



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

**MONDAY, MARCH 7, 2022**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Kate Harrison

**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/86832943195> . 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: **868 3294 3195**. 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: February 22, 2022**
- 2. Review and Approve Draft Agenda:**
  - a. 3/22/22 – 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, March 28, 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 March 3, 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, FEBRUARY 22, 2022**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Kate Harrison

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

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To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **822 6303 5613**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

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

**Roll Call:** 2:34 p.m. All present.

**Public Comment** – 4 speakers

## **Review of Agendas**

**1. Approval of Minutes: February 8, 2022**

**Action:** M/S/C (Wengraf/Hahn) to approve the minutes of 2/8/22.

**Vote:** All Ayes.

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

a. 3/8/22 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Arreguin/Hahn) to approve the agenda of 3/8/22 with the changes noted below.

- Item Added: Retired Annuitant (City Manager) – Item added to the agenda
- Item 13 Two-Thirds Vote (Arreguin) – Councilmember Harrison added as a co-sponsor
- Item 14 Council Relinquishment (Harrison) – Councilmember Wengraf added as a co-sponsor
- Item 18 Parking Enforcement (Commission) – Referred to the Public Safety Committee
- Item 19 AB 43 (Kesarwani) – Replaced by new joint item submitted by Councilmembers Kesarwani and Taplin; moved to March 8 Consent Calendar
- Item 20 AB 43 (Taplin) – Replaced by new joint item submitted by Councilmembers Kesarwani and Taplin; moved to March 8 Consent Calendar
- Item 21 Equitable Safe Streets (Taplin) – Referred to the FITES Committee; Councilmembers Bartlett and Hahn added as co-sponsors

Order of Items on Action Calendar

Retired Annuitant Item

**Vote:** All Ayes.

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

- None selected

**4. Adjournments In Memory – None**

## **Scheduling**

**5. Council Worksessions Schedule** – received and filed

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

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

## Referred Items for Review

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

**Action:** 2 speakers. Discussion of state declaration of emergency and impact on in-person/virtual meetings. No action taken.

**9. Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies**

**Action:** 2 speakers. Discussion of state declaration of emergency and impact on in-person/virtual meetings. 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**

## Items for Future Agendas

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

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 3:14 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on February 22, 2022.

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Mark Numainville, City Clerk

## Communications

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DRAFT AGENDA

02a



BERKELEY CITY COUNCIL MEETING

Tuesday, March 22, 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.

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. Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference**  
**From: City Manager**  
**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, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, and March 8, 2022.  
**Financial Implications:** To be determined.  
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 2. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, November 9, 2021, December 14, 2021, and February 8, 2022.  
**Financial Implications:** To be determined.  
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 3. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the Council meetings of February 8 (regular), February 15 (closed and special), February 18 (closed), February 22 (regular) and February 24 (closed).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900

## Consent Calendar

- 4. Amendment to the Berkeley Revolving Loan Fund Administrative Plan to allow management of the COVID-19 Resiliency Loan Program (RLP) by Working Solutions, a certified Community Development Financial Institution; Authorize a \$60,000 contract with Working Solutions to provide technical assistance and small business support to Berkeley's RLP participants**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions:  
1. Approving changes to the Administrative Plan of the Berkeley Revolving Loan Fund (RLF) to allow for third party administration of the COVID-19 Resiliency Loan Program (RLP).  
2. Authorizing the City Manager to execute a sole source contract and any amendments with Working Solutions, a certified Community Development Financial Institution, not to exceed \$60,000 of ARPA funds to provide additional small business support and technical assistance to Berkeley's RLP participants for the period beginning March 31, 2022 through the five-year term of the RLP loan repayments (anticipated ending date December 31, 2027).  
**Financial Implications:** See report.  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on March 22, 2022**  
**From: City Manager**  
**Recommendation:** Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on March 22, 2022  
**Financial Implications:** \$12,952,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 6. Donation of Fire Apparatus and Equipment**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution donating a surplus fire truck, Auto 910 and equipment, to the Livermore Pleasanton Department.  
**Financial Implications:** See report.  
Contact: Abe Roman, Fire, (510) 981-3473

