



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

MONDAY, JANUARY 10, 2022

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 Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be 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/83550022282> 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: **835 5002 2282**. 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: January 4, 2022**
- 2. Review and Approve Draft Agenda:**
 - a. 1/25/22 – 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. Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies**

Unscheduled Items

- 10. Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)**
- 11. 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 Monday, January 24, 2022

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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 January 6, 2022.



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**

**TUESDAY, JANUARY 4, 2022**

**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**

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# AGENDA

**Roll Call:** 2:33 p.m. All present.

**Public Comment** – 9 speakers

## Review of Agendas

**1. Approval of Minutes: November 29, 2021**

**Action:** M/S/C (Arreguin/Wengraf) to approve the minutes of 11/29/21.

**Vote:** All Ayes.

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

a. 1/18/22 – 6:00 p.m. Regular City Council Meeting

**Action:** (Arreguin/Hahn) to approve the agenda of 1/18 with the changes noted below:

- *Item Added: Net Energy Metering (Wengraf) – Councilmember Hahn added as co-sponsor*
- *Item 17 Transportation Network User Tax (Harrison) – Revised item submitted*
- *Item 18 Roe v Wade (Wengraf) – Revised item submitted; Councilmembers Hahn and Harrison added as co-sponsors*
- *Item 21 Camp Fees (City Manager) – Moved to first Action Item*
- *Item 24 Marina Master Plan for Parking (Kesarwani) – Councilmembers Taplin, Robinson and Mayor Arreguin added as co-sponsors; Moved to Consent Calendar; Author to submit supplemental regarding budget referral*
- *Item 25 Parking Benefits Districts (Kesarwani) – Councilmember Taplin and Mayor Arreguin added as co-sponsors; Moved to Consent Calendar*

Order of Action Items

21 Camp Fees

19 ADU Ordinance

20 ADU Ordinance (Public Safety)

22a Street Maintenance

22b PWC Paving Plan

22c Update Street Maintenance

23a Adopt-a-Spot

23b Companion Report Adopt-a-Spot

**Vote:** All Ayes.

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

- None Selected

**4. Adjournments In Memory**

- Aoife Beary, Survivor of Berkeley Balcony Collapse

## Scheduling

5. **Council Worksessions Schedule**
  - BART Development Worksession in January or February TBD
  - Special Meeting called for March 10 for Reimagining Public Safety
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:** 3 speakers. No action taken.
9. **Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies**  
  
**Action:** 3 speakers. Presentation from staff regarding hybrid meeting test on December 7. Committee discussion. No action taken.

## Unscheduled Items

10. **Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)**
11. **Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**  
  
**Action:** 2 speakers. No action taken.

## Items for Future Agendas

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

## Adjournment

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

Adjourned at 3:39 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on January 4, 2022.

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Mark Numainville, City Clerk

### **Communications**

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# DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, January 25, 2022  
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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*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: <<INSERT MEETING ID HERE>>. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*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. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the Council meetings of December 7 (special), December 9 (closed and special), December 14 (special and regular).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 2. Revenue Contract: The Center at Sierra Health Foundation for \$90,999.50 for Information Technology Equipment, Telehealth Licenses, and Personal Protective Equipment**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to apply for funding provided by the California Department of Health Care Services (DHCS) through the Behavioral Health Telehealth Request for Applications and accept the funding and execute any resultant revenue agreements and amendments to purchase information technology equipment, telehealth software licenses, and personal protective equipment up to \$90,999.50 in FY 2022 and FY 2023.  
**Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 3. 2022 Fee Assessment – State of California Self-Insurance Fund (Workers’ Compensation Program)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2022 for administering the Workers’ Compensation Program, in an amount not to exceed \$268,093.55.  
**Financial Implications:** See report.  
Contact: Donald E. Ellison, Human Resources, (510) 981-6800
- 4. Contract No. 32000093 Amendment: DC Electric Group, Inc. for On-Call Electronic Traffic Calming Devices Maintenance Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32000093 with DC Electric Group, Inc. to increase the current contract by \$250,000 for a total not to exceed amount of \$500,000 and to remove the \$50,000 annual limit.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

5. **Contract: Glosage Engineering, Inc. for Sanitary Sewer Rehabilitation at Various Locations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Sanitary Sewer Project, located on Grizzly Peak Boulevard Backline, Euclid Avenue Backline, Cragmont Avenue Backline, Euclid Avenue, Wildcat Canyon Road, Woodhaven Road, Keeler Avenue, Spruce Street, and Eunice Street; accepting the bid of the lowest responsive and responsible bidder, Glosage Engineering, Inc.; and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$1,780,859, which includes a 10% contingency of \$161,896.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300
6. **Lease and Cooperative Agreement: Downtown Berkeley Bike Station**  
**From: City Manager**  
**Recommendation:**  
1. Adopt the first reading of an Ordinance authorizing the City Manager to execute a lease agreement with BART for retail space at the Center Street Garage for a fifteen-year lease term commencing February 1, 2021, and expiring on January 31, 2036.  
2. Adopt a Resolution authorizing the City Manager to execute a cooperative agreement with the Bay Area Rapid Transit District (BART) for the continued operation of the Downtown Berkeley Bike Station in its Center Street Garage location for a three-year term commencing July 1, 2020, and expiring on June 30, 2023, in an amount not to exceed \$225,000.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300

## Council Consent Items

7. **Resolution Requesting State Cannabis Cultivation Tax Reform**  
**From: Mayor Arreguin (Author), Councilmember Bartlett (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution requesting State cannabis cultivation tax reform.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100

## Council Consent Items

8. **2022 Seating Arrangement during City Council Meetings**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Rescind Resolution No. 69,647–N.S and adopt a Resolution changing the seating arrangement of the Mayor and City Councilmembers on the dais for calendar year 2022, to accommodate the Vice-Mayor, as follows (From left to right, facing the dais): Kesarwani, Bartlett, Hahn, Harrison, Arreguin, Wengraf, Droste, Robinson, Taplin.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
9. **2022 City Council Committee and Regional Body Appointments**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution approving the appointment of Council representatives to City Council Standing Policy Committees, Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions for a term ending on December 31, 2022 or until new appointments are made.  
**Financial Implications:** None  
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 – Old Business

10. **Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code**  
*(Continued from December 14, 2021. Item contains supplemental materials)*  
**From: City Manager**  
**Recommendation:** Adopt a Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code.  
**Financial Implications:** None  
Contact: LaTanya Bellow, City Manager's Office, (510) 981-7000, Jennifer Louis, Police, (510) 981-5900

## Action Calendar – Policy Committee Track Items

11. **Referring the Civic Arts Commission’s affordable housing for artists in Berkeley Report and other Artist Live, Work and Live-Work opportunities to the Housing Element Update**  
**From: Councilmember Hahn (Author)**  
**Recommendation:** 1. Refer the Civic Arts Commission’s report entitled affordable housing for artists in Berkeley to the City Manager, Planning Commission, and Housing Advisory Commission to review, consider, and incorporate recommendations, to the greatest extent possible, into the Housing Element update and related planning and zoning processes.  
2. Refer to the City Manager, Planning Commission, and Housing Advisory Commission consideration of the feasibility and impacts of allowing ground floor affordable live, work, and live-work space for artists in certain commercial, manufacturing, and mixed-use buildings/areas, both new-build and existing, and exploration of other opportunities for living, work and live-work space for artists.  
**Financial Implications:** See report  
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

### Information Reports

12. **LPO NOD: 2212 Fifth Street/#LMIN2021-0001**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
13. **LPO NOD: 1120 Second Street/#LMSA2021-0001**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
14. **LPO NOD: 1325 Arch Street/#LMIN2020-0008**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
15. **LPO NOD: 1960 University Avenue/#LMSA2021-0002**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

### Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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

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

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

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

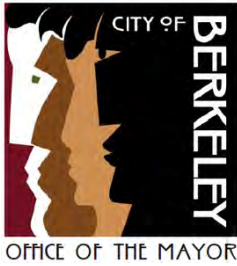
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Captioning services are provided at the meeting, on B-TV, and on the Internet.

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CONSENT CALENDAR
January 25, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín (Author) and Councilmember Ben Bartlett (Co-Sponsor)

Subject: Resolution Requesting State Cannabis Cultivation Tax Reform

RECOMMENDATION

Adopt a Resolution requesting State cannabis cultivation tax reform.

BACKGROUND

California voters in 2016 passed Proposition 64, which legalized cannabis for non-medical adult use, and created a framework for regulating the cannabis industry. Within this regulatory framework, Proposition 64 establishes two commercial cannabis taxes: an excise tax upon the retail sale of cannabis and cannabis products, and a cultivation tax on all harvested cannabis. The current regulatory structure is overly complex and imposes notably high taxation rates. As a result, local cannabis businesses within the City of Berkeley and elsewhere have struggled.

This resolution seeks to address these challenges by urging the Governor and State Legislature to eliminate the cultivation tax and adjust state regulations to ensure the success of legal commercial cannabis activities.

Despite the City of Berkeley embracing legalization and permitting the operation of commercial cannabis businesses within the City, the industry continues to be burdened by high taxation rates imposed at the state level. Starting January 1, 2022, California's cultivation tax rate will be \$10.08 for flower per dry-weight, \$3.00 for leaves/trim per dry-weight ounce, and \$1.41 for fresh cannabis plant per ounce. These rates, compounded with the already high 15% excise tax, are placing undue barriers on legal cannabis businesses and perpetuating the illicit cannabis market.

The Legislature in both 2018 and 2019 considered bills to temporarily eliminate the cultivation tax, citing severe under-collection of expected tax revenue and an ever-present illicit market as grounds for reevaluating the current tax structure. However, both measures failed to pass during the legislative process.

Given the enduring and increased challenges legal cannabis operators face from overly-complex and high taxation rates, this resolution urges Governor Newsom and the California Legislature to eliminate the cultivation tax and to establish a regulated environment for commercial cannabis activities, including reasonable taxation, that does not impose such barriers as to perpetuate the illicit market for cannabis

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The environmental impact of allowing illegal cannabis to proliferate is widely known. It involves illegal logging of national and state forest and park land, poisoning creeks, streams and entire riparian ecosystems. Locally, it can involve harmful chemicals being illegally dumped, utility theft, and unpermitted work leading to faulty wiring, residential and structure fires, and explosions.

FINANCIAL IMPLICATIONS

None.

CONTACT PERSON

Jesse Arreguín, Mayor, (510) 981-7100

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

REQUESTING STATE CANNABIS CULTIVATION TAX REFORM

WHEREAS, California voters passed Proposition 64 in 2016, establishing two commercial cannabis taxes that, effective January 1, 2018, imposed an excise tax upon the retail sale of cannabis or cannabis products at a rate of fifteen percent (15%), and a cultivation tax on all harvested cannabis that enters the commercial market at a rate of nine dollars and twenty-five cents (\$9.25) for dry-weight flower per ounce, and two dollars and seventy-five cents (\$2.75) per dry-weight leaves/trim per ounce; and

WHEREAS, the City of Berkeley embraced legalization and established a regulatory framework to permit commercial cannabis businesses, including cultivation, has been burdened by the onerous nature of State regulations, rapidly expanding illicit cultivation, and the economic instability of the legal market has impacted the jurisdiction's ability to provide other core mandated services; and

WHEREAS, Proposition 64 required that the Bureau of Cannabis Control convene a committee to advise the licensing authorities on the development of standards and regulations, including best practices and guidelines that protect public health and safety while ensuring commercial cannabis regulations do not impose barriers that perpetuate, rather than reduce and eliminate, the illicit market for cannabis. This committee came to be known as the Cannabis Advisory Committee (CAC); and

WHEREAS, in 2018, and again in 2019, the California Legislature considered, but did not approve, bills to temporarily eliminate the cultivation tax. California State Treasurer Fiona Ma, sponsor of Assembly Bill 286 (Bonta, 2019) argued that "given that we now have seen a year of severe under-collection of expected tax revenue and that the black market still exists, it is understood that excessive taxation is an obstacle to establishing a fully viable legal market. Compliant businesses are at a significant disadvantage, and this high tax rate incentivizes businesses to stay underground." Treasurer Ma characterized the bill as "imperative to temporarily lessen California's total tax on cannabis, and give these businesses and the State enough time to fully implement Prop 64."; and

WHEREAS, in 2019, Harinder Kapur, Senior Assistant Attorney General, testified to the California Legislature stating that upwards of 80 percent of California's cannabis businesses remained in the illicit market; and

WHEREAS, in November 2019, the California Department of Tax and Fee Administration announced that effective January 1, 2020, per statutory mandate, the cultivation tax would increase to account for inflation, leading the CAC to express concern in its 2019 Annual Report that the increase in taxation, "...come[s] at a time when the complex regulatory framework, coupled with high taxation, pose[s] significant challenges to the licensed cannabis market," noting a report published by Arcview Market Research, that these two factors could disadvantage the licensed market by as much as 77 percent on pricing compared to well- established illicit market operations; and

