scheider

Noes: None

Abstain: None

Absent from vote: None

Recused: None

Excused: Commissioners Morales and Namkung

Definitions: Sugar-sweetened beverages or SSBs refer to all beverages with added caloric sweeteners with a minimum of 2 calories per fluid ounce, as defined in Chapter 7.72 of the City of Berkeley Municipal Code.i SSBs include juices with added sweetener, sodas, energy drinks, sweetened teas and coffee drinks, and sport drinks. These drinks offer little or no nutritional value, but include massive quantities of added sugar. For instance, a single 20-ounce bottle of soda typically contains the equivalent of approximately 16 teaspoons of sugar.

In BMC Chapter 7.72, SSBs exclude 100% juice, diet drinks, waters, and milk drinks as well as medical drinks and baby formula.

BACKGROUND

In November of 2014, the Berkeley voters passed Measure D with 76% of the vote, which requires both the collection of a 1 cent-per-ounce tax on the distribution of SSBs in the City of Berkeley and the convening of the Sugar Sweetened Beverage Products

Panel of Experts (SSBPPE) to recommend investments to both reduce the consumption of SSBs as well as to address the health consequences of the consumption of SSBs including diabetes, dental caries, heart disease and obesity.ii

To accomplish these goals, the SSBPPE recommended that the City create the Healthy Berkeley program to reduce the consumption of sugar-sweetened beverages (“SSB”) in Berkeley and to address the effects of SSB consumption. The City Council unanimously adopted this recommendation on November 29, 2016 and awarded a \$1.5 million per year investment to be granted to community agencies and the Berkeley Unified School District garden and nutrition program. \$225,000, or 15%, of this funding is allocated to the City Public Health Division to administer and evaluate the Healthy Berkeley Program. See November 29, 2016, Council agenda items 33a and 33b.iii

The City of Berkeley requires that all Healthy Berkeley funded programs (including the school district) adopt an organizational policy curtailing the service, procurement and sale of SSBs. The purpose of these organizational policies is to change norms in our community about consuming sugary drinks and support the educational work of these programs.

We know from the public health campaigns to reduce tobacco use, that institutional policies that change norms have a powerful impact on behavior and are a vital tool to improving health in our communities. Education and media campaigns are not enough to change behaviors, especially when pervasive and persuasive marketing by corporations influence choices that people make, and when there is an addictive aspect to the behavior as is the case with both tobacco and sugar.iv

ENVIRONMENTAL SUSTAINABILITY

None

RATIONALE FOR RECOMMENDATION

In 2014, Berkeley voters overwhelmingly passed Measure D and since then the City of Berkeley has led the effort to reduce the consumption of sugary drinks and resulting health impacts and disparities, not only in Berkeley but also in the Bay Area and nationwide. Sales of sugary beverages have decreased and school and community groups have been funded to continue the effort to reduce sugary drink consumption and improve health. Now is an opportune time for the City to once again provide leadership for City employees and the community by enacting a healthy beverage policy for the City that restricts procurement of sugary drinks as well as the serving and sales of sugary drinks at City events. This policy would be responsive to the will of the voters, supportive of school and community efforts to improve Berkeley residents' health, and a model to other cities. This policy will align the City with Healthy Berkeley grantees who have already adopted similar policies. The SSBPPE encourages the City to take this step to set an example and demonstrate its own commitment to the further reducing sugary drink consumption and improvement in community health.

ALTERNATIVE ACTIONS CONSIDERED

In January 2018, the SSSBPPE voted to recommend that the Berkeley City Council adopt an Ordinance amending the Administrative Code to direct the City of Berkeley departments and City food services contractors to refrain from: 1) Procuring sugar-sweetened beverages with City funds; 2) Selling sugar-sweetened beverages on City property, including in vending machines; and, 3) Serving sugar-sweetened beverages at City meetings and events on City property. On March 27, 2018, the City Council voted to refer the recommendation to the City Manager and request that the City Manager draft an ordinance for consideration by the City Council. In June 2018, the City Council ranked this ordinance around 32 among items to develop for the City. No further action was taken until May of 2019, when Council Member Harrison reached out to Holly Scheider, her appointee on the SSBPPE Commission, and suggested that the Commission put forward a Resolution in place of an Ordinance with the same content.

CITY MANAGER

See the City Manager companion report.

CONTACT PERSON

Dechen Tsering, SSBPPE Commission Secretary (510) 981-5394

Attachments:

1: Resolution

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

RESOLUTION ESTABLISHING CITY POLICY / AMENDING THE ADMINISTRATIVE CODE TO DIRECT CITY OF BERKELEY DEPARTMENTS TO REFRAIN FROM PROCURING, SERVING OR SELLING SUGARY DRINKS

WHEREAS, the City of Berkeley is known for its commitment to reducing inequities in diet and disease and in promoting access to healthy food and beverages.

WHEREAS, drinking just **one** serving of sugar-sweetened beverage per day poses a **30 percent or higher risk** of becoming diabetic.

WHEREAS, drinking just **one** serving of sugar-sweetened beverage per day poses a **30 percent or higher risk** of early death from cardiovascular disease.

WHEREAS, city employees deserve a healthy work environment, with an increased variety of healthier low-sugar alternative beverages such as flavored waters, plain or carbonated water, 100% juice, milk drinks, diet drinks, unsweetened or artificially sweetened iced teas and coffee drinks.

WHEREAS, it is recognized that city staff are free to bring and consume their own sugary beverages at work.

WHEREAS, other public institutions that have completely eliminated the sales of sugar sweetened beverages on their premises and have demonstrated that as a result, positive changes have been documented in the staff's metabolic disease indicators associated with lower risk of diabetes and heart disease

WHEREAS, giving City employees access to healthier beverages in the workplace will increase healthy beverage consumption and reduce the impact of diet-related disease, thus reducing the City's health care expenses.

WHEREAS, the City of Berkeley requires that *all* organizations receiving funding from Healthy Berkeley not serve or sell sugar sweetened beverages on their premises.

WHEREAS, the Berkeley Unified School District does not serve or sell soda to students of all ages and students on their premises and this contributes to positive adult role modeling regarding healthy beverage consumption.

WHEREAS, Chapter 7.72 of the City of Berkeley Municipal Code^v has already defined sugar-sweetened beverages as all beverages with added caloric sweeteners with a minimum of 2 calories per fluid ounce, including juices with added sweetener, sodas, energy drinks, sweetened teas and coffee drinks, and sport drinks which offer little or no nutritional value, but include massive quantities of added sugar and in addition, Berkeley Municipal Code Chapter 7.72 also defines exemptions and thus excludes waters, 100% juice, milk drinks, diet drinks, as well as medical drinks and baby formula.

THEREFORE BE IT RESOLVED that the City of Berkeley and City food services contractors **shall not**:

- 1) Procure sugar-sweetened beverages with City funds; and,
- 2) Serve or sell sugar-sweetened beverages on City property, including in vending machines.

BE IT FUTHER RESOLVED that the City discourages sugar-sweetened beverages at events on City property that receive City of Berkeley funding, and mandate that these events be required to provide options other than sugar-sweetened beverages.

BE IT FUTHER RESOLVED that in areas or facilities where employees regularly work beyond the core business hours of 8 a.m. – 6 p.m., the City of Berkeley shall provide refrigerators in good working order and of adequate size for the number of employees in that area, to bring and store their own beverages.

BE IT FUTHER RESOLVED to ask the City Council to make a referral to the Sugar-Sweetened Beverage Product Panel of Experts to consider how to regulate sugar sweetened beverages at events held on City of Berkeley Property hosted by non-City entities who receive City of Berkeley funds.

ⁱ B.M.C. 7388-NS § 7.72, 2014, City of Berkeley

ⁱⁱ B.M.C. 7388-NS § 7.72, 2014, City of Berkeley

ⁱⁱⁱ Berkeley Nov. 29, 2016 agenda:

https://www.cityofberkeley.info/Clerk/City_Council/2016/11_Nov/City_Council_11-29-2016_-_Regular_Meeting_Agenda.aspx Language in the Nov. 29, 2016

Resolution, Agenda item 33a, pages 9 and 11, follows:

“BUSD will not sell or serve sugar-sweetened beverages (as defined by the SSB tax) at any BUSD schools or campuses.”