## Consent Calendar

- 7. Contract: Pinnacle for Occupational Physicals**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Pinnacle Training Systems, LLC (Contractor) to replace the current contractor that has failed to perform to City requirements. The new Contractor also specializes in providing occupational health and pre-employment medical examinations including cancer and cardiac screening for firefighters, paramedics, emergency medical technicians, police officers and other designated staff (first responders). The contract base period will run from March 23, 2022 through March 22, 2026 in an amount not to exceed \$325,000 per fiscal year with an option to extend for three additional two-year terms, for a total ten-year potential contract not to exceed \$3,250,000.  
**Financial Implications:** See report  
Contact: Abe Roman, Fire, (510) 981-3473
- 8. Contract: Interior Motions for HHCS Public Health Division Furniture**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract, and any amendments or extensions, with Interior Motions for new furniture for the Public Health Division offices. The contract will be in an amount not to exceed \$100,000 for the period January 1, 2022 through December 30, 2022.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 9. Contract No. 32100178 Amendment: California Mental Health Services Authority Help@Hand Participation Agreement**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an Amendment to the Help@Hand Participation Agreement with the California Mental Health Services Authority (CalMHSA) (Contract No.32100178) to increase the amount of funding by \$140,800 for a total amount not to exceed \$541,715 through June 30, 2024, and any amendments.  
**Financial Implications:**  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 10. Revenue Contract: Alameda County Behavioral Health Care Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a revenue contract amendment with Alameda County Behavioral Health Care Services (ACBH) for the provision of mental health services, including Medi-Cal, Medicare, Educationally Related Mental Health Services (ERMHS), and Early Periodic Screening, Diagnosis and Treatment (EPSDT) billing and reimbursement, with an Effective Date of July 1, 2021.  
**Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

- 11. Increase Taxi Scrip Window Daily Cash Redemption Limit**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing Berkeley Rides for Seniors & the Disabled (BRSD) to increase the Taxi Scrip Window daily cash redemption limit from \$800 to \$1,000, one day per week.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 12. Amending Berkeley Municipal Code (BMC) Chapter 12.70 Sections 12.70.031 and 12.70.050A.1 to align with State and Local Laws**  
**From: City Manager**  
**Recommendation:** Staff recommends the City Council adopt the reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 12.70 Smoking Pollution Control to incorporate two changes:  
1) Amending BMC 12.70.030 to replace the outdated term “Dispensary” with “Cannabis Retailer” in order to align with the State’s Medicinal and Adult-Use of Cannabis Safety and Regulation Act (MAUCSRA); and  
2) Revise BMC Chapter 12.70.050.A.1 to clarify that smoking tobacco is allowed at a tobacco retailer, and smoking cannabis is allowable at a Cannabis Retailer, subject to Council-approved BMC Sections 23.320.020.F.2, 12.21.020.U, V, and Y, and 12.22.040.F.2 allowing “Cannabis Lounges”.  
**Financial Implications:** None.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 13. Amendments to On-Call Architectural Services Contract No. 31900137 (ELS Architecture and Urban Design), Contract No. 31900155 (Siegel & Strain Architects), and Contract No. 31900131 (Noll & Tam Architects)**  
**From: City Manager**  
**Recommendation:** Adopt Resolutions authorizing the City Manager to:  
1. Execute an amendment to Contract No. 31900137 for ELS Architecture and Urban Design increasing the contract amount by \$900,000; and  
2. Execute amendments to Contract No. 31900155 for Siegel & Strain Architects, and Contract No. 31900131 for Noll & Tam Architects by increasing the contract amount by \$900,000 each and duration by 9 months each, from June 30, 2022 to March 31, 2023.  
**Financial Implications:** See report.  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