WHEREAS, in 2020, the Legislature again considered a bill to eliminate the cultivation tax, but, due to emergency orders and economic uncertainty caused by the COVID-19 pandemic, held the bill in Committee, and instead approved Assembly Bill 1872 (Committee on Budget, Chapter 93, Statutes of 2020) which suspended for one year the California Department of Tax and Fee Administration's authority to adjust the cannabis cultivation tax for inflation; and

WHEREAS, on November 17, 2021, the California Department of Tax and Fee Administration announced that effective January 1, 2022, the cultivation tax would increase from nine dollars and sixty-five cents (\$9.65) to ten dollars and eight cents (\$10.08) for flower per dry-weight ounce; from two dollars and eighty-seven cents (\$2.87) to three dollars (\$3.00) for leaves/trim per dry-weight ounce; and, from one dollar and thirty-five cents (\$1.35) to one dollar and forty-one cents (\$1.41) for fresh cannabis plant per ounce; and

WHEREAS, a November 2021 sales report from BDS Analytics shows that legal sales in California fell by more than eleven percent (11.4%) to \$293.1 million when compared to last year and are down nearly eight percent (7.7%) from August 2021, additionally showing that cannabis flower sales fell twenty-three percent (23%), while concentrates, the second-largest product category, declined eight percent (8%); and

WHEREAS, the licensed cannabis market is currently experiencing a price collapse and that the average wholesale price for dried cannabis flower has fallen to approximately five hundred dollars (\$500) a pound, and that the average wholesale price for dry leaves and trim has fallen to thirty dollars (\$30) a pound making the current tax rate for dry flower equivalent to fifty-one percent (51%) of gross receipts and the current tax rate for dry leaves and trim equivalent to one hundred fifty-three percent (153%) of gross receipts; and

WHEREAS, the ongoing consequences of high state taxes combined with over-regulation has continued to economically challenge legal cannabis businesses and disincentivize the permitting and licensing of new cannabis businesses by local jurisdictions, including the City of Berkeley; and

WHEREAS, local jurisdictions, including the City of Berkeley, have experienced increased challenges collecting cultivation taxes, regulating commercial cannabis cultivators, and addressing illicit cultivation; and

WHEREAS, in November 2016, Proposition 64 was enacted to, "...accomplish [...] taxation on the growth and sale of cannabis in a way that drives out the illicit market for marijuana and discourages use by minors, and abuse by adults."

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Berkeley that it strongly urges Governor Newsom and the California Legislature to immediately eliminate the State cultivation tax and to establish a regulated environment for commercial cannabis activities, including reasonable taxation, that do not impose such barriers as to perpetuate, rather than reduce and eliminate, the illicit market for cannabis.



Office of the Mayor

02a.08

CONSENT CALENDAR
January 25, 2022

To: Members of the City Council
From: Mayor Jesse Arreguín
Subject: 2022 Seating Arrangement during City Council Meetings

RECOMMENDATION

Rescind Resolution No. 69,647–N.S and adopt a Resolution changing the seating arrangement of the Mayor and City Councilmembers on the dais for calendar year 2022, to accommodate the Vice-Mayor, as follows (From left to right, facing the dais): Kesarwani, Bartlett, Hahn, Harrison, Arreguin, Wengraf, Droste, Robinson, Taplin.

BACKGROUND

The Mayor makes recommendations on the seating arrangement of the Berkeley City Councilmembers. In 2020, the City Council approved Resolution No. 69,647–N.S which changed the order of the dais to accommodate the newly-elected councilmember and newly-appointed Vice-Mayor. Mayor Arreguín is recommending a change to the current seating arrangement for calendar year 2022 (from left to right, facing the dais) as follows: Kesarwani, Bartlett, Hahn, Harrison, Arreguin, Wengraf, Droste, Robinson, Taplin to accommodate the Vice-Mayor, Councilmember Harrison.

City Council meetings are currently being conducted by videoconference in accordance with California Government Code Section 54953(e) and the state declared emergency due to the ongoing COVID-19 pandemic. This Resolution will be in place until a new Resolution supersedes it, and it is anticipated that physical meetings will return sometime in 2022.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No identifiable environmental effects from taking this action

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

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

2022 CITY COUNCIL SEATING ARRANGEMENT ON THE DAIS

WHEREAS, the Mayor makes recommendations on the seating arrangement of the Berkeley City Councilmembers; and

WHEREAS, in 2020, the City Council adopted Resolution No. 69,647–N.S. which changed the seating arrangement to accommodate the newly-elected councilmember and newly-appointed Vice-Mayor; and

WHEREAS, Mayor Arreguín is recommending a change to the current seating arrangement for calendar year 2022 to accommodate the Vice-Mayor (from left to right, facing the dais) as follows: Kesarwani, Bartlett, Hahn, Harrison, Arreguin, Wengraf, Droste, Robinson, Taplin.

NOW THEREFORE, BE IT RESOLVED that Resolution No. 69,647–N.S. is hereby rescinded; and

BE IT FURTHER RESOLVED that the Berkeley City Council does hereby set the seating order on the dais for City Council Meetings during calendar year 2022 as follows (from left to right, facing the dais): Kesarwani, Bartlett, Hahn, Harrison, Arreguin, Wengraf, Droste, Robinson, Taplin; and

BE IT FURTHER AND FINALLY RESOLVED that this Resolution will be in place until a new Resolution supersedes it.



Office of the Mayor

02a.09

CONSENT CALENDAR
January 25, 2022

To: Members of the City Council
From: Mayor Jesse Arreguín
Subject: 2022 City Council Committee and Regional Body Appointments

RECOMMENDATION

Adopt a Resolution approving the appointment of Council representatives to City Council Standing Policy Committees, Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions for a term ending on December 31, 2022 or until new appointments are made.

BACKGROUND

There are a number of City Council appointments to various Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions. Every two years after the General Municipal Election, the Mayor makes recommendations on new Council representatives to these committees.

The Berkeley City Council Rules of Procedure and Order also require the Mayor to recommend and the full Council approve appointments to Standing Council Policy Committees by January 31st of each year.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No identifiable environmental effects from taking this action

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

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

APPROVING APPOINTMENTS TO STANDING CITY COUNCIL POLICY COMMITTEES, PARTNERSHIP COMMITTEES, LIASIONS TO BOARDS AND COMMISSIONS AND REGIONAL BODIES FOR 2022

WHEREAS, the City Council has numerous appointments to various Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions, and makes new appointments every two years following the General Municipal Election; and

WHEREAS, the Berkeley City Council Rules of Procedure and Order also require the Mayor to recommend and the full Council approve appointments to Standing Council Policy Committees by January 31st of each year.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it officially makes the following appointments for the period ending December 31, 2022 or until new appointments are approved:

City Council Standing Policy Committees:

Agenda & Rules Committee

Appoint Mayor Arreguín, Councilmember Hahn and Councilmember Wengraf
Appoint Councilmember Harrison as Alternate

Budget & Finance Committee

Appoint Mayor Arreguin, Councilmember Droste and Councilmember Harrison
Appoint Councilmember Kesarwani as Alternate

Facilities, Infrastructure, Transportation, Environment & Sustainability Committee

Appoint Councilmember Harrison, Councilmember Robinson and Councilmember Taplin
Appoint Councilmember Droste as Alternate

Public Safety Committee

Appoint Councilmember Taplin, Councilmember Kesarwani and Councilmember Wengraf
Appoint Councilmember Hahn as Alternate

Land Use, Housing & Economic Development Committee

Appoint Councilmember Droste, Councilmember Bartlett and Councilmember Robinson
Appoint Mayor Arreguin as Alternate

Health, Life Enrichment, Equity & Community Committee

Appoint Councilmember Bartlett, Councilmember Hahn and Councilmember Kesarwani

Appoint Councilmember Taplin as Alternate

Partnership Committees:

4x4 Joint Task Force Committee on Housing: Rent Board/City Council

Appoint Mayor Arreguín, Councilmember Harrison, Councilmember Robinson and Councilmember Taplin

3x3 Committee of the Berkeley City Council and the Berkeley Housing Authority

Appoint Mayor Arreguin, Councilmember Harrison and Councilmember Kesarwani

2x2 Committee of the City Council and the Board of Education

Appoint Councilmember Hahn and Councilmember Droste

Appoint Mayor Arreguin as Alternate

Regional Committees:

Alameda County Transportation Commission

Appoint Councilmember Robinson

Appoint Mayor Arreguin as Alternate

Alameda County Waste Management Authority

Appoint Councilmember Wengraf

Appoint Councilmember Hahn as Alternate

Delegate to Association of Bay Area Governments General Assembly

Appoint Councilmember Bartlett

Appoint Councilmember Droste as Alternate

Joint Powers Authority - East Bay Community Energy Authority

Appoint Councilmember Harrison

Appoint Councilmember Hahn as Alternate

Joint Powers Agreement - East Bay Regional Sports Fields

Appoint Councilmember Kesarwani

Appoint Councilmember Taplin as Alternate

Joint Powers Authority - Lead Abatement

Appoint Councilmember Wengraf

Appoint Councilmember Droste as Alternate

League of California Cities - East Bay Division

Appoint Councilmember Hahn

Appoint Councilmember Taplin as Alternate

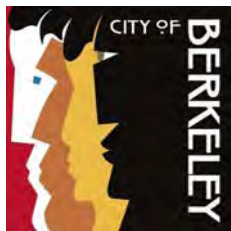
Oakland Airport Noise Forum
Appoint Councilmember Robinson

Council Liaisons to City Boards and Commissions:

Board of Library Trustees
Appoint Councilmember Hahn

Community Health Commission
Appoint Councilmember Kesarwani

Mental Health Commission
Appoint Councilmember Taplin



Sophie Hahn
City Council District 5
510-981-7140
shahn@cityofberkeley.inf

02a.11

CONSENT CALENDAR
January 25, 2022

To: Honorable Members of the City Council
From: Councilmember Hahn (Author)
Subject: Referring the Civic Arts Commission's *affordable housing for artists in Berkeley* Report and other Artist Live, Work and Live-Work opportunities to the Housing Element Update

RECOMMENDATION

1. Refer the Civic Arts Commission's report entitled *affordable housing for artists in Berkeley* to the City Manager, Planning Commission, and Housing Advisory Commission to review, consider, and incorporate recommendations, to the greatest extent possible, into the Housing Element update and related planning and zoning processes.
2. Refer to the City Manager, Planning Commission, and Housing Advisory Commission consideration of the feasibility and impacts of allowing ground floor affordable live, work, and live-work space for artists in certain commercial, manufacturing, and mixed-use buildings/areas, both new-build and existing, and exploration of other opportunities for living, work and live-work space for artists.

SUMMARY/CURRENT SITUATION:

Affordable living and work-space for artists is a pressing issue for our community, with artists increasingly priced out and unable to live and work in Berkeley. Affordable housing for artists has been identified in numerous planning documents as a key need. Most recently, the Civic Arts Commission generated a report entitled *affordable housing for artists in Berkeley* that reported data about the unique housing and space needs of artists, based on a survey and focus groups with diverse artists and cultural workers. (See Attachment 1: *affordable housing for artists in Berkeley*). The report was presented at the [December 8, 2021 Civic Arts Commission meeting](#), and generated important discussion around housing and work-space affordability for artists.

Berkeley is currently engaged in an in-depth process to update the City's Housing Element. The results of the update will shape the development of housing in Berkeley for much of the next decade. A key component of the Housing Element is to identify sites that can accommodate future housing needs across income levels and other demographic factors. The Housing Element also involves the development of a variety of approaches to meet community housing and affordability needs such as zoning updates and new affordable housing requirements and programs.

With the [Housing Element update process already in progress](#), it is important for the recently completed *affordable housing for artists in berkeley* report to be referred and the report's findings and recommendations to be incorporated into the Housing Element Update, as feasible.

In addition to the findings and recommendations of the *affordable housing for artists* report, an informal group of artists has been discussing the possibility of allowing ground-floor commercial space to be substituted for affordable artist work- or live-work space in new-buildings, or in existing buildings via conversions in some locations or building types. Because there are many elements to consider, including impacts to the retail environment, feasibility and costs, quality of work- and living-space for artists, relationship to affordable housing and community benefit requirements in new-build, locations and buildings types where artist ground floor live-, work- and live-work space may be feasible, and more, this idea is referred more generally to the City Manager, Planning Commission, and Housing Advisory Commission (HAC).

Exploration of other potential means to create, convert and/or reserve affordable living, work, and live-work space for artists is also referred, allowing the City Manager, Planning Commission, and HAC to broaden their analysis and consultation to consider all opportunities to create affordable living and work-spaces for artists.

To the extent feasible opportunities for affordable artist living and live-work space may be identified from the *affordable housing for artists in berkeley* report or through additional exploration, concepts should be incorporated into the Housing Element Update.