“Funded organizations must have in place or agree to adopt prior to being funded an organizational policy prohibiting serving SSBs at organization sponsored events or meetings.”

^{iv} <https://www.theatlantic.com/health/archive/2014/01/the-sugar-addiction-taboo/282699/>

^v B.M.C. 7388-NS § 7.72, 2014, City of Berkeley



Kate Harrison
Councilmember District 4

ACTION CALENDAR
June 1, 2021

To: Honorable Mayor and Members of the City Council
 From: Councilmember Harrison
 Subject: Adopt a Resolution Updating City of Berkeley Street Maintenance and Rehabilitation Policy

RECOMMENDATION

1. Adopt a Resolution updating the City's Street Maintenance and Rehabilitation Policy dated June 1, 2021.
2. Refer the exploration of potential bonding and funding opportunities for improving the PCI of streets and creating a Paving Master Plan back to the FITES Committee for further review.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Resolution No. 55,384-N.S. (1990) as subsequently updated by Resolution No. 64,733-N.S. (2009) authorized the Public Works Commission to work with staff to submit an annual update to the Street Repair Policy. However, the Street Paving Plan has been updated every year but the Street Repair Policy has not been updated for many years. The Public Works Department maintains 214 miles of streets in the City of Berkeley, with a replacement value of over \$793 million and Berkeley's current Pavement Condition Index is at 57, which means that the condition of our streets is very much "At-Risk." The new policy included in this item seeks to achieve improvements to PCI while ensuring equity.

It is in the public interest to adopt a new paving policy, which includes best practices and new strategies, as developed by the Public Works Commission, Public Works Department and the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee.

It is also important for the Committee to continue its work on opportunities for improving the PCI of streets and creating a Paving Master Plan back to the FITES Committee for further review.

POLICY COMMITTEE RECOMMENDATION

Action: 1 speaker. M/S/C (Robinson/Harrison) move the Public Works supplemental item “City of Berkeley Street Maintenance and Rehabilitation Policy to Council” with a positive recommendation including amendments made during the meeting today, and ask Council to refer the exploration of potential bonding and funding opportunities for improving the PCI of streets and creating a Paving Master Plan back to the FITES Committee for further review.

Vote: All Ayes

BACKGROUND

A sub quorum of the Public Works Commission and the Public Works Department have been working intensively over the past year to revise the City of Berkeley Street Maintenance and Rehabilitation Policy to conform to best practices in other cities and to enhance equity and outcomes. The initial policy was adopted by the Council in 1990 and was subsequently updated in 2006 (see attached). For example, the current policy includes an outdated conception of equity based on Council districts, lacks PCI targets for major street types and Performance Metrics, and a “Dig Once” policy.

Amidst the backdrop of significantly deteriorating street conditions and the climate emergency, Councilmember Harrison concurrently submitted a referral to the FITES Committee to explore potential bonding and funding opportunities for improving the Paving Condition Index (PCI) of streets during the 2020 5-year paving plan adoption process. FITES spent a number of meetings discussing with Public Works staff and members of strategies to improve PCI and funding options. The Council subsequently agreed to extend the mandate of the Committee and also to expand their role to consider:

- the Public Works Commission Paving Policy, which sets criteria for determining *how* to pave streets;
- a paving master plan, which will set out *long-range financing plan* for doing so; and
- continue working with the Public Works Department and the Commission to explore potential bonding and funding opportunities to make the paving master plan a reality.

These efforts are in addition to a rolling five-year *short term paving plan* adopted by the Council to allow staff to bid out specific street segments for the next year’s work. Therefore, the Council designated the FITES committee with the task of reviewing the final version of the new Paving Policy.

The prior Paving Policy:

- is the basis of the rolling a 5-year Street Rehabilitation Plan;
- aims to maintain a safe surface conveyance system in the public right-of-way for vehicles, bicycles, transit and pedestrians;
- breaks streets into three categories: Arterials; Collectors and Residentials
- provides that federal, state, regional and local transportation funds are to be invested as follows:
 - 10% for Arterials
 - 50% for Collectors
 - 25% for Residentials
 - 15% for Discretionary and Demonstration Projects;
- provides for direction regarding water conveyance systems, other public utilities and trenching practices.

The Public Works Commission and FITES Committee framed their work around the following key principles, including but not limited to:

- The City's climate goals, especially its transportation goals (60% of City emissions are from transport); the importance of shifting away from traditional asphalt approaches to paving in order to reduce emissions and ensure longevity;
- Issues of equity, distribution of paving and addressing that certain users have not paid their fair share to rehabilitate roads;
- A more comprehensive approach to paving with regard to utility upgrades as we begin to phase out natural gas and build advanced internet communication networks;
- Rapid deployment of pedestrian, bicycle and mobility improvements, i.e., the evolving street;
- Water management best practices (permeable pavers) or landscaping that is visually pleasing, human health supportive, and plant, insect, and animal sustaining.

The updated paving policy included in this item incorporates the following assumptions:

- Adopts an expanded emphasis on climate and sustainability and expanded conformance to the City's Climate Action Plan, Green Infrastructure Plan, Resilience Strategy, Vision Zero Policy and Action Plan, Undergrounding Plan, Complete Streets Policy, Vision 2050 framework, Pedestrian Plan, Transit First

Policy, Strategic Transportation Plan, public realm and/or other localized transportation plans, and Bicycle Plan;

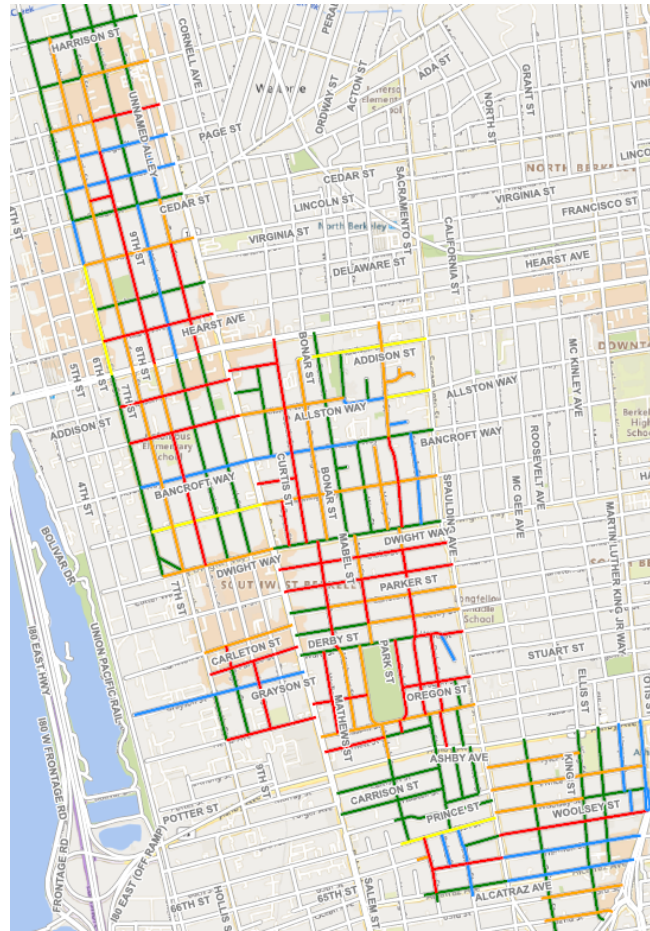
- Recognizes that poorly maintained streets have a disproportionate impact on certain members of the community, including low-income residents; those with mobility or visual impairments who face greater access and safety challenges; bicyclists and pedestrians, who face greater danger than those driving; and dense, more populous neighborhoods with thoroughfares;
- Emphasizes using life cycle cost analysis to evaluate different road surfacing options;
- Promotes the rehabilitation of contiguous sections of roadway, rather than one block at a time, shall be preferred, when feasible;
- States that bond funds shall strive to be used for long-lasting capital improvements (projects with a useful life that meets or exceeds the duration of the bond repayment schedule) or to accelerate road work that will result in long-term cost savings for ratepayers;
- Asserts that street trees are valuable part of the landscape, as they sequester carbon, soak up stormwater, improve land values, and add greenery;
- Asserts that tree removals shall only be permitted as a last resort consistent with BMC 12.44.020, with the approval of both the Director of Parks and Waterfront and Director of Public Works. If tree removal is necessary, replacement trees shall be planted where and when feasible in accordance with BMC 12.44.010.