- 14. Purchase Order: Nicholas K Corp dba the Ford Store San Leandro for Fifteen Ford Interceptor Utility Hybrid Vehicles**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City Manager to participate in Alameda County bid procedures and authorize the City Manager to execute a purchase order for fifteen (15) Ford Interceptor Utility Hybrid vehicles with Nicholas K Corp dba the Ford Store San Leandro in an amount not to exceed \$765,000.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300
- 15. Purchase Order: Nicholas K Corp dba the Ford Store San Leandro for Three Electric Vehicle Ford Pickup Trucks**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City Manager to participate in Alameda County bid procedures and authorize the City Manager to execute a purchase order for three (3) Electric Vehicle Ford Pickup Trucks with Nicholas K Corp dba the Ford Store San Leandro in an amount not to exceed \$135,000.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300
- 16. Contract No. 112725-1 Du-All Safety, LLC for Safety Consulting and Training Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 112725-1 with Du-All Safety, LLC for continued safety training and consulting services up to \$100,000 for a total contract amount not to exceed \$400,000, and to extend the contract term through December 31, 2025.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300
- 17. Contract No. 32100122 Amendment: Silao General Engineering for Site Improvements Project at 125/127 University Avenue**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32100122 with Silao General Engineering, Inc. to complete the parking lot site improvements at 125/127 University Avenue increasing the current contract amount of \$192,946.60 by \$85,000.00 for a total amount not-to-exceed of \$277,947.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

- 18. Contract No. 31900106 Amendment: Coastland Civil Engineering for On-Call Civil Engineering Services for the Sanitary Sewer Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 31900106 with Coastland Civil Engineering (Coastland) for On-Call Civil Engineering Services for the Sanitary Sewer Program, increasing the contract by \$500,000, for a total amount not to exceed \$1,400,000, and extending the term of the contract to June 30, 2023.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300
- 19. Contract No. 31900094 Amendment: West Yost for On-Call Civil Engineering Services for the Sanitary Sewer Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 31900094 with West Yost Associates (West Yost) for On-Call Civil Engineering Services for the Sanitary Sewer Program, increasing the contract by \$500,000, for a total amount not to exceed \$1,200,000, and extending the term of the contract to June 30, 2023.  
**Financial Implications:** See report.  
Contact: Liam Garland, Public Works, (510) 981-6300
- 20. Contract No. 090342-1 Amendment: Waste Management of Alameda County for Landfill Disposal Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend the City's existing Contract No. 090342-1 with Waste Management, Inc. of Alameda County for Landfill Disposal Services through December 31, 2026 by increasing the Not to Exceed amount from \$32,740,168 to \$45,545,780.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 21. Fiscal Year 2023 Street Lighting Assessments – Initiating Proceedings**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions describing proposed improvements to be used to determine the annual assessments levied for Berkeley Street Lighting Assessment District No. 1982-1 and Street Lighting Assessment District No. 2018, and order the preparation of Engineer's Reports.  
**Financial Implications:** See Report.  
Contact: Liam Garland, Public Works, (510) 981-6300



## Consent Calendar

- 22. Vacancies on Commission on Disability**  
**From: Commission on Disability**  
**Recommendation:** Appoint new members to fill vacancies on the Commission on Disability from District 3, District 4, District 5, District 6, District 7, and Mayor Jesse Arreguin  
**Financial Implications:** None  
Contact: Dominika Bednarska, Commission Secretary, (510) 981-6300
- 23. Letter of Support for Budget Referral: South Sailing Basin Dredging**  
**From: Parks and Waterfront Commission**  
**Recommendation:** Send the attached Letter of Support for Budget Referral: South Sailing Basin Dredging to be added to the scope of the project for the study of dredging the main channel.  
**Financial Implications:** See report.  
Contact: Roger Miller, Commission Secretary, (510) 981-6700
- 24. Letter of Support for Infrastructure Improvement Projects in the Berkeley Waterfront from the Parks, Recreation, and Waterfront Commission to State Senate Budget Chair Skinner and Assembly Budget Chair Ting**  
**From: Parks and Waterfront Commission**  
**Recommendation:** Send the attached Letter of Support for Infrastructure Improvement Projects in the Berkeley Waterfront from the Parks, Recreation, and Waterfront Commission to State Senate Budget Chair Skinner and Assembly Budget Chair Ting.  
**Financial Implications:** See report.  
Contact: Roger Miller, Commission Secretary, (510) 981-6700
- 25. Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities**  
**From: Auditor**  
**Recommendation:** We recommend City Council request that the City Manager report back by September 29, 2022, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Berkeley Police Department (BPD). They have agreed to our findings and recommendations. Please see our report for their complete response.  
**Financial Implications:** None  
Contact: Jenny Wong, Auditor, (510) 981-6750