BACKGROUND:

The City's 2018-2027 Arts and Culture Plan Update identifies affordable artist housing as the first of five strategic goals:

Goal 1 Increase Access to Affordable Housing and Affordable Spaces for Artists and Arts Organizations

Support the long-term sustainability of the arts and culture sector by expanding the availability of affordable housing and spaces for both artists and arts organizations.

The Plan Update also includes the following introductory remarks:

“Berkeley is home to a vibrant and diverse community that strongly values its rich cultural fabric. Characterized by its collective nature, the city is famous for its distinguished university, beautiful natural setting, and its remarkable history as a home for progressive movements. Arts and culture permeate civic life in Berkeley through numerous acclaimed theaters, performing arts spaces, as well as the city’s many artists. Over 150 arts and culture nonprofits operate in Berkeley and together they contribute to a dynamic, continually evolving arts and culture community that interacts closely with other sectors of the city’s economy. The nonprofits that make up the arts community are particularly diverse in terms of their size and their creative disciplines.

Along with the cultural richness the arts infuse into the community, the arts sector is also a significant economic driver, generating an estimated \$165 million in total economic activity. In 2017, Berkeley Mayor Jesse Arreguin stated that “in addition to fostering civic pride, a flourishing arts scene [brings] new visitors to our city and more revenue to local businesses.” Currently, as the San Francisco Bay Area is experiencing substantial economic growth, rising real estate and living costs have created an especially challenging environment for the arts community in Berkeley. Some artists and arts organizations are leaving the city because they can no longer afford to live and work here.”

Most recently, the Civic Arts Commission generated a report entitled *affordable housing for artists in berkeley* that reported data about the unique housing and space needs of artists, based on a survey and focus groups with diverse artists and cultural workers. (See Attachment 1: *affordable housing for artists in berkeley*). The report was presented at the [December 8, 2021 Civic Arts Commission meeting](#), and generated important discussion around housing and work-space affordability for artists.

Discussions of affordability in the arts ecosystem are often anecdotal, with few studies to provide comprehensive data to inform potential solutions. To provide more comprehensive information, the Civic Arts Commission requested and received a report with findings based on a survey and focus groups. The study consulted a diverse group of Berkeley artists and cultural workers and provides systematic data around the unique housing and space needs of artists. The report explicitly seeks to position Berkeley’s arts community for inclusion in

the City's affordable housing efforts and to help improve the safety of local arts spaces while avoiding further displacement.

The study was initially conceptualized in 2019 in response to concerns around housing and art space affordability among artists and arts organizations in Berkeley, and was motivated by two events.

First, the 2018 Arts and Culture Plan Update for the City of Berkeley identified -- as a primary goal -- the need to increase access to affordable housing and spaces for artists, cultural workers, and arts organizations. The cultural plan specified a number of action steps towards this goal, including undertaking a data-informed assessment of current art space affordability challenges and displacement risks in Berkeley, as well as the development of strategies to protect and create affordable spaces for Berkeley artists, cultural workers, and arts organizations based on the assessment's findings.

Second, in November 2018, the voters of Berkeley approved two bond measures totaling \$135 million to fund affordable housing in Berkeley. Berkeley City Council subsequently began the development of an affordable housing framework (Housing for a Diverse, Equitable and Creative Berkeley) to guide Berkeley's affordable housing policies, programs, and projects through 2030. This framework explored a wide array of affordable housing for artists and other creative workers. In July 2019, the Council referred this policy document to various Commissions for further development. However, the pandemic caused this work to be temporarily put on hold.

The survey and subsequent report on its findings was completed and released by the Civic Arts Commission in November 2021. It made several key findings and recommendations that relate to zoning and planning decisions which may potentially be made as part of the ongoing Housing Element Update.

Some key findings of the report include recommendations that the City of Berkeley:

1. Create policies that prioritize artists for new affordable housing

Artists are an important part of the fabric of Berkeley as a city. As such, they should be part of ongoing conversations about Berkeley's housing plan. The survey results demonstrate that artists -- as a group -- have low income, a high rent burden, and have traditionally been left out of ongoing affordable housing. In order to mitigate further displacement and allow artists to continue to work and thrive in Berkeley, the City could consider creating a priority category for artists who meet income qualification to access affordable housing."

2. Designate some of Berkeley's upcoming affordable housing funding from Measure O for units specific to artists

"On July 24, 2019, Berkeley's Civic Arts Commission approved an amendment recommendation for Measure O that called for "significantly increas[ing] the supply of affordable housing and live/work housing for artists, artisans, and cultural workers" through adding to the zoning ordinance, incentivizing developers to build market-rate housing that includes affordable live/work units for creative workers, and incorporate live/work spaces for artists and cultural workers into large-scale affordable housing projects."

3. Consult artists when designing new policies for live/work spaces

Across the Bay Area, responses to the Ghostship fire emphasized increased attention to artist DIY live/work spaces. These spaces were often the only options for artists to access live/work spaces that met their needs. Yet, artists have always worked to transform neighborhoods through their work and creative use of space. As Berkeley works to address affordability issues for all of its residents, consulting and involving artists in the planning process can help bring about a much-needed, new, and fresh perspective on issues such as rezoning, repurposing ground floor spaces, and requiring community benefit proposals for new development.

4. Develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline

Due to the nature of their work, artists often have a unique income structure that makes applying for affordable housing more difficult. In addition, the survey shows that artists have needs for certain types of spaces that might be difficult to identify. Funding technical assistance to support artists to translate their needs and apply for the existing affordable housing pipeline could be an important step in helping artists leave inadequate living situations.

Because the report and findings include important information about the housing and space needs of artists, the *affordable housing for artists in berkeley* study is being referred to the Housing Element Update and to the Planning Commission and HAC for immediate consideration.

In addition to the findings and recommendations of the *affordable housing for artists* report, an informal task force of artists has been discussing the possibility of allowing ground-floor commercial space to be substituted for affordable artist work- or live-work space in new-buildings, or in existing buildings via conversions, in some locations or building types.

Because there are many elements to consider, including impacts to the retail environment, feasibility and costs, quality of work- and living-space for artists, relationship to affordable housing and community benefit requirements in new-build, locations and buildings types where artist ground floor live-, work- and live-work space may be feasible, and more, this idea is referred more generally to the City Manager, Planning Commission, and Housing Advisory Commission (HAC).

The presence of artists living and working around the clock has been documented as an important factor in creating more livable, animated urban areas. At the same time, retail vacancies have risen steadily in recent years as more purchasing has migrated online. The COVID-19 pandemic has accelerated this trend and led to even greater amounts of empty space, even in Berkeley's most popular commercial areas. Removing barriers to use or re-use of vacant retail/commercial spaces may be a means to provide affordable live/work spaces for artists while also activating storefronts.

To explore the possibilities of using retail/commercial space to house working artists, an informal task force including members of the Civic Arts Commission, affordable housing advocates, artists, and developers was convened. The goal of the group's work was to increase active uses of often-vacant ground floor space and provide a new low-impact supply of affordable live/work spaces for artists.

Some of the ideas generated by this informal group include:

1. Allowing affordable live/work housing for artists in lieu of ground floor retail or commercial use in specific locations (for example, away from main commercial nodes, or on side-streets) or corridors, including the San Pablo and University Avenue corridors and/or in other appropriate locations.
2. Developing a clear set of allowable uses and criteria for tenant eligibility including the responsibility to maintain a lively street presence.

In addition to consulting with the arts community, including members of the informal task force, the City Manager, Planning Commission and HAC should consult with business and commercial property owners to fully understand the opportunities and challenges of allowing live-work in lieu of retail, and to identify the circumstances, requirements,

locations and other factors that could make affordable live-work ground floor uses work both for artists, and for the health and vitality of commercial districts.

ALTERNATIVES CONSIDERED

By referring the *affordable housing for artists in berkeley* report and its findings and other affordable living and work-space considerations to be developed simultaneous with and/or as part of the Housing Element, we can ensure that artists' unique housing, work-space and affordability needs are considered during the Update process, and incorporated as feasible in the Housing Element and other zoning and planning processes.

FISCAL & STAFF IMPACTS

Staff and the Commissions are already engaged in in-depth discussion of housing needs, zoning changes, and programs to meet housing and affordability needs communitywide. Adding more explicit consideration of the specific needs of artists, drawing from studies already completed and with input from the Arts Commission and arts community, will add important information to existing discussions. Additional formal study or consulting help is not envisioned.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This referral asks only for concepts to be studied and incorporated into a planning process already underway, and does not entail environmental or climate impacts.

CONTACT PERSON

Councilmember Sophie Hahn, shahn@cityofberkeley.info; 510-682-5905

Attachments

1. *affordable housing for artists in berkeley*

affordable housing for artists in Berkeley

a baseline survey

Anh Thang Dao-Shah, ph.d.& Asif Majid, ph.d
creative equity research partners
December 2021

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		b: survey questions

executive summary

This project aims to respond to concerns around housing and art space affordability among artists and arts organizations in Berkeley by answering two key questions:

- 1) What are the trends around local affordability issues that can be addressed through targeted resources and policy solutions?
- 2) What pre-existing housing disparities impact what artists seek in possible affordable housing solutions?

As in other parts of the Bay Area, narratives of concern around affordability in the arts ecosystem in the past decade are often anecdotal. The sector lacks comprehensive data that could inform system change solutions. To that end, this report is based on a survey and focus groups with a diverse group of artists and cultural workers in Berkeley to provide systematic data around the unique housing and space needs of artists. It seeks to better position Berkeley's arts community to participate in the City's current affordable housing efforts and help improve the safety of local arts spaces, without causing further artist displacement.

key findings

Artists are highly educated, yet have low income

Berkeley's artists and artists/cultural workers who responded to the survey are highly educated (88% have a Bachelor's degree or higher). Yet, 60% of that same group has lower, very low, or extremely low income.

Artists and cultural workers have multiple forms of employment

Only 32% of all respondents reported that they are employed full time. Others indicated that they cobble together different types of part-time and short-term contract work, as well as self-employment, in order to make ends meet.

Artists are rent burdened

Artists and artists/cultural workers disproportionately rent their living space (71%). Of those who rent, 77% are rent burdened or severely rent burdened, based on the California's Department of Housing and Community Development definitions.

Artists have a unique need for flexible live/work spaces

Responding artists and artists/cultural workers indicated, at a rate of 82%, that they do their creative work in their living space. Of those respondents, over half (56%) practice artistic disciplines that require extra ventilation.

recommendations

- **create policies that prioritize artists for new affordable housing**
- **designate some of Berkeley's upcoming affordable housing funding from measure O for units specific to artists**
- **consult artists when designing new policies for live/work spaces**
- **develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline**
- **pilot a guaranteed basic income program for qualifying artists**

introduction

why this project?

This project was initially conceptualized in 2019 in response to concerns around housing and art space affordability among artists and arts organizations in Berkeley. It was motivated by two events.

First, the [2018 Arts and Culture Plan Update for the City of Berkeley](#) identified -- as a primary goal -- the need to increase access to affordable housing and spaces for artists, cultural workers, and arts organizations. The cultural plan specified a number of action steps towards this goal, including undertaking a data-informed assessment of current art space affordability challenges and displacement risks in Berkeley, as well as the development of strategies to protect and create affordable spaces for Berkeley artists, cultural workers, and arts organizations based on the assessment's findings.

Second, in November 2018, the voters of Berkeley approved two bond measures totaling \$135 million to fund affordable housing in Berkeley. Berkeley City Council subsequently began the development of an affordable housing framework ([Housing for a Diverse, Equitable and Creative Berkeley](#)) to guide Berkeley's affordable housing policies, programs, and projects through 2030. This framework explored wide array of affordable housing for artists and other creative workers. In July 2019, the Council referred this policy document to various Commissions for further development. However, the pandemic caused this work to be temporarily put on hold.

As elsewhere in the Bay Area, concerns around the arts ecosystem's affordability over the past decade are mostly anecdotal, arising when a major artist or arts organization imminently faces the loss of their living and work space. These stories, while important, inadequately inform systems change solutions aimed at addressing structural concerns.

To that end, this project's goal is to develop an assessment that provides systematic data around the unique housing and space needs of artists and cultural workers. This will better position the arts community to participate in Berkeley's ongoing affordable housing efforts and help improve art space safety in Berkeley without causing further displacement of artists. Two key questions guided this project from the beginning:

- 1) What are the trends around local affordability issues that can be addressed through targeted resources and policy solutions?**
- 2) What pre-existing disparities could impact possible affordable housing solutions for artists?**

This second question is key to ensure the solutions we suggest do not unintentionally impact some groups more than others.

In April 2020, the COVID-19 pandemic brought a pause to the assessment project and

raised new affordability questions, as the arts community dealt with the consequences of regular lockdowns. While some local, state, and federal measures -- such as the eviction moratorium and extension of unemployment benefits to independent contractors -- helped prevent widespread displacement during the pandemic's height, the new normal brought new concerns as artists and cultural organizations continue to struggle with canceled events, lower venue capacity, and overall uncertainty.