In addition, the new policy incorporates the following new policies:

- **Planning**
 - The *5-year Street Rehabilitation Plan* shall be supported by a 30-year road surfacing projection, where roadway improvement projects are forecast over a long-term planning period. The first five years of the projection will become the first draft of the *5-year Plan*.
- **Equity**
 - The benefits of good infrastructure shall be distributed equitably throughout the entire community regardless of the income, political influence, or demographic characteristics of the residents in each area.

Equity means that disadvantaged residents with more pressing needs experience benefits sooner than others, as defined by the City within the adopted *5-Year Plan*.

- A new *Equity Zone* shall be established according to Attachment 1. This Zone shall be prioritized to meet an average PCI of 70 sooner than the remainder of the City. This Zone contains historically underserved neighborhoods that have experienced decades of underinvestment, and the residents in this zone experience more pressing needs.



- Over the longer term, road surfacing activities shall be planned within Pavement Analysis Zones. A Pavement Analysis Zone shall consist of a logical set of street segments, excluding the arterials, collectors, bus routes, bicycle boulevards and non-representative demonstration projects.

- The department may revise the pavement analysis zone boundaries from time to time, consistent with the other goals of this policy. Any changes to pavement analysis units shall be proposed within the biannually updated *5-year Street Rehabilitation Plan* submitted to City Council.
 - It shall be the goal of the City to seek parity of street condition between pavement analysis zones, except in regards to the *Equity Zone*.
- **Performance Metrics**
 - The City will strive to maintain all roads within the primary transportation network at a standard no less than the following PCI targets for any stretch of roadway¹:
 - i. Arterial - 70,
 - ii. Collector - 70,
 - iii. Bus Routes - 70,
 - iv. Existing and proposed low-stress bikeway network - 70.
 - 1. Bikeways shall be surfaced with a treatment that emphasizes smoothness of the road surface.
 - v. Equity Zone- 70.
 - The biannually updated *5-year plan* shall report on these performance metrics, PCI measurements for each street segment in the City, and percent of overall funding dedicated to each of the following: arterials, collectors, bus routes, existing and proposed low-stress bikeway network, equity zone, and residential streets.
- **Dig Once**
 - Street rehabilitation shall conform with a dig once approach. This includes coordinating with sewer, water, electrical, telecom, undergrounding and other activities to minimize the cost and maintain the quality of the street surface.
 - In order to protect the City's investment on street improvements, the City shall place a moratorium on recently paved streets that prohibits digging through them for up to five years, excluding emergency work.

¹ PCI of 70 is the lower threshold of what is considered "Good." Streets that fall below a "good" condition require much more expensive repair process.

- **Demonstration Projects and Use of New Technologies**
 - To the extent practical, the City shall evaluate the use of permeable pavement, concrete pavement, and other street surface technologies using life cycle cost analysis.
 - The use of new technologies that provide enhanced durability, lower cost, and more environmentally beneficial impacts shall be evaluated and reviewed in the biannually adopted *5 Year Street Rehabilitation Plan*.

- **Plan and Policy Development and Update**
 - Every two years, in line with the City’s budgeting process, the *5-year Street Rehabilitation Plan* adopted by City Council shall include a funding sufficiency analysis based on the existing deferred maintenance at that point to determine what level of funding is required to maintain our streets in safe, good condition that protects our environment and properly maintains the existing investment in City assets.
 - Identify new funding sources such as:
 - Heavy vehicles, which have a disproportionate impact on the degradation of paved assets, and
 - Transportation Network Company (TNC) vehicles.
 - At a minimum, this *Street Maintenance and Rehabilitation Policy* shall be reviewed and adopted by the City Council every five years, with advice of the Public Works Commission.

It is the public interest to adopt these updates through the attached Resolution to improve the lives of Berkeleyans, protect the environment and promote equitable outcomes.

FINANCIAL IMPLICATIONS

Staff time will be necessary to implement the new paving policy.

ENVIRONMENTAL SUSTAINABILITY

Supporting low-carbon paving policies will complement and accelerate Berkeley’s ongoing efforts to reduce carbon emissions at an emergency and equitable pace in line with the Climate Action Plan and Climate Emergency Declaration.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

ATTACHMENTS

1. Resolution
2. 2006 Street Maintenance and Rehabilitation Policy

RESOLUTION NO. -N.S.

ADOPTING THE 2021 STREET MAINTENANCE AND REHABILITATION POLICY UPDATE

WHEREAS, Resolution No. 55,384-N.S. (1990) as subsequently updated by Resolution No. 64,733-N.S. (2009) authorized the Public Works Commission to work with staff to submit an annual update to the Street Repair Policy and the annual Street Paving Plan; and

WHEREAS, the Street Paving Plan has been updated every year but the Street Repair Policy has not been updated for many years; and

WHEREAS, the Public Works Department maintains 214 miles of streets in the City of Berkeley, with a replacement value of over \$793 million; and

WHEREAS, Berkeley's current Pavement Condition of Index is 57, which means that the condition of our streets is very much "At-Risk"; and

WHEREAS, the Public Workers Commission and Public Works Department established a working group to consider updates to the paving policy to improve planning outcomes, ensure equity, identify new funding sources, better align with environmental goals, implement performance metrics, establish a "Dig Once" policy, and leverage demonstration projects and use of new technologies; and

WHEREAS, on April 21, 2021 Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee moved the updated policy including amendments to the Council; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following Street Repair Policy update dated June 2021 is hereby adopted:

City of Berkeley Street Maintenance and Rehabilitation Policy

Section 1. General Policy

It is the policy of the City of Berkeley to maintain our streets in safe, good condition that protects our environment and to properly maintain the existing investment in City assets. Staff will implement a Citywide road resurfacing plan that will ensure street maintenance and repair in a timely manner, reduce long term-replacement costs, and provide for the safe and efficient use of our streets. The users of the street surface in the public right-of-way include powered vehicles, bicycles, transit, and pedestrians. The right-of-way also provides for storm water conveyance and is the location of many public utilities.

The policy requires that a *5-year Street Rehabilitation Plan* for the entire City be prepared and adopted biannually in line with the City's budget process. Any changes to the *5-year Plan* made in the interim shall be reported to City Council. Streets and their surfacing treatment shall be prioritized using a multi-criteria adaptive planning framework to achieve sustainable, resilient, and integrated solutions for the City's right-of-way and the downstream environments. The criteria shall consider equity, quality of life, safety, opportunities for leadership, resource allocation, environmental impacts, and climate and resilience.

This section of the policy defines basic assumptions that inform the goals, objectives, and outcomes of the *5-year plan*.

1. This policy defines the priorities for managing the road surface infrastructure from curb to curb. This policy does not provide guidance on how to prioritize sidewalks or other infrastructure associated with complete streets planning.
2. Streets include arterial, collector, residential, and commercial/industrial streets as defined in Berkeley's General Plan.
3. Consistency with the City's General Plan policy of encouraging use of forms of transportation other than automobiles.
4. Conformance with the Regional Water Quality Control Board's stormwater permit requirements.
5. Support of the City's plans and updates thereto, including the City's Climate Action Plan, Green Infrastructure Plan, Resilience Strategy, Vision Zero Policy and Action Plan, Undergrounding Plan, Complete Streets Policy, Vision 2050 framework, Pedestrian Plan, Transit First Policy, Strategic Transportation Plan, public realm and/or other localized transportation plans, and Bicycle Plan.
6. Poorly maintained streets have a disproportionate impact on certain members of the community:
 - a) Low-income residents are more seriously impacted by higher vehicle repair costs than higher income residents;
 - b) Those with mobility or visual impairments face greater challenges of unequal access and safety compared to those without such challenges;
 - c) Bicyclists and pedestrians face greater danger than those driving; and
 - d) Poorly maintained streets in dense, more populous neighborhoods are detrimental to more users than poorly maintained streets in less dense neighborhoods.
7. Utility trench and pothole repair work shall be done in accordance with permit conditions, standard details, and/or standard operating procedures adopted by the Public Works Department.
8. To the extent practical, the City shall use life cycle cost analysis to evaluate different road surfacing options.
9. Runoff from roadways carry pollutants that negatively impact public health, creeks and streams, and the Bay.
10. Street trees are valuable part of the landscape, as they sequester carbon, soak up stormwater, improve land values, and add greenery.
11. The Metropolitan Transportation Commission requires the use of a Pavement Management Tool (such as StreetSaver). Pavement Management Tools are used to optimize road surface conditions through the use of a Pavement Condition Index (PCI) performance metric.