## Council Consent Items

- 26. Support for AB-2053 (Social Housing Act)**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Send a letter in support of Assembly Bill 2053 to the state legislature.  
**Financial Implications:** None  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 27. Support for AB-2336**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Send a letter of support for Assembly Bill 2336: Speed Safety System Pilot Program.  
**Financial Implications:** None  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 28. Support for AB-2713**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Send a letter of Support for Assembly Bill 2713: Rent caps  
**Financial Implications:** None  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 29. Budget Referral: West Berkeley Transportation Plan**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** That the City Council refer \$300,000 to the FY23-24 budget process for the hiring of a consultant to do a study and draft a comprehensive plan for transportation in West Berkeley through 2050.  
**Financial Implications:** \$300,000  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

## Council Consent Items

30. **Budget Referral: Reparations in Berkeley – Funding for a Consultant to Facilitate Community Process to Design and Implement a Local Reparations Plan**  
**From: Councilmember Bartlett (Author), Councilmember Hahn (Co-Sponsor), Councilmember Taplin (Co-Sponsor), Mayor Arreguin (Co-Sponsor)**  
**Recommendation:** Refer to the Fiscal Year 2022/2023 Budget Process, an allocation of \$350,000 to fund a Consultant to develop policy recommendations for reparations in Berkeley. These recommendations will address the economic injury and intergenerational trauma experienced by Berkeley’s descendants of slavery and the ongoing harm caused to all African Americans by systems that uphold the legacy of segregation. The Consultant will design a process to develop short, medium, and long-term recommendations for reparation policies in Berkeley designed to promote the creation of generational wealth and boost economic mobility, and opportunity in Berkeley’s African American community. 1. Inform. The Consultant should hold a series of educational events, truth-telling symposiums, sessions, and community gatherings on Berkeley’s history. The Consultant should engage a myriad of Berkeley stakeholders, including residents who have experienced harm with economists and historians to provide context. Subject matter experts will employ financial and historical data to illuminate the generational wealth gap, describe barriers to economic mobility, and detail the systemic racism against Berkeley’s African American community. 2. Interact. The Consultant should aim to foster an interactive dialogue centered on the community’s historical experiences and legacy of racism. These group settings should be between persons of diverse vantage points and opinions. The Consultant’s facilitation of these emotive conversations should aspire to enable learning and deep listening, connection, and ultimately trust, healing, and the desire to repair the community. 3. Recommend. Draw from the community dialogues to issue short, medium, and long-term recommendations, for reparations policies. The policy recommendations should focus on creating significant, sustainable progress towards repairing the damage caused by public and private systemic racism; and mitigate racial disparities in wealth, education, employment, homeownership, health, criminal justice, and more. The recommendations should include a portfolio of policies aligned under the following framework: i. Reckoning ii. Acknowledgment iii. Accountability iv. Redress  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

## Council Consent Items

**31. Support for AB 1755 (Levine)**

**From: Councilmember Wengraf (Author)**

**Recommendation:** Adopt a Resolution in Support of AB-1755: Homeowners Insurance: Home Hardening (Levine). AB-1755 will require, beginning in 2025, an insurance provider licensed in California to issue an insurance policy to a homeowner that has taken science-based actions to harden their property from wildfire risk. This legislation would also create the Wildfire Protection Grant Program under the Department of Insurance that would administer grants to residential property owners of up to \$10,000 to help pay for costs associated with home hardening and wildfire mitigation improvements. Send copies of the Resolution to Assembly Member Levine, Assembly Member Wicks, Senator Skinner, Governor Newsom and Insurance Commissioner Lara.