These questions brought new urgency to the project, as well as the need to methodologically pivot and narrow the project's focus. Instead of focusing on both housing needs of artists and space needs of arts organizations as originally envisioned, this project focused on understanding the affordable housing and workspace needs of individual artists and cultural workers to ensure timely recommendations that would allow for participation in ongoing affordable housing efforts. This shift also allowed for the inclusion of additional questions that sought to understand both the short-term impact of the pandemic and the ongoing challenges that would inform long-term strategies to address affordability issues in Berkeley.

methodology and data limitations

In order to collect data directly from artists and cultural workers during the ongoing pandemic, an online survey was issued in September 2021 through the Berkeley Civic Arts Program. The survey was open for four weeks and was accompanied by a robust outreach strategy, including outreach and reminder emails through the Civic Arts Program's and City of Berkeley's mailing lists and social media channels, the direct networks of a number of arts organizations represented by members of an ad-hoc advisory group, and posting on other community-serving digital platforms like Nextdoor. A list of all survey questions is found in Appendix B.

In addition to quantitative data, this project relies on the insights of artists, cultural leaders, and the City's affordable housing experts to provide context to the affordability crisis and housing needs. Research staff conducted three focus group meetings with 21 community stakeholders, who formed an ad-hoc community advisory group.

Members of the advisory group were selected to provide different perspectives on the historic and current landscape of arts and culture in Berkeley with a specific focus on housing needs for artists and cultural workers. With research staff, the advisory group helped design survey questions, reviewed preliminary findings, and brainstormed potential solutions. A list of the advisory group participants is provided in Appendix A.

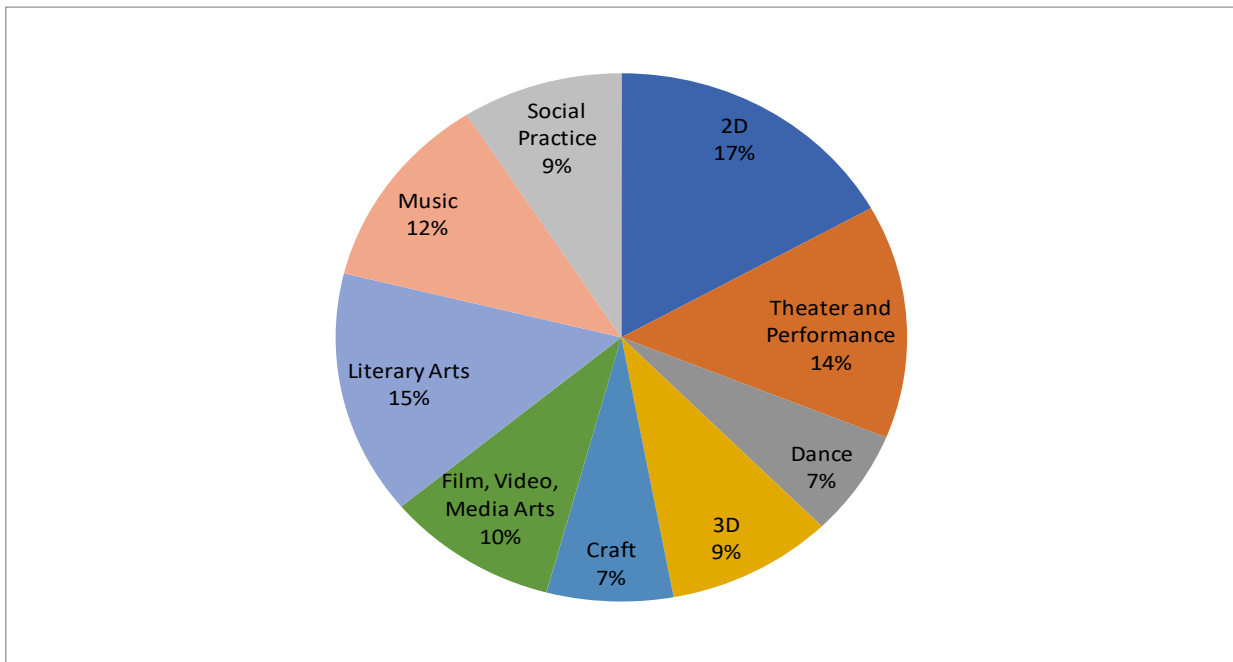
Any survey of artists must contend with the fact that there is no baseline dataset regarding the number of artists in a given community, due to the various ways artists can be defined. The most common way to define a professional group is to use IRS data that classifies someone's profession based on the income they earn from their main profession. Artists' main sources of income, however, often do not come from artwork; income sources are diverse and cross-sectoral. The same can be said for cultural workers. Plus, an artist's level of engagement with an art practice is not limited to paid opportunities. Income is thus an inadequate defining criterion. Through this survey's

grassroots and community-centered approach, this project provides a snapshot of the needs of the arts and culture sector and should be understood as baseline data that should be supplemented with ongoing and long-term data collection and analysis.

survey results

who responded?

A total of 163 artists and cultural workers responded to the survey. This constitutes 0.14% of Berkeley’s population, based on data from the 2020 census. For comparison, in a similar study in 2015 in San Francisco, which involved a six-week survey and multiple in-person outreach events, 560 artists and cultural workers responded to the survey. That constituted 0.07% of San Francisco’s population, based on 2010 census data. In other words, the Berkeley survey had double the response rate.



Of the Berkeley survey respondents, **48% identified as artists, 15% identified as cultural workers, and 37% identified as both artists and cultural workers.** In total, 32% of respondents do not currently reside in Berkeley, while 39% have lived in Berkeley for more than 10 years.

31% of respondents identified as LGBTQIA+

62% of respondents identified as female

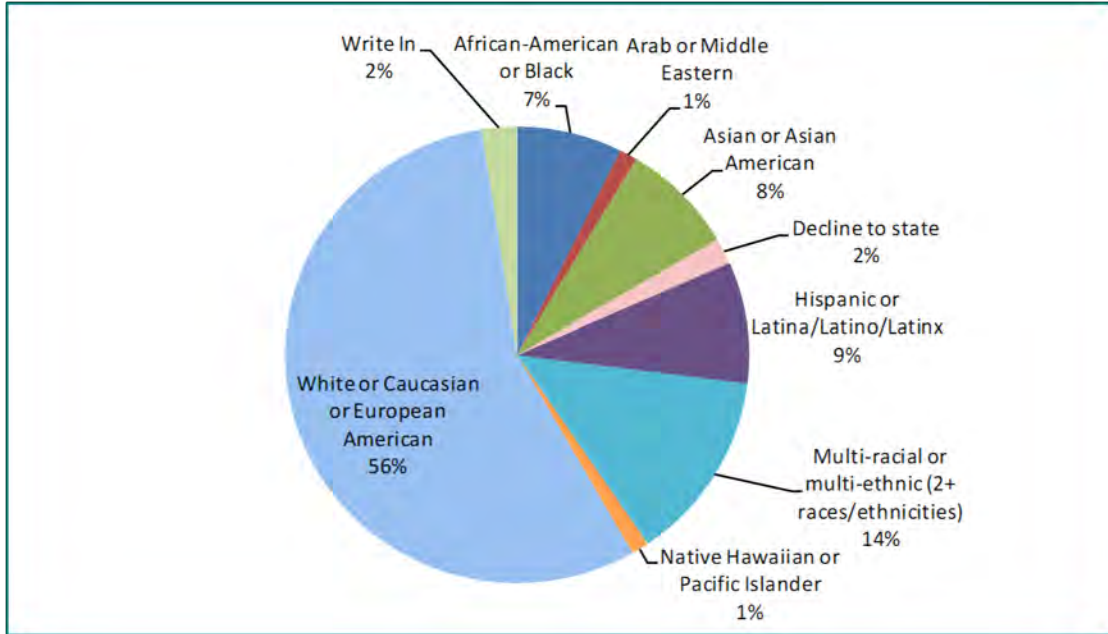


Figure 2: Race and ethnicity of survey respondents

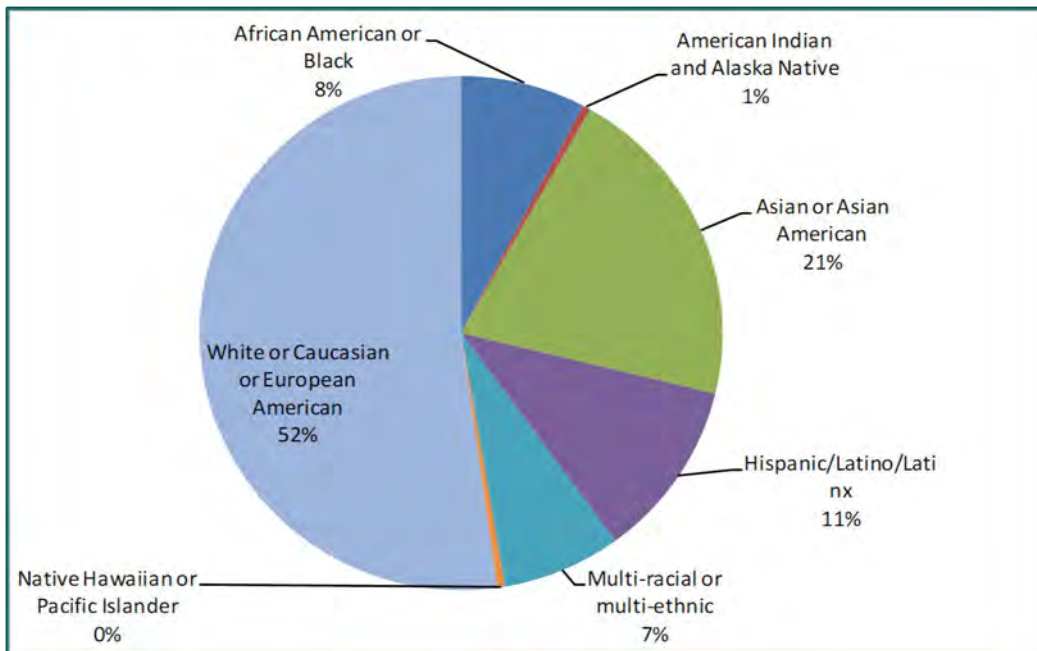


Figure 3: Race and ethnicity of City of Berkeley residents

key findings

Artist respondents are highly educated, yet have low income

Of those respondents who identified as artists or as both artists and cultural workers, 88% reported having a Bachelor’s degree or higher. Of that same group, 60% reported an annual household income of \$69,000 or less. According to the [California Department of Housing and Community Development, in Alameda County for a single individual in 2019](#) (when this project and survey were first developed), annual household income of \$26,050 or below constitutes extremely low income, between \$26,051-\$43,400 is defined as very low income, and between \$43,401-\$69,000 is defined as lower income. Per these categories, 60% of those who identified as artists or both artists and cultural workers have lower, very low, or extremely low income. [In 2021, the upper threshold for the lower income category has risen to \\$76,750](#), meaning that artists are now even further behind financially than they were two years ago.

While low income is prevalent across the group, this rate is significantly higher among BIPOC respondents. Of respondents who identified as non-White, 72%, reported having lower, very low, or extremely low income, compared to 55% among those who identified as White or Caucasian. Due to the small number of participants, we are unable to make comparison between different groups who identify as non-White.

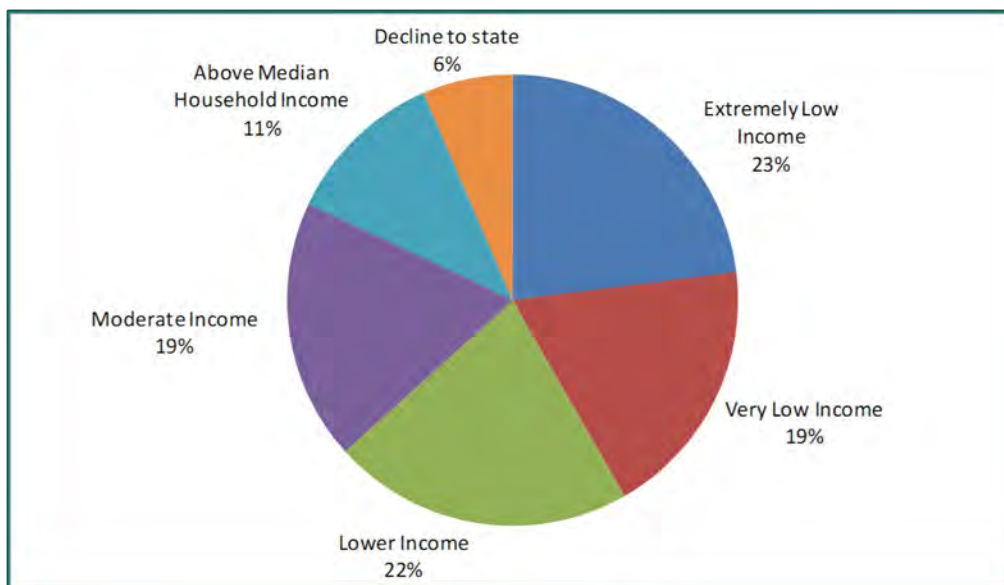


Figure 4a: Income categories for all artist respondents

<i>Income Category</i>	<i>Income Range</i>	<i>Percentage of Artist Respondents</i>
Extremely Low	≤ \$26,050	21%
Very Low	\$26,051-\$43,400	16%
Low	\$43,401-\$69,000	23%

Median	\$69,001-\$78,200	17%
Moderate	\$78,201-\$93,850	18%
Decline to State	n/a	5%

Figure 4b: Income ranges for artist respondents

Artists and cultural workers have multiple forms of employment

Only 32% of all respondents reported that they are employed full-time. Others indicate that they engage in a patchwork of different types of part-time and short-term contract work, as well as self-employment, in order to make ends meet. Examples of employment that respondents are undertaking include: being a self-employed artist for one’s own or another’s art practice, being employed part time/doing regular work for pay as either a cultural worker or otherwise, doing contract work as a cultural worker or something other than a cultural worker, and undertaking unreported work for cash.