Section 3. Funding

The *Five-year Street Rehabilitation Plan* shall identify all available funding and the sources used to deliver the proposed road improvement projects. This shall include Federal, State, County and City funding sources. In the event that the planned projects are not able to achieve the City's desired roadway condition level of service, the *Five-year Plan* should identify the level of funding and activities needed to expand roadway improvements to achieve the stated goals of this policy. Bond funds shall strive to be used for long-lasting capital improvements (projects with a useful life that meets or exceeds the duration of the bond repayment schedule) or to accelerate road work that will result in long-term cost savings for ratepayers.

Section 4. Specific Policy

The Street Rehabilitation Program shall ~~Page 11 of 17~~ following objectives:

1. Planning

- a) The *5-year Street Rehabilitation Plan* shall be supported by a 30-year road surfacing projection, where roadway improvement projects are forecast over a long-term planning period. The first five years of the projection will become the first draft of the *5-year Plan*.
- b) To the extent financially practical, implementation of the paving plan shall advance plans identified in section 2.5.
- c) Rehabilitation of contiguous sections of roadway, rather than one block at a time, shall be preferred, when feasible.
- d) Tree removals shall only be permitted as a last resort consistent with BMC 12.44.020, with the approval of both the Director of Parks and Waterfront and Director of Public Works. If tree removal is necessary, replacement trees shall be planted where and when feasible in accordance with BMC 12.44.010.

2. Equity

- a) The benefits of good infrastructure shall be distributed equitably throughout the entire community regardless of the income, political influence, or demographic characteristics of the residents in each area. Equity means that disadvantaged residents with more pressing needs experience benefits sooner than others, as defined by the City within the adopted *5-Year Plan*
- b) A new *Equity Zone* shall be established according to Attachment 1. This Zone shall be prioritized to meet an average PCI of 70 sooner than the remainder of the City. This Zone contains historically underserved neighborhoods that have experienced decades of underinvestment, and the residents in this zone experience more pressing needs and receive benefits sooner.
- c) Over the longer term, road surfacing activities shall be planned within Pavement Analysis Zones. A Pavement Analysis Zone shall consist of a logical set of street segments, excluding the arterials, collectors, bus routes, bicycle boulevards and non-representative demonstration projects.
 - a. The department may revise the pavement analysis zone boundaries from time to time, consistent with the other goals of this policy. Any changes to pavement analysis units shall be proposed within the biannually updated *5-year Street Rehabilitation Plan* submitted to City Council.
 - b. It shall be the goal of the City to seek parity of street condition between pavement analysis zones, except in regards to the *Equity Zone*.

3. Performance Metrics

- a) The City will strive to maintain all roads within the primary transportation network at a standard no less than the following PCI targets for any stretch of roadway¹:
 - a. Arterial - 70,
 - b. Collector - 70,
 - c. Bus Routes - 70,
 - d. Existing and proposed low-stress bikeway network - 70.
 - i. Bikeways shall be surfaced with a treatment that emphasizes smoothness of the road surface.
 - e. Equity Zone- 70.
- b) Funding should be prioritized towards maintenance activities to achieve the goals of item 4.2a.
- c) The biannually updated *5-year plan* shall report on these performance metrics, PCI measurements for each street segment in the City, and percent of overall funding dedicated to each of the following: arterials, collectors, bus routes, existing and proposed low-stress bikeway network, equity zone, and residential streets.

4. Dig Once

- a. Street rehabilitation shall conform with a dig once approach. This includes coordinating with sewer, water, electrical, telecom, undergrounding and other activities to minimize the cost and maintain the quality of the street surface.

¹ PCI of 70 is the lower threshold of what is considered “Good.” Streets that fall below a “good” condition require much more expensive repair process. 103

- b. In order to protect the City's ~~Page 12 of 13~~ street improvements, the City shall place a moratorium on recently paved streets that prohibits digging through them for up to five years, excluding emergency work².

5. Demonstration Projects and Use of New Technologies

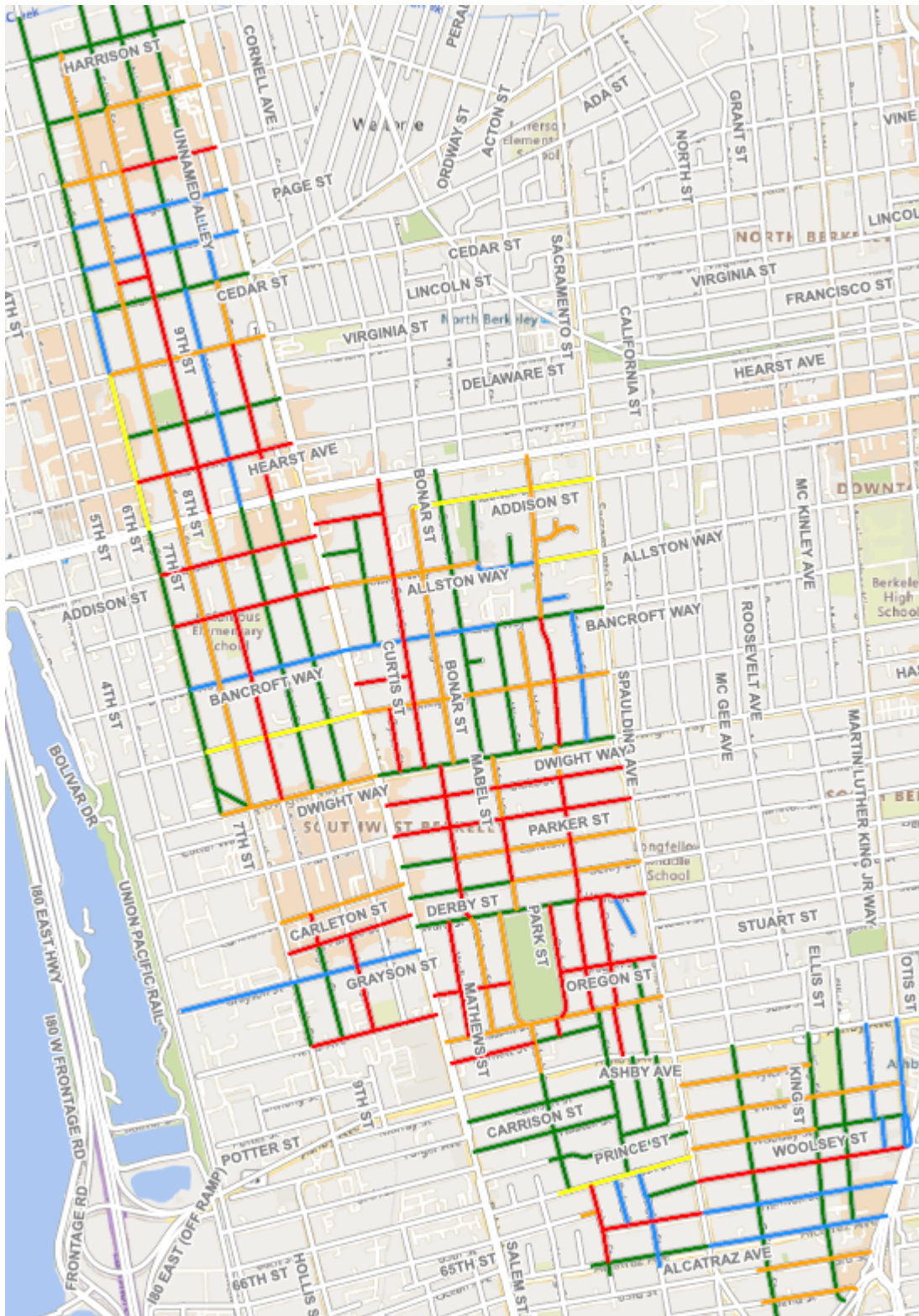
- a. To the extent practical, the City shall evaluate the use of permeable pavement, concrete pavement, and other street surface technologies using life cycle cost analysis.
- b. The use of new technologies that provide enhanced durability, lower cost, and more environmentally beneficial impacts shall be evaluated and reviewed in the biannually adopted *5 Year Street Rehabilitation Plan*.