**Financial Implications:** None

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

**32. Support for AB-1594 Firearms: Civil Suits**

**From: Councilmember Wengraf (Author), Councilmember Taplin (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)**

**Recommendation:** Adopt a Resolution in support of AB-1594 (Assembly Member Ting) which would allow gun manufacturers to be sued for creating a public nuisance if their failure to follow federal, state or local law caused injury or death or if the gun industry member engaged in unfair business practices.

Send the Resolution to Assembly Members Ting, Gipson, Ward and Wicks along with Senator Skinner and Governor Newsom.

**Financial Implications:** None

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

**33. 2022 Virtual Holocaust Remembrance Day Program: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**

**From: Councilmember Wengraf (Author), Councilmember Hahn (Author)**

**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 each from Councilmember Wengraf and Councilmember Hahn to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf's and Hahn's discretionary Council Office Budgets and all other Councilmembers who would like to contribute, allows the City of Berkeley to invite the community to the City's 19th Annual Holocaust Remembrance Day virtual program, created by the community with City Council support. In light of the vulnerability of many of the attendees, and the continuing threat of the COVID pandemic, this year's program will be held virtually on April 28, 2022.

**Financial Implications:** See report

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

## Council Consent Items

- 34. Budget Referral: Telegraph-Channing Garage Elevator Repairs**  
**From: Councilmember Robinson (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Refer \$3.6M to the June 2022 budget process for urgent repairs to the Telegraph-Channing Garage elevators. Additionally, refer to the City Manager to pursue all available funding opportunities for this project, including American Rescue Plan Act funds.  
**Financial Implications:** See report  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

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

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

- 35. Referral Response: Research and Development (R&D) Definition**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and, upon conclusion, adopt the first reading of a Zoning Ordinance amendment that modifies the land use definition of Research and Development (R&D) [Berkeley Municipal Code (BMC) Division 5: Glossary – Defined Terms 23.502.020].  
**Financial Implications:** None  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Action Calendar – Old Business

36. **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 January 25, 2022. 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: Jennifer Louis, Police, (510) 981-5900, LaTanya Bellow, City Manager's Office, (510) 981-7000

## Action Calendar – New Business

### 37. Recommendation to Identify High Risk Safety Areas that are Exempt from State Imposed Housing Increases Due to Public Safety Considerations

#### From: Disaster and Fire Safety Commission

**Recommendation:** The Disaster and Fire Safety Commission (DFSC) recommends that the City Council define the location of those areas in Berkeley in which residents are at high risk due to public safety considerations and use this information to help guide the Housing Element process so that greater density and development in those areas is avoided to the extent reasonably possible. These areas include:

1. Fire Zones 2 and 3 with narrow (26 feet or less in width), winding streets, or those with “pinch-points” that do not allow emergency vehicle access and safe evacuation routes for residents in the event of a wildfire; and
  2. Locations within the Alquist-Priolo (Hayward Fault) Earthquake Zone identified by the California Geological Survey; and
  3. Locations within the Liquefaction or Landslide Zones identified by the California Geological Survey and areas associated with creeks, above and underground and subject to the impacts of Sea Level Rise.
- A. Establish a Priority: The DFSC requests that the identification process begin with items 1 and 2 listed above. State legislation mandating increased development in these areas is effective January 1, 2022, and the identification of the boundaries of areas where residents are at high risk in Berkeley should be completed prior to that date. Item 3 is also important, but as a practical matter, it may take longer to review. Therefore, completing identification may have to be done in steps over time. An additional consideration in giving priority at this time to areas affected by fire is that we are now in the “traditional” wildfire season with the clear statewide warning that today’s wildfires are both more frequent and intense and are being fueled by the State’s continued severe drought with no relief in the foreseeable future.
- B. Establish an Easy-to-Understand Map Format: The DFSC requests that the identification information presented be in an easy-to-understand map format that is available to the public and kept in an up-to-date format as the process progresses. This format should; within technical capability, clearly identify streets that are boundaries to the public safety areas. The California Geological Survey already maintains property-specific maps that address Items 1 and 2 above. The DFSC requests that the City produce similar maps for the other hazardous areas as they are identified.
- C. Need for Timely Action: The Council has recently taken action to indicate their intent to begin a process to complete the State required new Housing Element for the City’s General Plan. Establishing high-risk public safety areas is a foundational tool in the work that needs to be done to complete a new Housing Element.
- D. Provides an Opportunity to Inform the Public: Defining high-risk public safety zones not only informs residents about the nature of the risks but encourages individuals and groups to be part of the effort to reduce those risks.