Artist respondents report being rent burdened, but are not immediately concerned with losing their housing

Among respondents who identify as artists and as both artists and cultural workers, 71% of respondents rent. Of those who rent, 77% are rent burdened or severely rent burdened. According to the [US Department of Housing and Urban Development](#), a household or individual that spends more than 30% of their monthly household income on rent is rent burdened. Severely rent burdened households or individuals spend more than 50% of their monthly household income on rent.

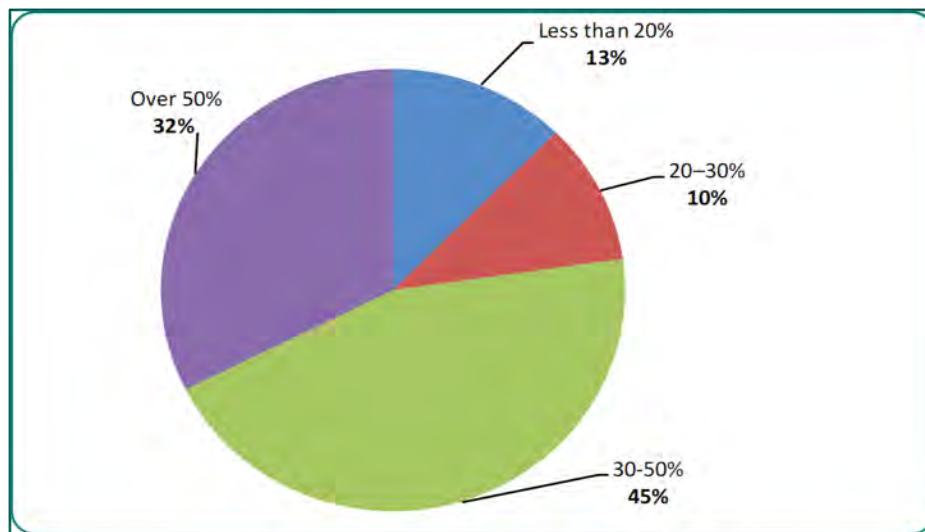


Figure 5: Respondents’ percentage of monthly household income spent on rent

While studies have shown that rent burden and extremely low income decrease the health and overall wellbeing of all those impacted, for artists this burden can

fundamentally change the way they engage with their artistic practice. Qualitative comments provided by the respondents highlighted having to scale back on their practice in order to earn the income they need to pay rent. This means they are unable to focus on developing their creative practice. As one respondent, a musician, explained:

The cost of living in the Bay Area fundamentally changes how I am able to grow in my craft. Since we are all hustling to pay rent at this level, rehearsals must be paid, limited and without a "post gig hang" - something I find central to collaborating with others. This limits how much performing I can do with others, which limits how much I can grow, experiment and contribute in my craft.

Over the long term, the lack of opportunities for artists to devote time and energy to their practice can lead to the abandonment of artistic practice altogether.

Despite respondents' high rent burden and low income, those identifying as artists and as artists/cultural workers do not indicate concerns around losing their housing in the near future.

Only 9% of respondents reported that they were evicted due to no-fault causes in the last 2 years. No-fault eviction is defined as evictions that take place when leases are not renewed without the tenant having violated any regulations as long as a notice to move out is sent to the tenant within the required time period. Landlords might choose to evict tenants who are paying rent on time and complying with regulations due to owner move in or the need to retrofit a building. In the last decade, as the affordability crisis has intensified throughout the Bay Area, no-fault eviction has often been used to let go of long-term tenants who are protected from rent increases to bring in new tenants who are charged at market rate. In the survey issued to San Francisco artists, about 30% of respondents reported that their leases were not going to be renewed due to no fault of their own.

Only 6% of respondents had to rely on the eviction moratorium during the pandemic. In total, only 9% of respondents are uncertain or very uncertain that they will be able to retain housing after the moratorium ends (20% were neither certain nor uncertain). Though seemingly at odds with other findings, this sentiment could be attributed to three factors.

First, Berkeley has strong renter protection policies. Qualitative survey responses show that many respondents who rent are aware of and rely on rent control, which helps keep their rent affordable. This is especially true with respondents who have resided in Berkeley for more than five years. Not concerned with immediate loss of housing does not mean that existing housing needs are met, however. As one respondent explained:

The only reason I am able to remain in the Bay Area is because I have been in the same unit for a decade and we have rent control - the other apartments in my building go for over twice what we're paying. [...] If I ever wanted to leave this apartment (and I do), I would have to leave the area entirely, because I can't afford anything else.

The gap between existing housing and respondents' needs is especially acute for those working in artistic disciplines that have specific space requirements like extra ventilation.

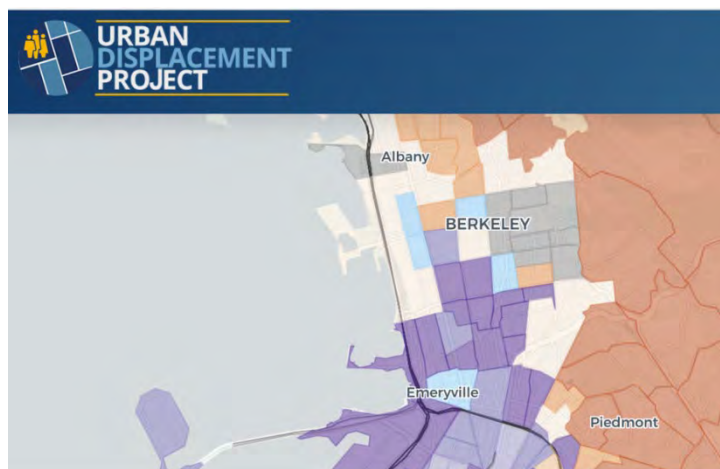
Second, the fact that the majority of respondents engage in multiple forms of employment means that they have multiple sources of income beyond their artistic practices to rely on for rental needs. However, as discussed above, in the long-term, the high burden of rent and reliance on other means of employment to make ends meet will impact artists' abilities to sustain their art. As one artist wrote:

My housing is over 2/3 of my income, leaving little to nothing for anything over basic living expenses.

Lastly, the timing of the survey suggests that those who are currently still residing in Berkeley are the ones who managed to weather the wave of displacement that took place in the last decade through the two factors described above and we have not captured the concerns of those who already had to leave as displacement was taking place. According to the [Urban Displacement Project](#), by 2018, almost all of Berkeley, except the immediate area surrounding University of California, Berkeley was experiencing ongoing and advanced gentrification, with a few areas already becoming exclusive and three areas in North Berkeley marked as low income and susceptible to displacement. South Berkeley area between Ashby Avenue and Emeryville border was in an advance gentrification stage with displacement having taken place between 2000 and 2018.

For comparison, the study in San Francisco took place in 2015, in the middle of the biggest wave of gentrification in the broader Bay Area. In that study, more than 1/3 of respondents expressed immediate concerns about loss of housing due to rent increase, end of lease term or fear of no-fault eviction.

Notably, South Berkeley also had high percentage of BIPOC population (between 50% and 70%). This data confirms that, like in the rest of the Bay Area, BIPOC communities are more susceptible to early displacement and the survey respondents' demographic reflects these changes in the population.



Artists have a unique need for flexible, live/work space

Of responding artists and artists/cultural workers, 82% reported that they make their art where they live, with 56% of this group requiring extra ventilation for their art.

This finding reflects the way that affordability challenges can fundamentally change an artist's practice. For artists needing extra ventilation, this could mean a choice between maintaining their own health and practicing their art, particularly if there is no adequate separation between where artists sleep, cook, and eat and where artworks are being stored, produced, or left to dry. The need for flexible and affordable live/work space has pushed artists to make choices to live in dangerous conditions that can have fatal consequences. As one artist respondent explained:

It's really hard to find space to train that is affordable. I need at least 20' ceilings, ideally 30'. There were many affordable live/work warehouse conversions with this kind of ceiling height pre-Ghostship but many of these affordable spaces were affordable due to slumlord and very DIY situations, which often meant common housing needs like sealed roofs, consistent mail/package delivery, heating, bedroom windows/egress, were not guaranteed. The tragedy at Ghostship has led cities around the Bay Area to tighten up their policies around DIY spaces to prevent similar situations. However, without intentional creation of spaces that meet the needs of practicing artists, such policies do not solve the root cause problem that have caused artists to seek out those spaces in the first place.

recommendations

Create policies that prioritize artists for new affordable housing

Artists are an important part of the fabric of Berkeley as a city. As such, they should be part of ongoing conversations about Berkeley's housing plan. The survey results demonstrate that artists -- as a group -- have low income, a high rent burden, and have traditionally been left out of ongoing affordable housing. In order to mitigate further displacement and allow artists to continue to work and thrive in Berkeley, the City could consider creating a priority category for artists who meet income qualification to access affordable housing. Such a priority category would require working with the arts community to create an inclusive definition of what it means to be an artist. It should also take into consideration and center artists from Black, Indigenous, and People of Color (BIPOC) communities, as well as LGBTQ+ communities who have already been displaced. In doing so, artists will have an opportunity to return to Berkeley and enrich the city's social and artistic fabric.

Designate some of Berkeley's upcoming affordable housing funding from measure o for units specific to artists

On July 24, 2019, Berkeley's Civic Arts Commission approved an amendment recommendation for Measure O that called for "significantly increas[ing] the supply of affordable housing and live/work housing for artists, artisans, and cultural workers" through adding to the zoning ordinance, incentivizing developers to build market-rate housing that includes affordable live/work units for creative workers, and incorporate live/work spaces for artists and cultural workers into large-scale affordable housing projects. Other proposals included the development of a community land trust and transforming underused retail spaces and City-owned buildings into artist live/work spaces. These recommendations should be revisited and implemented, as they align with the range of qualitative responses that came through the survey. Respondents also suggesting the development of: 1) co-ops; 2) a separate affordable housing lottery specifically for those artists and cultural workers from BIPOC and other underserved communities; and 3) relationships between the City and land trusts to purchase buildings that serve as artist housing. These suggestions point to the importance of re-evaluating how zoning and other policies further disenfranchise artists and cultural workers.

Consult artists when designing new policies for live/work spaces

Across the Bay Area, responses to the Ghostship fire emphasized increased attention to artist DIY live/work spaces. These spaces were often the only options for artists to access live/work spaces that met their needs. Yet, artists have always worked to transform neighborhoods through their work and creative use of space. As Berkeley works to address affordability issues for all of its residents, consulting and involving

artists in the planning process can help bring about a much-needed, new, and fresh perspective on issues such as rezoning, repurposing ground floor spaces, and requiring community benefit proposals for new development.

Develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline

Due to the nature of their work, artists often have a unique income structure that makes applying for affordable housing more difficult. In addition, the survey shows that artists have needs for certain types of spaces that might be difficult to identify. Funding technical assistance to support artists to translate their needs and apply for the existing affordable housing pipeline could be an important step in helping artists leave inadequate living situations. The advisory group also recommended creating a one-stop shop that features affordable housing for artists (perhaps akin to a specialized version of [San Francisco's DAHLIA housing portal](#)), which would create a platform where artists could share information about available housing and get connected to resources like financial technical assistance. A space geared towards artists' housing needs might be especially beneficial for artists who are looking for affinity housing along the lines of race and sexual identity, which allows them to stay more connected with their own communities.