Section 5. Plan and Policy Development and Update

The plan and policy development shall be as follows:

1. Every two years, in line with the City's budgeting process, the *5-year Street Rehabilitation Plan* adopted by City Council shall include a funding sufficiency analysis based on the existing deferred maintenance at that point to determine what level of funding is required to maintain our streets in safe, good condition that protects our environment and properly maintains the existing investment in City assets.
2. Identify new funding sources such as:
 - a. Heavy vehicles, which have a disproportionate impact on the degradation of paved assets, and
 - b. Transportation Network Company (TNC) vehicles.
3. At a minimum, this *Street Maintenance and Rehabilitation Policy* shall be reviewed and adopted by the City Council every five years, with advice of the Public Works Commission.

² As cited in Berkeley Municipal Code 16.12.030 and documented on the City [website](#)





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PUBLIC WORKS
 Department of Public Works

CITY OF BERKELEY STREET REHABILITATION AND REPAIR POLICY
 Updated March 2009

A. STREET REHABILITATION POLICY

Section 1. General Policy

It is the policy of the City of Berkeley that there shall be a 5-year Street Rehabilitation Plan for the entire City to be adopted by the City Council.

The primary purpose of the street rehabilitation program is to maintain a safe surface conveyance system in the public right-of-way for vehicles, bicycles, transit and pedestrians. The right-of-way also provides ancillary functions of a water conveyance system and location of public utilities.

The City shall strive to identify and implement integrated solutions that address the multiple demands on the street infrastructure that are designed for safety, environmentally sustainable and economically efficient over the long run.

The Plan shall make use of all available funding and set priorities for rehabilitation of streets in accordance with their use, as follows:

- Arterials
- Collectors
- Residentials

(Within the collectors and residential street categories, bus and bicycle routes shall be given first consideration.)

To the extent practicable, these priorities shall be consistent with:

- 1) the City's General Plan policy of encouraging use of forms of transportation other than automobiles,
- 2) the Regional Water Quality Control Board (RWQCB) goals regarding water quality, flooding potential and runoff control, and
- 3) the City's Measure G goal of an 80% reduction of greenhouse gas emissions by 2050.

Section 2. Assumptions

- 1) Emergency and interim work for trench and pothole repair will be done and funded outside this program.
- 2) Available funds for street rehabilitation include Gas Tax, Measure B Sales Tax, and other federal, state, and local funds appropriated by the City Council for this purpose during the annual budget process.
- 3) Additional sources of funding other than those above will be needed to ensure acceptable levels of effort in street rehabilitation.

Section 3. Funding

Federal and State transportation and other similar funds shall be used for repair of arterials. When all

eligible work on arterials has been completed in a certain year, these fund sources may be applied to collectors.

All Berkeley's Measure B Sales Tax funds allocated for local streets and roads, all new gas tax subventions, as much of the current gas tax subventions as available and other similar funds shall be used for street rehabilitation as follows:

- 10% for Arterials
- 50% for Collectors
- 25% for Residentials
- 15% for Discretionary and Demonstration Projects

The fees assessed to mitigate for excessive deterioration on and wear and tear of streets resulting from construction activities, public or private, shall be used for street rehabilitation.

To provide for maximizing the use of the limited funds available, the Program may provide for paving publicly owned unimproved streets in areas other than those zoned S1 (industrial and manufacturing) if at least 75% of the cost is borne by the adjacent property owners.

Section 4. Specific Policy

The Street Rehabilitation Program shall be based on the following criteria, listed in order of priority:

- 1) Street rehabilitation shall be coordinated with utility, sewer, water contamination runoff issues, and other underground activities to minimize the cost and maximize the effectiveness of rehabilitation and improve the environment.
- 2) Long term cost effectiveness, long term street pavement durability and aesthetics are important for priority setting and repair methodology selection.
- 3) In order to benefit the greatest number of residents, heavy street use (as indicated by traffic counts and bus routes designated in AC Transit's Comprehensive Service Plan) shall be given great consideration.
- 4) Demonstration and test projects for new technologies should be located in high visibility and heavily used areas. See attached document on background and recommendations for the trial permeable paver sites.
- 5) Rehabilitation of an entire street, rather than one block at a time, shall be scheduled as much as possible.
- 6) First hand assessment of streets, as well as computer based analysis, shall be a basis for street rehabilitation program development.

Section 5. Program and Policy Development and Update

The 5-year Street Rehabilitation Program shall be adopted by the City Council and the 5-year planning process shall be adopted as a City policy as follows:

- 1) Each year, the 5-year program shall be reviewed and updated formally by the City Council, with the advice of the Public Works Commission.
- 2) On an annual basis coinciding with budget preparation, the Street Rehabilitation Policy shall be reviewed and updated formally by the City Council, with advice of the Public Works Commission.
- 3) Both the 5-Year Program and the Street Rehabilitation Policy shall be reviewed and updated annually to ensure that the revolving 5-Year Street Plan is consistent with the policy stated herein and for consistency with General Plan and Area Plan policies.

B. UTILITY TRENCH AND POTHOLE REPAIR POLICY

Section 1. General Policy

It is the policy of the City of Berkeley that there shall be an annual Utility Trench and Pothole Repair Program for the most heavily used streets and in the priority order, as follows:

1. Arterials
2. Collectors
3. Residentials with bus routes

Additionally, the other residential streets shall be repaired on an area by area basis at least every five (5) years. The program shall be reviewed and updated annually to ensure adherence to the City policy.

Section 2. Assumptions

- a. Emergency work for trench and pothole repair will be done as a part of this program.
- b. Utility company created trenches will be repaired by the respective utility company, and no City resources will be used for these purposes.

Section 3. Funding

- a. Gas Tax subventions and General Funds of the City shall be used for pothole repair.
- b. Sanitary sewer funds shall be used for City created sewer trench repair.

Section 4. Specific Policy

In addition to applicable policy under Street Rehabilitation Policy, the Utility Trench and Pothole Repair Program shall be based on the following criteria:

- a. A trench or a pothole is defined as any pavement surface irregularities with a change of elevation (plus or minus) of more than one (1) inch in twelve (12).
- b. All on-going trench and pothole repair shall use the permanent repair technique, i.e., prepare the trench or pot hole into a rectangular shape, fill with hot asphalt mix, and roll to match the grade adjacent to it.

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[Department of Public Works](#), 2180 Milvia Street, Berkeley, CA 94704

Questions or comments? Email: publicworks@cityofberkeley.info Phone: (510) 981-6300

(510) 981-CITY/2489 or 311 from any landline in Berkeley

TTY: (510) 981-6903





Office of the Mayor

CONSENT CALENDAR

June 1, 2021

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Berkeley Housing Authority Board of Commissioners Re-Appointments

RECOMMENDATION

Adopt a Resolution re-appointing Dan Rossi, Christine Schildt, and Adolph Moody to the Berkeley Housing Authority Board of Commissioners.

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. State law also states that the length of a commissioner's term shall be four years and can be reappointed.

Currently, there are three members of the BHA Board that have either terms that have expired or will be expiring soon. Specifically, they are:

Dan Rossi – Expires in July 2021

Mr. Rossi is the current chair of the BHA Board and was first appointed in September 2013 (Resolution No. 66,313-N.S.) and was reappointed in July 2017 (Resolution No. 68069-N.S.). Mr. Rossi has served with distinction on the Housing Authority Board, bringing his experience as a municipal attorney and former Housing Advisory Commissioner to assist BHA in policy and personnel matters. He has extensive experience with affordable housing.

Christine Schildt – Expires in September 2021

Ms. Schildt is the current vice-chair of the BHA Board and was first appointed in September 2017 (Resolution No. 68,155-N.S.). She is a Senior Associate with PolicyLink, a member of the Berkeley Planning Commission, and South Berkeley community leader who has advocated for affordable housing and worked with public housing residents.