**Financial Implications:** See report

Contact: Keith May, Commission Secretary, (510) 981-3473

## Action Calendar – Policy Committee Track Items

- 38. Referral to the Budget and Finance Policy Committee and Budget Referral to Consider General Fund Strategies and Related Fiscal Policies for Funding Capital Improvements, in Particular Street, Sidewalk, Micromobility and Transit Infrastructure**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** 1. Refer to the Council Budget and Finance Policy Committee to explore specific options for improving how and to what extent the City's Capital Improvement Program (CIP) is funded, to include but not limited to the following potential strategies: a. investigate historic assumptions and policies regarding secured-property and transfer tax revenues; b. consider a one-time allocation of a certain percentage of salary savings accruing from historic vacancies that are not likely to be filled in the short-term; c. consider the sale of underutilized city-owned property such as the former Premier Cru building; d. consider prospective Public Works plan to charge utilities for pavement impact.  
2. Refer to the June 2022 Budget process \$[ ] to be transferred to the CIP based on Committee consideration and any conclusions.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 39. Referral to the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee Policy Committee to Consider Strategies and Make Recommendations to Council and Staff to Ensure Potential Infrastructure Bond Expenditure Is Consistent With Climate Action Goals and Other Environmental Policies**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** Refer to the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Policy Committee Policy Committee to consider strategies and make recommendations to the Council and staff to ensure that potential infrastructure bond is consistent with Climate Action goals and other environmental policies.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 40. Revisions to Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department Law Enforcement Services Manual**  
**From: Councilmember Droste (Author), Councilmember Taplin (Author)**  
**Recommendation:** Revise Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department (BPD) Law Enforcement Services Manual to enable officers of the Berkeley Police Department to conduct detentions and warrantless searches individuals on parole/probation consistent with and supportive of the provisions in the probationer's/parolee's release conditions.  
**Financial Implications:** None  
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180



## Information Reports

41. **Berkeley Economic Dashboards Update**  
**From: City Manager**  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
42. **FY 2022 First Quarter Investment Report: Ended September 30, 2021**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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

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

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

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

#### COMMUNICATION ACCESS INFORMATION:

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



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





Commission on Disability

02a.22

CONSENT CALENDAR

March 22, 2022

To: Honorable Mayor and Members of the City Council

From: Commission on Disability

Submitted by: Commission on Disability, T. Michai Freeman (Chair)

Subject: Vacancies on Commission on Disability

RECOMMENDATION

Appoint new members to fill vacancies on the Commission on Disability from

District 3, District 4, District 5, District 6, District 7, and Mayor Jesse Arreguin

FISCAL IMPACTS OF RECOMMENDATION

NONE

CURRENT SITUATION AND ITS EFFECTS

The Commission on Disability is charged with promoting the total integration and participation of persons with disabilities in all areas of economic, political, and community life. Currently three commissioners are seated on the Commission on Disability out of a nine-member panel. We ask councilmembers and Mayor Jesse Arreguin make appointments to the Commission on Disability to enable this body to effectively pursue the Commission's mandate. Item passed January 19, 2022.