Pilot a guaranteed basic income program for qualifying artists

Acknowledging the disproportionate impact of the pandemic on a community that was already struggling due to ongoing affordability challenges, multiple cities such as [San Francisco](#) and [Minneapolis](#) have launched pilot programs providing artists from marginalized communities who meet income requirements with a monthly stipend that would help cover their basic needs. Stipends are unrestricted, so they can be spent on rent and food while artists continue their artistic practice. Due to the existing racial wealth gap, which was reflected in the survey results, such a pilot should prioritize BIPOC artists. These types of programs are gaining national attention because the arts and culture are often cited as key strategies for economic recovery. Practicing artists are essential for such recovery. The advisory group agreed that a basic income program would address two key findings in this report -- respondents' extremely low income and high rent burden -- both of which have already forced artists to significantly modify or abandon their art practices.

further research

While the survey and focus groups discussed in this report have provided a much-needed snapshot into the space needs of artists in Berkeley, limited data does not allow us to paint a comprehensive picture. The following research and data collection is recommended, in order to complement this report.

Work with arts organizations to understand the income levels and housing needs of cultural workers

Only 15% of the respondents to the survey identified exclusively as cultural workers, meaning that there was not a statistically significant sample from which to draw conclusions about the needs of cultural workers. Further research, specifically on the housing needs and income levels of cultural workers, is needed.

Conduct a disparity study

Currently, Berkeley does not have comprehensive race and ethnicity data for seekers of affordable housing. Therefore, it is impossible to determine whether or not the artists who responded to this survey are demographically representative of the population that qualifies for affordable housing. A disparity study will ensure that changes in policy will not disproportionately impact certain groups.

Continue to collect data on artists

The lack of baseline data on artists -- even as simple as the total number of artists and disciplines practiced in a given community -- prevents us from understanding the extent of the issues that artists face. More long-term data collection and analysis of artists in Berkeley will allow the city to identify trends, as well as possible challenges that can be mitigated by timely policy changes.

appendices

a: community advisory group members

Kim Anno, Berkeley Civic Arts Commission
Delores Nochi Cooper, Berkeley Juneteenth Festival
Bruce Coughran, Indra's Net Theater
Hadley Dynak, Berkeley Cultural Trust
Misty Garrett, City of Berkeley
Ashlee George, Capoeira Arts Foundation and BrasArte
Mayumi Hamanaka, Kala Art Institute
Archana Horsting, Kala Art Institute
Mildred Howard, Independent Artist
Beatriz Leyva-Cutler, BAHIA
Amanda Montez, City of Berkeley
Mirah Moriarty & Rodrigo Esteva, Dance Monks
PC Muñoz, Freight & Salvage and BCT E&I Committee
Natalia Neira, La Pena Cultural Center and BCT E&I Committee
Daniel Nevers, Berkeley Art Center
Nancy Ng, Luna Dance Institute
Kathryn Reasoner, Vital Arts
Leigh Rondon, Shotgun Theater
Irene Sazer, Independent Artist (Civic Arts Grantee)
Sean Vaughn Scott, Black Repertory Group Theater
Rebecca Selin, Gamelan Sekar Jaya
Terry Taplin, Berkeley City Council and former Berkeley Civic Arts Commissioner
Rory Terrell, Local Artists Berkeley
Tyese Wortham, CAST
Chingchi Yu, Independent Artist (Civic Arts Grantee)

b: survey questions

Messaging

Are you an artist or cultural worker struggling to find affordable housing for you and your family?

Artists and cultural workers in Berkeley and throughout the Bay Area are facing an affordability crisis that prevents them from focusing on their creative work. Through the recently completed cultural planning process, the City of Berkeley identified as a primary goal the need to protect and increase access to affordable housing for artists and cultural workers.

Currently, there is little to no data on the affordable housing concerns of Berkeley artists and cultural workers. Your responses to this survey will help the City of Berkeley create programs and policies tailored to the housing needs that are specific to Berkeley's arts sector, including affordable housing and live-work spaces.

Thank you for helping keep Berkeley affordable for artists and cultural workers.

Survey Questions

1. Are you an artist or cultural worker?
 - a. Artist [proceed to question 2]
 - b. Cultural Worker (staff member at an arts culture organization) [Proceed to Question 4]
 - c. Both

2. If you are an artist, how would you describe your artistic practice/artwork?
Select all that apply:
 - a. 2D (Painting, Printmaking, Drawing, Photography, etc.)
 - b. 3D (Sculpture, Installation)
 - c. Theater/Performance
 - d. Dance
 - e. Craft
 - f. Film, Video, and/or Media Arts
 - g. Literary (Creative Writing, Poetry, etc.)
 - h. Music
 - i. Social Practice
 - j. Write in_____

3. Do you work with a medium that requires extra space and/or ventilation? This may include metal welding, spray paint, etc.
 - a. Yes
 - b. No

4. If you are a cultural worker, do you work at a Berkeley-based arts and culture nonprofit organization?
 - a. Yes
 - b. No

5. What is your primary language?
 - a. English
 - b. Spanish
 - c. Chinese (Mandarin and Cantonese)
 - d. Tagalog
 - e. Vietnamese
 - f. Persian
 - g. Portuguese
 - h. Punjabi
 - i. Swahili
 - j. Write In: _____
 - k. Decline to State

6. What is your race/ethnicity?
 - a. African-American or Black
 - b. American Indian or Alaska Native or Indigenous or First Nations
 - c. Arab or Middle Eastern
 - d. Asian or Asian American
 - e. Hispanic or Latina/Latino/Latinx
 - f. Native Hawaiian or Pacific Islander
 - g. White or Caucasian or European American
 - h. Multi-racial or multi- ethnic (2+ races/ethnicities)
 - i. Write In _____
 - j. Decline to State

7. What best describes your gender identity?
 - a. Female (cisgender)
 - b. Female (transgender)
 - c. Male (cisgender)
 - d. Male (transgender)
 - e. Gender-fluid/Genderqueer/Gender-expansive/Non-binary
 - f. Write In _____
 - g. Decline to State

8. How do you describe your sexual orientation or sexual identity?
 - a. LGBTQ+
 - b. Heterosexual/straight
 - c. Write in _____
 - d. Decline to State

9. Do you identify as a person with a disability?

- a. Yes
 - b. No
10. Please select the highest degree or level of school you have COMPLETED. If currently enrolled, mark the previous grade or highest degree already received.
- a. Less than high school
 - b. High school diploma/GED
 - c. Associate's degree
 - d. Bachelor's degree
 - e. Master's degree
 - f. Doctorate degree
11. How many people live in your household, including yourself?
- a. One [Proceed to Question 14]
 - b. Two
 - c. Three
 - d. Four
 - e. Five
 - f. More than five: Write In _____
12. Do you have any children under the age of 18?
- a. Yes
 - b. No [Proceed to Question 14]
13. If yes, how many children currently live with you?
- a. One
 - b. Two
 - c. Three
 - d. More than three
 - e. Write in: _____
14. What is your total household income?
- a. Less than \$26,050
 - b. \$26,051-\$43,400
 - c. \$43,401-\$69,000
 - d. \$69,001-\$98,549
 - e. More than \$98,550
 - f. Decline to state
15. If you are an artist, do you make 50% or more of your income from your artistic practice?
- a. Yes
 - b. No
 - c. I don't know
 - d. I am not an artist

16. What is your current employment status? Check all that apply:
 - a. Self employed artist for your own art practice
 - b. Self-employed, but not for your own art practice
 - c. Employed full time as a cultural worker
 - d. Employed full time as something other than a cultural worker
 - e. Employed part time/doing regular work for pay as a cultural worker
 - f. Employed part time/doing regular work for pay as something other than a cultural worker
 - g. Contract work as a cultural worker (for example: I receive a 1099 from a nonprofit arts organization organization)
 - h. Contract work as something other than a cultural worker (for example: I receive a 1099 from a separate non-arts organization or business)
 - i. Unreported work for cash
 - j. Not employed

17. How easy is it to predict your total income from month to month?
 - a. Very easy
 - b. Moderately easy
 - c. Neither easy nor difficult
 - d. Moderately difficult
 - e. Very difficult

18. How certain are you that your total income will return to pre-pandemic levels, over the next 6 months?
 - a. Very certain
 - b. Moderately certain
 - c. Neither certain or uncertain
 - d. Moderately uncertain
 - e. Very uncertain

19. What percentage of your average monthly income do you spend on housing costs?
 - a. Less than 20%
 - b. 20%-30%
 - c. 30%-40%
 - d. 40%-50%
 - e. More than 50%
 - f. I don't know

20. What is the zip code where you work?

21. What is the zip code where you live?

22. How long have you lived in Berkeley?
 - a. I do not live in Berkeley
 - b. Less than a year

- c. 1 - 3 years
 - d. 3 - 5 years
 - e. 5 - 10 years
 - f. More than 10 years
 - g. How long? _____
23. How long do you expect to remain in Berkeley?
- a. I do not live in Berkeley
 - b. Less than a year
 - c. 1 - 3 years
 - d. 3 - 5 years
 - e. 5 - 10 years
 - f. More than 10 years
 - g. How long? _____
24. Do you own or lease your living space?
- a. Lease [proceed to question 25]
 - b. Own [proceed to question 28]
25. What is your lease term?
- a. Month to month
 - b. 1 year
 - c. 2-3 years
 - d. More than 3 years
26. How many square feet is your space?
27. How much do you pay in rent per month?
28. Have you been displaced due to a “no-fault” or “no-cause” eviction in the past 2 years? (A “no-fault” or “no-cause” eviction is an eviction that is no fault of the tenant, but is allowed under the law.)
- a. Yes
 - b. No
 - c. I don't know
29. If you were displaced, did you have to move away from Berkeley?
- a. Yes
 - b. No
30. If you were not displaced, did you have to rely on the eviction moratorium that Berkeley has implemented over the past 12 months?
- a. Yes
 - b. No
 - c. I didn't know that evictions had been halted over the past 12 months.

31. How certain are you that you will be able to retain your housing when the eviction moratorium ends?
- Very certain
 - Moderately certain
 - Neither certain or uncertain
 - Moderately uncertain
 - Very uncertain
32. Do you use your living space for housing and your creative practice?
- Yes [proceed to question 37]
 - No [proceed to question 32]
33. If you have a work space that is separate from your living space, do you own or lease your work space?
- Lease [proceed to question 34]
 - Own [proceed to question 36]
34. What is the lease term for your work space?
- Month to month
 - 1 year
 - 2-3 years
 - More than 3 years
35. How much do you pay in rent per month for your work space?
Write in _____
36. How many square feet is your work space?
Write In _____
37. Have you been displaced from your work space due to a “no-fault” or “no-cause” eviction in the past 2 years? (A “no-fault” or “no-cause” eviction is an eviction that is no fault of the tenant, but is allowed under the law.)
- Yes
 - No
 - I don't know
38. If you were displaced, did you have to move your work space away from Berkeley?
- Yes
 - No
39. Do you share your work space?
- Yes
 - No

40. What are some challenges you've faced in the past when trying to access or find affordable housing?
41. Please share any ideas you have on how to ensure equitable participation of BIPOC artists and cultural producers from other historically underserved communities, as well as recommendations for local organizations that should be consulted.
42. Do you have anything else to share with us?

-----END OF SURVEY-----

Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
January 20 (Thurs.)	<ol style="list-style-type: none"> 1. Review and Update on City's COVID-19 Response 2. Public Works/Infrastructure Presentation
February 15	<ol style="list-style-type: none"> 1. Homeless Services and Mental Health Services
March 15	<ol style="list-style-type: none"> 1. Housing Element Update
April 19	<ol style="list-style-type: none"> 1. Fire Department Standards of Coverage Study

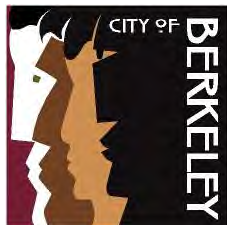
Unscheduled Workshops
<ol style="list-style-type: none"> 1. Cannabis Health Considerations 2. Alameda County LAFCO Presentation 3. BART Development (January or February)

Unscheduled Presentations (City Manager)
<ol style="list-style-type: none"> 1. Civic Arts Grantmaking Process & Capital Grant Program 2. Civic Center – Old City Hall and Veterans Memorial Building (Tentative: Action Item) 3. Mid-Year Budget Report FY 2022

	City Council Referrals to the Agenda & Rules Committee and Unfinished Business for Scheduling
1.	<p>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p>From: City Manager</p> <p>Recommendation: Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.</p> <p>Financial Implications: None</p> <p>Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000</p> <p>Note: <i>Referred to Agenda & Rules for future scheduling.</i></p>
2.	<p>Berkeley's 2019 Community-Wide Greenhouse Gas Emissions Inventory <i>(Referred from the November 30, 2021 meeting)</i></p> <p>From: City Manager</p> <p>Contact: Jordan Klein, Planning and Development, (510) 981-7400</p> <p>Note: <i>Referred to the Agenda & Rules Committee 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	Public Hearing
NOD – Notices of Decision			
Public Hearings Scheduled			
1527 Sacramento St (second story addition)	ZAB		2/22/2021
2956 Hillegass Ave (addition to lawful non-conforming structure)	ZAB		2/8/2021
Remanded to ZAB or LPC			
1205 Peralta Avenue (conversion of an existing garage)	ZAB		
Notes			

1/6/2022



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.