Adolph Moody – Expired on September 2020

Mr. Moody is one of the two tenant Commissioners on the BHA Board. He was first appointed in September 2005 (Resolution No. 63,066-N.S.) and most recently in September 2016 (Resolution No. 67,665-N.S.). With 16 years of experience, he brings extensive institutional knowledge to the board and the perspective as a BHA voucher holder. He has experience in accounting support, public housing programs, self-sufficiency programs, and neighborhood programs.

All three commissioners have expressed verbally their request to serve another term.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

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

RE-APPOINTMENT OF DAN ROSSI, CHRISTINE SCHILDT, AND ADOLPH MOODY
TO THE BERKLEY HOUSING AUTHORITY BOARD OF COMMISSIONERS

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 are currently three commissioners – Dan Rossi, Christine Schildt, and Adolph Moody, whose terms have either expired or will be expiring soon; and

WHEREAS, all three commissioners have expressed verbally their request to serve another term.

NOW THEREFORE, BE IT RESOLVED by the Mayor of the City of Berkeley that Dan Rossi and Christine Schildt are re-appointed to serve as a Commissioner of the Berkeley Housing Authority Board; and

BE IT FURTHER RESOLVED by the Mayor of the City of Berkeley that Adolph Moody is re-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 Dan Rossi, Christine Schildt, and Adolph Moody and hereby confirms the Mayor's reappointment; and

BE IT FURTHER RESOLVED that by the Mayor of the City of Berkeley that, pursuant to Health and Safety Code Section 34272(a), Dan Rossi and Christine Schildt are appointed to serve a four-year term; 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), Adolph Moody is appointed to serve as a tenant Commissioner for a two-year term.



Kate Harrison
Councilmember District 4

ACTION CALENDAR

June 1, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Budget Referral and Resolution Establishing A Pilot Existing Building Electrification Incentive Program to Assist New Homeowners, Renters and Existing Homeowners with Transition to Zero-Carbon Buildings

RECOMMENDATION

1. Adopt a Resolution establishing:
 - a. a two-year Pilot Existing Building Electrification Incentive Program to Assist New Homeowners, Renters and Existing Homeowners with Transition to Zero-Carbon Buildings; and
 - b. an annual process for the Energy (or successor) Commission and the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee (FITES), in consultation with community groups, to provide input to staff and Council about eligible *categories* of fund expenditures to maximize equitable emissions reductions and impacts for eligible households while leaving the mechanisms for doing so to staff discretion.
2. Refer to the June, 2021 budget process:
 - a. \$1,500,000 of general fund monies from excess equity as seed funding for the two-year pilot, inclusive of staff costs, for FY 2022.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The world is facing a grave climate emergency, requiring municipalities to rapidly transition towards zero carbon economy by 2030. Transitioning Berkeley's economy will require significant investment on the part of both government and residents. It is in the public interest to establish a financial incentive program to assist new homeowners, renters and existing homeowners with the transition to zero-carbon buildings. This item establishes the general scope of a two-year Existing Building Electrification Incentive Program Pilot and refers to staff to design an equitable program with \$1,500,000 for FY22, inclusive of staffing costs, and contingent on the availability of excess equity, from the General Fund. It also asks the Energy (or successor) Commission and FITES Committee, in consultation with community groups, to provide input to staff and Council on at least an annual basis about categories of fund expenditures that would provide the

most benefit for low-income households and to maximize equitable emissions reduction impacts. The establishment of this program is consistent with staff and Council goals and budgetary priorities.

BACKGROUND

According to the best available science, a 50% reduction in emissions must happen worldwide by 2030 or earlier in order to delay extremely catastrophic warming. To meet the U.N.'s global 2050 target to keep emissions as close as possible to 1.5 degrees Celsius, wealthy nations and cities will near zero by 2030.¹

As a result of the scientific and economic realities of climate change, and despite the people of Berkeley's average relative wealth, it is not realistic to expect the owners of the City's approximately 46,000 residential housing units to electrify their buildings in a decade without significant government co-investment. Low-carbon technology can often be out of reach of many low-income households and, without direct assistance, many will be left behind. Transitioning Berkeley's economy will require significant investment on the part of both residents and the government. Following Berkeley's 2019 landmark prohibition on natural gas infrastructure, staff have released a Draft Berkeley Existing Buildings Electrification Strategy that is currently unfunded.

Such investments would significantly lower Berkeley's carbon emissions, at least 37% of which are from buildings, and provide residents with a plethora of health and safety benefits that will likely outweigh upfront costs. The program can be crafted in a way that supports good paying jobs, for example including unionized contractors, workforce development and local hire requirements. The transition to a zero-carbon city thus has the potential to uplift both workers and residents.


In January 2021, the City's Office of Energy and Sustainable Development reported to the Energy Commission that the cost of electrifying the City's entire low-rise building stock (90% of all Berkeley buildings and 65% of floor area) would be between \$700 and \$880 million. An additional \$120 million is needed for efficiency improvements and solar.

¹ IPCC, 2018: Summary for Policymakers. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. *World Meteorological Organization, Geneva, Switzerland, 32 pp.* <https://www.ipcc.ch/sr15/chapter/spm/>.

Item 9 - Communications
Energy Commission
January 27, 2021

1/27/2021

Draft Total Costs



Approximate total modeled costs for converting Berkeley's low-rise housing stock today:

- Covers 36,000 1-3 floor homes (90% of all Berkeley buildings and 65% of floor area)
- \$280-430 Million more than business-as-usual gas replacements (no solar or envelope improvements)
- Additional \$220-660 Million for envelope efficiency and solar PV

	No Solar	Minimum Solar (Offset)	Maximum Solar (Net Zero Energy)
Economy Appliances	\$700 Million	\$930 Million	\$1.2 Billion
Mid-Tier Appliances	\$880 Million	\$1 Billion	\$1.2 Billion
Mid-Tier + Envelope Improvements	\$1 Billion	\$1.2 Billion	\$1.4 Billion

Clearly, this relatively modest pilot program would only make a small dent in the City's retrofit challenge, perhaps facilitating 400-500 retrofits per year. However, the success of this pilot program will likely spur the Council and residents to seek additional federal, state and local funds to expand the program in subsequent years. The expertise and lessons learned through this pilot will help guide future efforts aimed at closing the 46,000 gas-powered residential unit challenge.

Since 2018, the Council has explored opportunities to increase public investment in building electrification retrofits. Councilmember Harrison's November 27, 2018 referral, following the passage of the Climate Emergency Declaration, requested that the City Manager draft an ordinance expanding eligibility for the existing Seismic Transfer Tax Rebate Program to include electrification and other resiliency measures. Staff subsequently presented the draft ordinance to Council in July of 2020 at the outset of the COVID-19 pandemic with a recommendation to take no action for a year due to COVID-19-related fiscal uncertainty, and the item was held over at the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee (FITES).

At the same time, staff also presented to FITES a related referral to design a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents. FITES and Council agreed to move the Resilient Homes Equity Pilot Program design and research process forward in November, 2020.

Many economic and public health indicators suggest that the City is entering a more optimistic phase in the pandemic, to include the influx of substantial – but temporary - federal stimulus monies through the 2021 American Rescue Plan Act and the anticipation of a fairly rapid rebound in revenues to pre-pandemic levels. Transfer tax revenues for FY21 are estimated at \$20 million (compared with \$20 million in FY 19) and the city expects to receive a one-time two-year allocation of \$68 from the 2021 American Rescue Plan Act.

As a result, it is in the public interest to revisit the July 2020 item to see how the City can best move forward with providing residents with critical greenhouse gas reduction incentives in order to address our larger and longer-term crisis: climate change.

According to recent 2020 transfer tax data from OESD, on average between 2014-2019, 845 residential units were transferred per year, generating approximately an average of \$4.6 million total per year in eligible rebates for the Seismic Transfer Tax Program. The city has approximately 46,000 occupied housing units, with the vast majority being gas-powered.