Submitted to Secretary February 9, 2022. (Motion: Freeman Second: Walsh, Freeman: aye, Walsh: aye, Singer: aye)

RATIONALE FOR RECOMMENDATION

The Commission on Disability commissioners, while dedicated, are limited in their work to effectively advise the City of Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

NONE

CONTACT PERSON

Secretary, Dominika Bednarska,  
Department of Public Works  
(510) 981-6418





Parks and Waterfront Commission

02a.23

CONSENT CALENDAR

March 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Parks, Recreation, and Waterfront Commission  
Submitted by: Gordon Wozniak, Chair, Parks, Recreation, and Waterfront Commission  
Subject: Letter of Support for Budget Referral: South Sailing Basin Dredging

RECOMMENDATION

Send the attached Letter of Support for Budget Referral: South Sailing Basin Dredging to be added to the scope of the project for the study of dredging the main channel.

BACKGROUND

At a regular meeting of the Parks, Recreation, and Waterfront Commission on Wednesday, February 16, 2022, the commission took action to send to Council the attached Letter of Support (M/S/C: Floyd/Capitelli): Ayes: Birnbach; Capitelli; Cox; Diehm; Floyd, Kawczynska; Landoni; Srioudom; Wozniak; Noes: None; Abstain: None.

FINANCIAL IMPLICATIONS

This referral refers to the budget process the consideration of \$350,000 for planning and evaluation work related to South Sailing Basin dredging. Combining the planning and evaluation work for both projects, may result in cost savings.

ENVIRONMENTAL SUSTAINABILITY

Staff should research and consider the environmental impact of dredging the South Sailing Basin.

CITY MANAGER

The City Manager concurs with the recommendation contained in this report.

CONTACT PERSON

Gordon Wozniak, Chair, Parks, Recreation, and Waterfront Commission, 510-666-0662

Attachments:

1. Letter of Support – Parks, Recreation, and Waterfront Commission to Council
2. Photo of South Sailing Basin dock and surrounding mudflats at low tide at 3:53 PM on Jan. 30, 2022

Attachment 1



City of Berkeley  
Parks, Recreation, and Waterfront Commission

Date: Feb. 16, 2022

**Re: Support for Dredging the South Sailing Basin**

To the Berkeley City Council:

The Parks, Recreation, and Waterfront Commission strongly supports the Budget Referral of \$350,000 for planning and evaluation of dredging in the South Sailing Basin. At present, the City has hired a consultant for planning work for dredging the Main Harbor channel. Adding the South Sailing Basin dredging study to this contract could result in significant savings.

The South Sailing Basin provides water access for small-craft and aquatic recreation: e.g. small sailing boats, kayaks, paddle boards, windsurfing, and swimming. Since the basin has not been dredged in 50 years, the accumulation of silt and mud, make it impossible to launch boats on low tide days. See Attachment 2, which shows a low-tide event on Jan. 30, 2022, where the mudflats extended beyond the launching dock.

The silting of the South Sailing Basin threatens the long-term viability of aquatic recreation in this area and could jeopardize the City's multimillion dollar investment in new docks, launch facilities, and parking. If dredging is not carried out, these important recreation facilities could eventually be closed, which would be a loss for everyone.

Respectfully,

Gordon Wozniak, Chair

Berkeley Parks, Recreation, and Waterfront Commission

**Attachment 2**

Photo of South Sailing Basin dock and surrounding mudflats  
at low tide at 3:53 PM on Jan. 30, 2022









Parks and Waterfront Commission

02a.24

CONSENT CALENDAR  
March 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Parks and Waterfront Commission  
Submitted by: Gordon Wozniak, Chair, Parks and Waterfront Commission  
Subject: Letter of Support for Infrastructure Improvement Projects in the Berkeley Waterfront from the Parks, Recreation, and Waterfront Commission to State Senate Budget Chair Skinner and Assembly Budget Chair Ting

RECOMMENDATION

Send the attached Letter of Support for Infrastructure Improvement Projects in the Berkeley Waterfront from the Parks, Recreation, and Waterfront Commission to State Senate Budget Chair Skinner and Assembly Budget Chair Ting.