<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

<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.

Page 2
October 22, 2020
Re: Commission Meetings During COVID-19 Emergency

To assist commissions with the development of their work plan and to provide the City Council with a consistent framework to review the work plans, the City Manager has developed the following items to consider in developing the work plan that is submitted to the City Council agenda.

Prompts for Commissions to use in work plan:

- What commission items for 2021 have a direct nexus with the COVID-19 response or are the result of a City Council referral pertaining to COVID-19?
- What commission items for 2021 are required for statutory reasons?
- What commission items for 2021 are required for budgetary or fund allocation reasons?
- What commission items for 2021 support council-adopted or voter-adopted mission critical projects or programs?
- What are the anticipated staff demands (above and beyond baseline) for analysis, data, etc., to support commission work in 2021 (baseline duties = posting agendas, creating packets, attend meetings, minutes, etc.)?

The limitations on commission meetings are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Many of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new specific duties related to the impacts of the pandemic.

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager in consultation with Department Heads and the City Council. More frequent meetings by commissions will be permitted as the conditions under COVID-19 dictate.

Thank you for your service on our boards and commissions. The City values the work of our commissions and we appreciate your partnership and understanding as we address this pandemic as a resilient and vibrant community.

Attachments:

1. Resolution 69,331-N.S.
2. List of Commissions with Meeting Data

cc: Mayor and City Councilmembers
Senior Leadership Team

RESOLUTION NO. 69,331-N.S.

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

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

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

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

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

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

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

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

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

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

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

Section 1. Boards and Commissions

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

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

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

Category B

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

Transportation Commission
Youth Commission
Zero Waste Commission
Loan Administration Board

Section 2. City Council Policy Committees

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

Section 3. City Council


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

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

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk

Boards and Commissions	Meetings Held Under COVID Emergency (through 10/11)	Scheduled Meetings in October	Regular Mtg. Date	Secretary	Department
Zoning Adjustments Board	10	1	2nd & 4th Thur.	Shannon Allen	PLD
Police Review Commission	9	1	2nd & 4th Wed.	Katherine Lee	CM
Fair Campaign Practices Commission	8	1	3rd Thur.	Sam Harvey	CA
Design Review Committee	5	1	3rd Thur.	Anne Burns	PLD
Landmarks Preservation Commission	5	1	1st Thur.	Fatema Crane	PLD
Open Government Commission	5	1	3rd Thur.	Sam Harvey	CA
Homeless Services Panel of Experts	4	1	1st Wed	Brittany Carnegie	HHCS
Disaster and Fire Safety Commission	3	1	4th Wed.	Keith May	FES
Parks and Waterfront Commission	3	1	2nd Wed.	Roger Miller	PRW
Planning Commission	3		1st Wed.	Alene Pearson	PLD
Public Works Commission	3	1	1st Thur.	Joe Enke	PW
Civic Arts Commission	2		4th Wed.	Jennifer Lovvorn	OED
Solano Avenue BID Advisory Board	2		Contact Secretary	Eleanor Hollander	OED
Elmwood BID Advisory Board	1		Contact Secretary	Kieron Slaughter	OED
Joint Subcom. on Implementation of State Housing Laws	1		4th Wed.	Alene Pearson	PLD
Mental Health Commission	1		4th Thur.	Jamie Works-Wright	HHCS
Personnel Board	1		1st Mon.	La Tanya Bellow	HR
Transportation Commission	1	1	3rd Thur.	Farid Javandel	PW
Animal Care Commission	0		3rd Wed.	Amelia Funghi	CM
Cannabis Commission	0		1st Thur.		PLD
Children, Youth, and Recreation Commission	0		4th Monday	Stephanie Chu	PRW
Commission on Aging	0		3rd Wed.	Richard Castrillon	HHCS
Commission on Disability	0		1st Wed.	Dominika Bednarska	PW
Commission on Labor	0		3rd Wed., alternate mo	Nathan Dahl	HHCS
Commission on the Status of Women	0		4th Wed.	Shallon Allen	CM
Community Environmental Advisory Commission	0		2nd Thur.	Viviana Garcia	PLD
Community Health Commission	0		4th Thur.	Roberto Terrones	HHCS
Energy Commission	0		4th Wed.	Billi Romain	PLD
Homeless Commission	0		2nd Wed.	Brittany Carnegie	HHCS
Housing Advisory Commission	0		1st Thur.	Mike Uberti	HHCS
Human Welfare & Community Action Commission	0		3rd Wed.	Mary-Claire Katz	HHCS
Loan Administration Board	0		Contact Secretary	Kieron Slaughter	OED
Measure O Bond Oversight Committee	0		3rd Monday	Amy Davidson	HHCS
Peace and Justice Commission	0		1st Mon.	Nina Goldman	CM
Sugar-Sweetened Beverage Product Panel of Experts	0		3rd Thur.	Dechen Tsering	HHCS
Youth Commission	0		2nd Mon.	Ginsi Bryant	PRW
Zero Waste Commission	0		4th Mon.	Heidi Obermeit	PW



URGENT ITEM AGENDA MATERIAL

Government Code Section 54954.2(b)
Rules of Procedure Chapter III.C.5

**THIS ITEM IS NOT YET AGENDIZED AND MAY OR MAY NOT BE
ACCEPTED FOR THE AGENDA AS A LATE ITEM, SUBJECT TO THE
CITY COUNCIL'S DISCRETION ACCORDING TO BROWN ACT RULES**

Meeting Date: September 28, 2021

**Item Description: Resolution Making Required Findings Pursuant to the
Government Code and Directing City Legislative Bodies to
Continue to Meet Via Videoconference and Teleconference**

This item is submitted pursuant to the provision checked below:

- Emergency Situation (54954.2(b)(1) - majority vote required)
Determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.
- Immediate Action Required (54954.2(b)(2) - two-thirds vote required)
There is a need to take immediate action and the need for action came to the attention of the local agency subsequent to the agenda for this meeting being posted.

Once the item is added to the agenda (Consent or Action) it must be passed by the standard required vote threshold (majority, two-thirds, or 7/9).

Facts supporting the addition of the item to the agenda under Section 54954.2(b) and Chapter III.C.5 of the Rules of Procedure:

Assembly Bill 361 (Rivas) was signed by the Governor on September 16, 2021. This bill allows local legislative bodies to meet using videoconference technology while maintaining the Brown Act exemptions in Executive Order N-29-20 for noticing and access to the locations from which local officials participate in the meeting. Local agencies may only meet with the exemption if there is a state declared emergency.

The bill also requires that local legislative bodies meeting only via videoconference under a state declared emergency to make certain findings every 30-days regarding the need to meet in a virtual-only setting.

The agenda for the September 28, 2021 was finalized and published prior to the Governor signing AB 361 in to law. Thus, the need to take action came to the attention of the local agency after the agenda was distributed. This item qualifies for addition to the agenda with a two-thirds vote of the Council under Government Code Section 54954.2(b)(2).



Office of the City Attorney

CONSENT CALENDAR
September 28, 2021

To: Honorable Mayor and Members of the City Council
Madame City Manager

From: Farimah Faiz Brown, City Attorney

Subject: Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RECOMMENDATION

Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference.

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to California Government Code section 8630 and Berkeley Municipal Code Chapter 2.88.040, on March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19), including a confirmed case in the City of Berkeley. As a result of multiple confirmed and presumed cases in Alameda County, the County has declared a local health emergency. On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19. On March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20, which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) related to the holding of teleconferenced meetings by City legislative bodies. Among other things, Executive Order N-29-20 suspended requirements that each location from which an official accesses a teleconferenced meeting be accessible to the public.

These changes were necessary to allow teleconferencing to be used as a tool for ensuring social distancing. City legislative bodies have held public meetings via videoconference and teleconference pursuant to these provisions since March 2020. These provisions of Executive Order N-29-20 will expire on September 30, 2021.

COVID-19 continues to pose a serious threat to public health and safety. There are now over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley. Additionally, the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease.

As a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination. Holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time

Assembly Bill 361 (Rivas), signed into law by Governor Newsom on September 16, 2021, amended a portion of the Brown Act (Government Code Section 54953) to authorize the City Council, during the state of emergency, to determine that, due to the spread of COVID-19, holding in-person public meetings would present an imminent risk to the health or safety of attendees, and therefore City legislative bodies must continue to meet via videoconference and teleconference. Assembly Bill 361 requires that the City Council must review and ratify such a determination every thirty (30) days. Therefore, if the Council passes this resolution on September 28, 2021, the Council will need to review and ratify the resolution by October 28, 2021.

This item requests that the Council review the circumstances of the continued state of emergency posed by the spread of COVID-19, and find that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination. This item further requests that the Council determine that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference and teleconference, and that City legislative bodies shall continue to comply with all provisions of the Brown Act, as amended by SB 361.

BACKGROUND

On March 1, 2020, Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 3, 2020, the City's Director of Emergency Services proclaimed a local emergency due to the spread of COVID-19, including a confirmed case in the City of Berkeley and multiple confirmed and presumed cases in Alameda County.

On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19.

On March 10, 2020, the City Council ratified the Proclamation of Local Emergency. Since that date, there have been over 4,700 confirmed cases of COVID-19 and at least 57 deaths in the City of Berkeley.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20 which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) to allow teleconferencing of public meetings to be used as a tool for ensuring social distancing. As a result, City legislative bodies have held public meetings via teleconference throughout the pandemic. The provisions of Executive Order N-29-20 allowing teleconferencing to be used as a tool for social distancing will expire on September 30, 2021.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

RATIONALE FOR RECOMMENDATION

The Resolution would enable the City Council and its committees, and City boards and commissions to continue to hold public meetings via videoconference and teleconference in order to continue to socially distance and limit the spread of COVID-19.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998
Mark Numainville, City Clerk, (510) 981-6908

Attachments:

1: Resolution Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RESOLUTION NO. –N.S.

RESOLUTION MAKING THE REQUIRED FINDINGS PURSUANT TO GOVERNMENT CODE SECTION 54953(E)(3) AND DIRECTING CITY LEGISLATIVE BODIES TO CONTINUE TO MEET VIA VIDEOCONFERENCE AND TELECONFERENCE

WHEREAS, in accordance with Berkeley Municipal Code section 2.88.040 and sections 8558(c) and 8630 of the Government Code, which authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a City exist, the City Manager, serving as the Director of Emergency Services, beginning on March 3, 2020, did proclaim the existence of a local emergency caused by epidemic 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, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency pursuant to the California Emergency Services Act, in particular, Government Code section 8625; and

WHEREAS, the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020 continues to be in effect; and

WHEREAS, on September 16, 2021, Governor Newsom signed into law AB 361, which authorizes the City Council to determine that, due to the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril continue to exist, and now include over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley; and

WHEREAS, the City Council recognizes that the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease; and

WHEREAS, as a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination; and

WHEREAS, holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time; and

WHEREAS, the City Council will need to again review the need for the continuing necessity of holding City legislative body meetings via videoconference and teleconference by October 28, 2021.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that, pursuant to Government Code section 54953, the City Council has reviewed the circumstances of the continued state of emergency posed by the spread of COVID-19, and finds that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination; and

BE IT FURTHER RESOLVED that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference and teleconference; and

BE IT FURTHER RESOLVED that all City legislative bodies shall comply with the requirements of Government Code section 54953(e)(2) and all applicable laws, regulations and rules when conducting public meetings pursuant to this resolution.



OFFICE OF THE GOVERNOR

June 2, 2021

VIA EMAIL

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RE: Transition Period Prior to Repeal of COVID-related Executive Orders

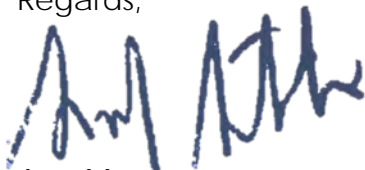
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

Thank you for your correspondence of May 18, 2021, inquiring what impact the anticipated June 15 termination of the Blueprint for a Safer Economy will have on Executive Order N-29-20, which provided flexibility to state and local agencies and boards to conduct their business through virtual public meetings during the COVID-19 pandemic.

Please be assured that this Executive Order Provision will not terminate on June 15 when the Blueprint is scheduled to terminate. While the Governor intends to terminate COVID-19 executive orders at the earliest possible date at which conditions warrant, consistent with the Emergency Services Act, the Governor recognizes the importance of an orderly return to the ordinary conduct of public meetings of state and local agencies and boards. To this end, the Governor's office will work to provide notice to affected stakeholders in advance of rescission of this provision to provide state and local agencies and boards time necessary to meet statutory and logistical requirements. Until a further order issues, all entities may continue to rely on N-29-20.

We appreciate your partnership throughout the pandemic.

Regards,

A handwritten signature in blue ink, appearing to read 'Ana Matosantos', written in a cursive style.