Existing Building Electrification Incentive Program Pilot

Since early 2021, Councilmember Harrison’s office and the FITES Committee have been working with City staff to explore opportunities to fund retrofits through general fund transfer tax revenues and establishing a cap on total and per beneficiary allocations. In working with the City Manager, we have concluded that while the existing transfer tax rebate system is a good vehicle for allocating at point of sale, it does not provide funding for existing homeowners who may need to replace a broken appliance or who want to make voluntary retrofits. A better vehicle is a two-year pilot; this requires fewer staff resources to administer and builds on significant staff experience and expertise administering incentive programs.

This item provides an alternative to the Seismic Transfer Tax Rebate model in the form of a budget referral and resolution establishing two-year pilot incentive program funded via general fund allocations, which are currently partially funded by transfer tax revenue.

Currently, the Council approved amount in transfer tax revenues is allocated to the General Fund (as in the past, at \$12.5 million) and some portion is typically set aside for capital projects (generally at \$2 million). For the first year of this pilot program this item proposes to allocate a total of \$1.5 million in excess Transfer Tax equity which would be inclusive of staff’s administrative costs.² On adoption of this proposal, total transfer tax expenditures would amount to approximately \$17 million, including the \$12.5 million typically allocated to the General Fund programs and the \$2 million to capital programs.

While the program will ultimately be designed by OESD staff through administrative regulation, this item also includes a resolution officially establishing the program and providing general parameters for how staff should allocate the proposed \$1.5 million retrofit fund. This program and the \$1.5 million allocation are already included as a line item in the Planning & Development Department’s Fiscal Year 2022 proposed budget.

New property owners are most likely to remodel their units shortly completing the purchase. Thus, the Draft Berkeley Existing Buildings Electrification Strategy recommends allocating some portion of the fund for transferees of residential properties within two years of point of sale. The City is also exploring opportunities to adopt certain mandatory electrification requirements for transferees of new buildings through its BESO program, starting with the largest buildings.

Equitably supporting existing homeowners and renters whose appliances, e.g., their water heater, break down suddenly, and those who wish to embark upon voluntary electrification projects to include new appliances, electrical work (e.g., panel upgrades) are also elements of the Building Electrification strategy. This part of the program would be similar to Marin County’s Electrify Marin program which provides residents with income-qualified incentives for building electrification and panel upgrades. Since 2019, Marin has disbursed over \$100,000 in rebates.

Electrify Marin

Appliance Type	Standard Rebate	Income Qualified Rebate
Heat Pump Water Heater	\$1,000	\$2,000
Heat Pump Space Heater		
Central Heat Pump	\$1,000	\$4,500
Mini-Split Heat Pump	\$800	\$3,000
Induction Cooking		
Range (Cooktop & Oven)	\$500	\$500
Cooktop only	\$250	\$250
Service Panel Upgrade	\$500	\$1,200

² This amount would be in addition to a separate \$500,000 Climate Equity Action incentive fund proposed by Councilmember Harrison, Mayor Arreguin, and Councilmembers Taplin and Robinson.

These incentives would be paired with rebates available through BayRen and EBCE, which are helpful but fall far short of the actual cost. For example, BayRen and EBCE offer \$2,000 for water heaters, which typically cost approximately \$5,000-\$10,000 when one includes the cost of potential electrical and panel upgrades. Berkeley's incentive program is also needed to pay for space heating electrification, and needed panel and other electrical upgrades for which there are currently no incentives. Electrical, panel and space heating upgrades are typically the most expensive part of any electrification project.

Staff have indicated that they believe an additional incentive of approximately \$2,500 per property owner would be significant to persuade many property owners to electrify.

Alternatives Considered

FITES discussed whether to expand this program beyond building electrification to include fire safety and resilience upgrades. However, at this time, fire programs have separate revenue sources and greenhouse gas reduction is a top priority given the need to reduce emissions to near zero by 2030 per the 2018 IPCC report. For example, fire safety measures have received generous support from the voters through Measure FF, whereas climate is still severely underfunded. In addition, global warming is one of the chief causes of increased fire threats.

FINANCIAL IMPLICATIONS

This item would result in a one-time investment of \$1,500,000 from excess equity to provide initial funding for a two-year Existing Building Electrification Incentive Program Pilot to assist property owners and renters with the transition to a zero-carbon economy. This investment includes staff costs to run the program.

ENVIRONMENTAL SUSTAINABILITY

Supporting incentives for building decarbonization will complement and accelerate Berkeley's ongoing efforts to reduce carbon emissions at an emergency and equitable pace in line with the Climate Action Plan, Climate Emergency Declaration, and Existing Building Electrification Strategy.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

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

RESOLUTION ESTABLISHING A BUILDING ELECTRIFICATION INCENTIVE PILOT PROGRAM

WHEREAS, the world is facing a grave climate emergency, requiring municipalities to rapidly transition towards a zero-carbon economy by 2030; and

WHEREAS, transitioning Berkeley's economy will require significant investment on the part of both government and residents as staff have estimated that converting Berkeley's approximately 46,000 residential housing units will likely cost hundreds of millions of dollars; and

WHEREAS, low-carbon technology and infrastructure can often be out of reach for many households and, without direct assistance, many will be left behind; and

WHEREAS, moderate and lower-income communities are most impacted by global climate change and have the least financial ability to address it; and

WHEREAS, City's Draft Existing Building Electrification strategy both cite the importance of ensuring equity in access to carbon-free technology; and

WHEREAS, it is in the public interest to establish a two-year Existing Building Electrification Incentive Program to assist residents with the cost of transitioning from a carbon-based city; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager establish an Existing Building Electrification Incentive Program to invest in the following priorities, to be further defined by staff:

1. incentives for transferees of residential property to include appliance retrofits and electrical upgrades (including panel upgrades);
2. equitable incentives for existing residential property owners and renters pursuing electrification retrofits or replacing broken or outdated appliances, to include electrical upgrades (including panel upgrades);
3. a nexus with good paying jobs, for example use of unionized contractors, workforce development programs and local hire requirements.

BE IT FURTHER RESOLVED that the Berkeley Energy Commission, or successor, and the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee, in consultation with community groups, provide input to staff and Council on at least an annual basis about eligible categories of fund expenditures to maximize equitable emissions reductions and impacts for eligible households.

BE IT FURTHER AND FINALLY RESOLVED that any unexpended funds shall carry over from year to year.

Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
May 18	<ol style="list-style-type: none"> 1. Systems Realignment 2. Affordable Housing Policy Reform
July 20	<ol style="list-style-type: none"> 1. Bayer Development Agreement 2. Measure FF and Fire Prevention
Sept. 21	<ol style="list-style-type: none"> 1. Housing Element
Oct. 19	<ol style="list-style-type: none"> 1. Update: Zero Waste Rates & Priorities 2. Berkeley Police Department Hiring Practices 3. Crime Report
Dec. 7	<ol style="list-style-type: none"> 1. Review and Update on City's COVID-19 Response 2. WETA / Ferry Service at the Marina

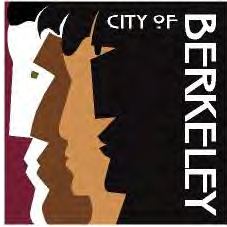
Unscheduled Workshops
<ol style="list-style-type: none"> 1. Cannabis Health Considerations

Unscheduled Presentations (City Manager)
<ol style="list-style-type: none"> 1. Civic Arts Grantmaking Process & Capital Grant Program

	City Council Referrals to the Agenda & Rules Committee and Unfinished Business for Scheduling
1.	<p>47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow <i>(Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee) (Referred from the January 21, 2020 agenda)</i></p> <p>From: Councilmember Harrison</p> <p>Recommendation:</p> <ol style="list-style-type: none"> 1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow. 2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods. <p>Financial Implications: See report Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140 <i>Note: Referred to Agenda & Rules for future scheduling.</i></p>
2.	<p>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p>From: City Manager</p> <p>Recommendation: Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.</p> <p>Financial Implications: None Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000 <i>Note: Referred to Agenda & Rules for future scheduling.</i></p>
3.	<p>17. Objective Standards Recommendations for Density, Design and Shadows <i>(Item contains supplemental material.) (Referred from the March 23, 2021 agenda.)</i></p> <p>From: Joint Subcommittee for the Implementation of State Housing Laws</p> <p>Recommendation: Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.</p> <p>Financial Implications: See report Contact: Alene Pearson, Commission Secretary, (510) 981-7400 <i>Note: Referred to Agenda & Rules for future scheduling.</i></p>

CITY CLERK DEPARTMENT				
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS				
BEFORE THE CITY COUNCIL				
Address	Board/ Commission	Appeal Period Ends	Determination on Appeal Submitted	Public Hearing
NOD – Notices of Decision				
0 Latham Lane (75 Latham) (construct a new two story single-family)	ZAB	5/25/2021		
0 Latham Lane (65 Latham) (construct a new two story single-family)	ZAB	5/25/2021		
1241 Ashby Avenue (construct detached two story dwelling unit)	ZAB	5/52/2021		
Public Hearings Scheduled				
2421 Fifth Street (construct two residential buildings)	ZAB			6/1/2021
1205 Peralta Avenue (conversion of an existing garage)	ZAB			TBD
2943 Pine Street (construct second story on existing one story)	ZAB			TBD
Remanded to ZAB or LPC				
Notes				

5/6/2021



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

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**

<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>
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

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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

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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.

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Category B

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Elmwood Business Improvement District Advisory Board
Energy Commission
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Homeless Services Panel of Experts
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Human Welfare and Community Action Commission
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Mental Health Commission
Parks and Waterfront Commission
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Public Works Commission
Solano Avenue Business Improvement District Advisory Board
Sugar-Sweetened Beverage Product Panel of Experts

Transportation Commission
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Zero Waste Commission
Loan Administration Board

Section 2. City Council Policy Committees

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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

APPENDIX D. TEMPORARY RULES REGARDING POLICY COMMITTEES AND LEGISLATIVE WORKFLOW DURING THE COVID-19 LOCAL EMERGENCY

To support staff, councilmembers, and members of the public in their focused work to address the COVID-19 pandemic; manage health, mental health, and economic impacts; and navigate the complexities of reopening after more than a year of shelter-in-place, these temporary rules limiting Policy Committee and City Council consideration of new significant legislation are hereby adopted.

- 1) Except as provided below, “new significant legislation” is defined as any law, program, or policy that represents a significant change or addition to existing law, program, or policy, or is likely to call for or elicit significant study, analysis, or input from staff, Councilmembers or members of the public.
- 2) New significant legislation originating from the Council, Commissions, or Staff related to the City’s COVID-19 response, including but not limited to health and economic impacts of the pandemic or recovery, or addressing other health and safety concerns, the City Budget process, or other essential or ongoing City processes or business will be allowed to move forward, as well as legislative items that are urgent, time sensitive, smaller, or less impactful.
- 3) New significant legislation not related to the City’s COVID-19 response may be submitted to the Agenda process to be referred to the appropriate Policy Committee but will be placed on the committee’s unscheduled items list, and timelines will be tolled for the duration of these temporary rules.
- 4) Councilmembers, Commission Chairs/representatives, and Staff may request reconsideration of Agenda Committee determinations regarding significance/impacts, time sensitivity and/or relevance to factors listed in (2), above.
- 5) Policy Committees may take up items referred previous to adoption of these temporary rules or may place them on the unscheduled list where timelines will be tolled. Reconsideration of a determination to place an item on the unscheduled calendar may be requested by the author on the same basis as a reconsideration by the Agenda Committee. Policy Committees are asked to prioritize pending items related to categories listed in (2), above. When a Policy Committee has no active items the Committee will not meet.
- 6) The Agenda & Rules and Budget & Finance Policy Committees will continue to meet to carry out their essential agenda setting and budget policy making roles; other legislation before these committees may be placed on the unscheduled calendar where timelines will be automatically tolled for the duration that this policy is in place.
- 7) Any outstanding items voted out of Policy Committee should include staffing and budgetary needs and a budget referral. Implementation of new ordinances, programs or policies may be deferred for the duration of these temporary rules and/or if resources are not identified and allocated.

- 8) These temporary measures will automatically expire on July 28, 2021 unless the term is shortened or extended by a vote of the City Council.

- 9) When Policy Committees are reopened by the full City Council, items pending before the Committee will be prioritized by vote of the members of each Committee, based on a proposal by the Chair, in an order that takes into account and balances, among other things, (i) the amount of time items have been pending before the Committee, (ii) the time sensitivity of the issues/topics raised by the legislation, (iii) a fair distribution of items from all Councilmembers within the queue, and (iv) a fair distribution of topic areas.

From: Williams-Ridley, Dee
Sent: Friday, April 30, 2021 6:54 PM
To: Numainville, Mark L.
Cc: White, David; Buddenhagen, Paul; Brown, Farimah F.; Thomsen, Rose
Subject: RE: New Rules of Procedure Amendment & Policy Committees

Mayor and Council,

Thank you for your feedback on the memo sent earlier by our City Clerk. This memo was sent at my request, in an effort to provide guidance regarding the newly adopted Appendix D to the Rules of Procedure. I'd like to take a moment to clarify an important intent of the procedures.

It was the intent of the author(s) as stated during deliberations, that the new rules of procedure would only affect new legislation introduced after Council adoption (which occurred on Tuesday, April 20, 2010). As a result, all prior legislation that was before a policy committee may continue to be heard.

I hope this clarifies any outstanding questions regarding the status of existing legislation before a policy committee. Please call me should you have questions or concerns.

Thank you,
Dee

From: Numainville, Mark L.
Sent: Friday, April 30, 2021 2:36 PM
To: Numainville, Mark L. <MNumainville@cityofberkeley.info>
Cc: Williams-Ridley, Dee <DWilliams-Ridley@cityofberkeley.info>; White, David <DWhite@cityofberkeley.info>; Buddenhagen, Paul <PBuddenhagen@cityofberkeley.info>; Brown, Farimah F. <FBrown@cityofberkeley.info>; Thomsen, Rose <rthomsen@cityofberkeley.info>
Subject: New Rules of Procedure Amendment & Policy Committees

Mayor and Councilmembers,

Please see the attached memo regarding the newly adopted Appendix D to the Rules of Procedure.

Thank you.

Mark Numainville
City Clerk
City of Berkeley
(510) 981-6909



City Clerk Department

April 30, 2021

To: Mayor and City Council
From: Mark Numainville, City Clerk
Re: Temporary Rules Regarding Policy Committee and Legislative Workflow
During the COVID-19 Local Emergency

At the meeting of April 20, 2021, the City Council adopted a revised City Council Rules of Procedure and Order, which includes the addition of temporary rules regarding policy committees and legislative workflow during the COVID-19 local emergency. These temporary rules are outlined in Appendix D to the Rules of Procedure and Order, and are effective immediately. Appendix D is attached for your review (Attachment 1), and highlights and guidance are outlined below.

Under the temporary rules:

- New significant legislation that is related to the City's COVID-19 response as defined in paragraph (2) of Appendix D may continue to be submitted to the legislative process and considered by the policy committees.
- New significant legislation that is submitted to the legislative process and does not meet the criteria in paragraph (2) may be referred by the Agenda & Rules Committee to the appropriate policy committee for direct placement on the committee's unscheduled items list as an "inactive" item, and the timelines will be tolled for the duration of the temporary rules.

For existing items on the policy committee's agenda that were referred prior to the adoption of the temporary rules:

- The committee must make a determination as to whether the item(s) meet the criteria in paragraph (2) for continued consideration by the committee.
- Items that do not meet the criteria in paragraph (2) will be placed on the unscheduled items list as "inactive" items, and the timelines will be tolled.
- Items that have been determined to meet the criteria for continued consideration by the committee may be placed on the unscheduled items list, and still maintain their "active" status for consideration by the committee.

An item has been added to the next policy committee agenda to facilitate the committee's review and determination of existing items.

An author of an item may request reconsideration of the determination of their item regarding significance/impacts, time sensitivity, and/or relevance to factors listed in paragraph (2). This request may be made by the author to the legislative body that made the original determination (either the Agenda & Rules Committee or the respective policy committee).

City Clerk and City Attorney staff are available to answer questions regarding the temporary rules before and during the policy committee meetings.

The temporary rules will be revisited by the full City Council at the regular meeting on July 27, 2021.

Attachments:

1. City Council Rules of Procedure and Order Appendix D