Ana Matosantos
Cabinet Secretary



NEWS RELEASE

Release
Number: 2021-58

June 4, 2021

Standards Board Readopts Revised Cal/OSHA COVID-19 Prevention Emergency Temporary Standards

The revised Cal/OSHA standards are expected to go into effect no later than June 15

Sacramento — The Occupational Safety and Health Standards Board on June 3 readopted Cal/OSHA's revised COVID-19 prevention emergency temporary standards.

Last year, the Board adopted health and safety standards to protect workers from COVID-19. The standards did not consider vaccinations and required testing, quarantining, masking and more to protect workers from COVID-19.

The changes adopted by the Board phase out physical distancing and make other adjustments to better align with the state's June 15 goal to retire the Blueprint. Without these changes, the original standards, would be in place until at least October 2. These restrictions are no longer required given today's record low case rates and the fact that we've administered 37 million vaccines.

The revised emergency standards are expected to go into effect no later than June 15 if approved by the Office of Administrative Law in the next 10 calendar days. Some provisions go into effect starting on July 31, 2021.

The [revised standards](#) are the first update to Cal/OSHA's temporary COVID-19 prevention requirements adopted in November 2020.

The Board may further refine the regulations in the coming weeks to take into account changes in circumstances, especially as related to the availability of vaccines and low case rates across the state.

The standards apply to most workers in California not covered by Cal/OSHA's Aerosol Transmissible Diseases [standard](#). Notable revisions include:

- **Face Coverings:**
 - Indoors, fully vaccinated workers without COVID-19 symptoms do not need to wear face coverings in a room where everyone else is fully vaccinated and not showing symptoms. However, where there is a mixture of vaccinated and unvaccinated persons in a room, all workers will continue to be required to wear a face covering.
 - Outdoors, fully vaccinated workers without symptoms do not need to wear face coverings. However, outdoor workers who are not fully vaccinated must continue to wear a face covering when they are less than six feet away from another person.
- **Physical Distancing:** When the revised standards take effect, employers can eliminate physical distancing and partitions/barriers for employees working indoors and at outdoor mega events if they provide respirators, such as N95s, to unvaccinated employees for voluntary use. After July 31, physical distancing

and barriers are no longer required (except during outbreaks), but employers must provide all unvaccinated employees with N95s for voluntary use.

- **Prevention Program:** Employers are still required to maintain a written COVID-19 Prevention Program but there are some key changes to requirements:
 - Employers must review the California Department of Public Health's [Interim guidance for Ventilation, Filtration, and Air Quality in Indoor Environments](#).
 - COVID-19 prevention training must now include information on how the vaccine is effective at preventing COVID-19 and protecting against both transmission and serious illness or death.
- **Exclusion from the Workplace:** Fully vaccinated workers who do not have COVID-19 symptoms no longer need to be excluded from the workplace after a close contact.
- **Special Protections for Housing and Transportation:** Special COVID-19 prevention measures that apply to employer-provided housing and transportation no longer apply if all occupants are fully vaccinated.

The Standards Board will file the readoption rulemaking package with the Office of Administrative Law, which has 10 calendar days to review and approve the temporary workplace safety standards enforced by Cal/OSHA. Once approved and published, the full text of the revised emergency standards will appear in the Title 8 sections [3205](#) (COVID-19 Prevention), [3205.1](#) (Multiple COVID-19 Infections and COVID-19 Outbreaks), [3205.2](#) (Major COVID-19 Outbreaks) [3205.3](#) (COVID-19 Prevention in Employer-Provided Housing) and [3205.4](#) (COVID-19 Prevention in Employer-Provided Transportation) of the [California Code of Regulations](#). Pursuant to the state's [emergency rulemaking process](#), this is the first of two opportunities to readopt the temporary standards after the initial effective period.

The Standards Board also convened a representative subcommittee to work with Cal/OSHA on a proposal for further updates to the standard, as part of the emergency rulemaking process. It is anticipated this newest proposal, once developed, will be heard at an upcoming Board meeting. The subcommittee will provide regular updates at the Standards Board monthly meetings.

The [Occupational Safety and Health Standards Board](#), a seven-member body appointed by the Governor, is the standards-setting agency within the Cal/OSHA program. The Standards Board's objective is to adopt reasonable and enforceable standards at least as effective as federal standards. The Standards Board also has the responsibility to grant or deny applications for permanent variances from adopted standards and respond to petitions for new or revised standards.

The California Division of Occupational Safety and Health, or [Cal/OSHA](#), is the division within the Department of Industrial Relations that helps protect California's workers from health and safety hazards on the job in almost every workplace. [Cal/OSHA's Consultation Services Branch](#) provides free and voluntary assistance to employers to improve their health and safety programs. Employers should call (800) 963-9424 for assistance from Cal/OSHA Consultation Services.

Contact: Erika Monterroza / Frank Polizzi, Communications@dir.ca.gov, (510) 286-1161.

The [California Department of Industrial Relations](#), established in 1927, protects and improves the health, safety, and economic well-being of over 18 million wage earners, and helps their employers comply with state labor laws. DIR is housed within the [Labor & Workforce Development Agency](#)



Office of the City Manager

June 1, 2021

To: Agenda & Rules Committee

From: Dee Williams-Ridley, City Manager

Subject: Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies

Introduction

This memo responds to the request from the Agenda & Rules Committee on May 17, 2021 for information from the City Manager on the options and timing for a return to in-person meetings for City legislative bodies. The analysis below is a preliminary summary of the considerations and options for returning to in-person meetings.

With the onset of the COVID-19 pandemic, the shelter-in-place order, and the issuance of Executive Order N-29-20 (“Executive Order”) in the spring of 2020, the City quickly adjusted to a virtual meeting model. Now, almost 15 months later, with the Blueprint for a Safer Economy scheduled to sunset on June 15, 2021, the City is faced with a new set of conditions that will impact how public meetings may be held in Berkeley. While the June 15, 2021 date appears to be certain, there is still a great deal of uncertainty about the fate of the Executive Order. In addition, the City is still awaiting concrete, specific guidance from the State with regards to regulations that govern public meetings and public health recommendations that will be in place after June 15, 2021.

For background, Executive Order N-29-20 allows legislative bodies to meet in a virtual setting and suspends the following Brown Act requirements:

- Printing the location of members of the legislative body on the agenda;
- Posting the agenda at the location of members of the legislative body that are remote; and
- Making publicly available remote locations from which members of the legislative body participate.

Meeting Options

There are three groups of City Legislative bodies that are considered in this memo

- City Council;
- City Council Policy Committees; and
- Boards and Commissions.

The three meeting models available are:

- In-person only;
- Virtual only; or
- Hybrid (in-person and virtual).

The scenarios below show the options available for each given set of facts.

Summary Recommendations of Meeting Options	Physical Distancing			No Physical Distancing		
	In-Person	Hybrid	Virtual*	In-Person	Hybrid	Virtual*
	City Council	X	X	X	X	X
Policy Committees			X	X		X
Board and Commissions			X	X		X

* The ability to hold virtual-only meetings is dependent on the status of Executive Order N-29-20

Currently, the Centers for Disease Control recommends physical distancing for unvaccinated persons. While the City and the community have made tremendous progress with regards to vaccination, the City would use the guidelines for unvaccinated persons when making determinations regarding public meetings.

Meeting Type Considerations

Our previous experience pre-pandemic and our experience over the past 15 months demonstrates that the City can conduct all in-person and all virtual meetings. However, the possibility of hybrid meetings presents new questions to consider. The primary concern for a return to in-person meetings using a hybrid model is the impact on the public experience and the legislative process.

Will the legislative body be able to provide a transparent, coherent, stable, informative, and meaningful experience for the both the public in attendance and virtually?

Will the legislative body be able to conduct the legislative process in an efficient, coherent, and meaningful manner with the members split between in-person and virtual, and considering the additional delays and logistical challenges of allowing for public participation in a hybrid model?

For the City Council, testing has shown that the larger space and technology infrastructure at the Boardroom will allow the Council to conduct all three types of meetings (in-person, hybrid, virtual).

For Policy Committees and Commissions, only the “all virtual” or “all in-person” meetings are recommended. Preliminary testing has shown that the audio/visual limitations of the meeting rooms available for these bodies would result in inefficient and cumbersome management of the proceedings in a hybrid model. In addition, there are considerations to analyze regarding the available bandwidth in city facilities and all members having access to adequate devices. Continuing the all virtual model for as long as possible, then switching to an all in-person model when conditions permit provides the best access, participation, and legislative experience for the public and the legislative body.

Other Considerations

Some additional factors to consider in the evaluation of returning to in-person or hybrid meetings are:

- How to address vaccination status for in-person attendees.
- Will symptom checks and/or temperature checks at entry points be required?
- Who is responsible for providing PPE for attendees?
- How are protocols for in-person attendees to be enforced?
- Physical distancing measures for the Mayor and City Councilmembers on the dais.
- Installation of physical barriers and other temporary measures.
- Will the podium and microphone need to be sanitized after every speaker?
- High number of touch points in meeting rooms.
- Will chairs for the public and staff need to be sanitized if there is turnover during the meeting?
- Determining the appropriate capacity for meeting locations.
- The condition and capacity of meeting room ventilation system and air cycling abilities.
- How to receive and share Supplemental Items, Revisions, Urgent Items, and submissions by the public both in-person and virtually.
- Budget including costs for equipment, physical improvements, A/V, PPE, and sanitization.

Conclusion

As stated above, conditions are changing daily, and there is a high degree of uncertainty surrounding the future guidance, regulations, and actions at the state level. Planning, testing and analysis are already underway to prepare for an eventual return to in-person meetings. Staff will continue to monitor the evolving legislative and public health circumstances and advise the committee at future meetings.

Attachment:

1. Executive Order N-29-20

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-29-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS despite sustained efforts, the virus continues to spread and is impacting nearly all sectors of California; and

WHEREAS the threat of COVID-19 has resulted in serious and ongoing economic harms, in particular to some of the most vulnerable Californians; and

WHEREAS time bound eligibility redeterminations are required for Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries to continue their benefits, in accordance with processes established by the Department of Social Services, the Department of Health Care Services, and the Federal Government; and

WHEREAS social distancing recommendations or Orders as well as a statewide imperative for critical employees to focus on health needs may prevent Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries from obtaining in-person eligibility redeterminations; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. As to individuals currently eligible for benefits under Medi-Cal, CalFresh, CalWORKs, the Cash Assistance Program for Immigrants, the California Food Assistance Program, or In Home Supportive Services benefits, and to the extent necessary to allow such individuals to maintain eligibility for such benefits, any state law, including but not limited to California Code of Regulations, Title 22, section 50189(a) and Welfare and Institutions Code sections 18940 and 11265, that would require redetermination of such benefits is suspended for a period of 90 days from the date of this Order. This Order shall be construed to be consistent with applicable federal laws, including but not limited to Code of Federal Regulations, Title 42, section 435.912, subdivision (e), as interpreted by the Centers for Medicare and Medicaid Services (in guidance issued on January 30, 2018) to permit the extension of

otherwise-applicable Medicaid time limits in emergency situations.

2. Through June 17, 2020, any month or partial month in which California Work Opportunity and Responsibility to Kids (CalWORKs) aid or services are received pursuant to Welfare and Institutions Code Section 11200 et seq. shall not be counted for purposes of the 48-month time limit set forth in Welfare and Institutions Code Section 11454. Any waiver of this time limit shall not be applied if it will exceed the federal time limits set forth in Code of Federal Regulations, Title 45, section 264.1.
3. Paragraph 11 of Executive Order N-25-20 (March 12, 2020) is withdrawn and superseded by the following text:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow

members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

- (i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and
- (ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

- (i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

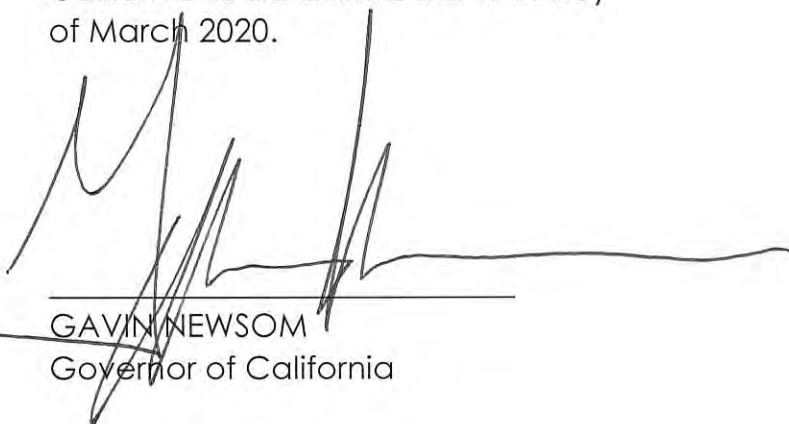
All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 17th day of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State