BACKGROUND

At a regular meeting of the Parks, Recreation, and Waterfront Commission on Wednesday, February 16, 2022, the commission took action to request Council send the attached Letter of Support (Attachment 1) (M/S/C: Kawczynska/Cox/U): Ayes: Birnbach; Capitelli; Cox; Diehm; Floyd, Kawczynska; Landoni; Srioudom; Wozniak; Noes: None; Abstain: None.

FINANCIAL IMPLICATIONS

The Berkeley Waterfront has \$15 million in key improvement projects that are in need of immediate funding.

ENVIRONMENTAL SUSTAINABILITY

No negative impact and consistent with City standards.

CITY MANAGER

The City Manager concurs with the recommendation contained in this report.

CONTACT PERSON

Gordon Wozniak, Chairperson, Parks and Waterfront Commission, 510-666-0662

Attachments:

1. Letter of Support – Parks, Recreation, and Waterfront Commission – to the State

Attachment 1



City of Berkeley  
Parks, Recreation, and Waterfront Commission

Date: Feb. 16, 2022

**Re: Support for Infrastructure Improvements to the Berkeley Marina**

To Whom It May Concern:

The Parks, Recreation and Waterfront Commission voted unanimously at its meeting on Feb. 16, 2022, to express its support for the City of Berkeley's funding request for Infrastructure Improvements at the Berkeley Marina. (See list in Attachment 2).

The Berkeley Waterfront is a beloved recreational area offering a 1,000-slip Marina, more than 100 acres of open space and seven miles of trails that delight dog owners, birdwatchers, sailors, windsurfers, bicyclists, kite flyers, and anyone seeking to enjoy fresh air and expansive views of the bay.

Over the last fifteen years, despite investing \$40 million in capital improvement projects at the Marina, there remains \$130 million in unfunded infrastructure needs.

To help the Marina recover from the Covid financial impact, it needs revenue-generating infrastructure investments. All projects in the \$15 million City request to the State are directly related to revenue, except for the perimeter path at Cesar Chavez Park. An improved main channel that is passable at low tide and new berthing slips, with sizes attractive to the current market, will improve occupancy rates and annual revenues by ~\$0.5M.

Looking ahead, and to ensure fiscal sustainability, the City has engaged in a long-range planning effort, the Berkeley Marina Area Specific Plan (BMASP), which will inform future development and provide alternative visions for a sustainable waterfront area. To protect the environmental jewel that is the waterfront and State land granted, a robust CEQA process shall be performed for all projects.

We respectfully request State support for these highest-priority capital improvement projects. If in the next budget cycle, additional funds are available, there are several priority projects that would improve fishing and recreational access to the Bay, but are non-revenue generating.

Thank you for your consideration and we look forward to working in partnership to ensure the vitality and longevity of the Berkeley Marina for decades to come.

Respectfully,

Gordon Wozniak, Chair, Berkeley Parks, Recreation, and Waterfront Commission

## Attachment 2

The Berkeley City Council's request to State Senator Nancy Skinner for \$15 million of investment in the following critical needs at the Berkeley Marina:

### 1. Dredging Main Channel - \$6,000,000

Both the northern and southern entrances to the main Berkeley Marina need to be dredged. They were last partially dredged in 1989 by the Federal Emergency Management Agency after the Loma Prieta earthquake, to allow for large ferry use. Currently, there are several spots where large boats cannot enter or exit during low tide.

### 2. Dock Piling Replacement - \$1,300,000

The Berkeley Marina has approximately 500 pilings. Approximately 50 percent are the original wood pilings, many of which have failed or are near failure. The City has identified \$1.2 million in City funding to replace the worst pilings, but is in need of additional funding to replace the remaining wood pilings.

### 3. Finger Dock Replacement - \$850,000

Various small docks next to each slip that are adjacent to each boat need to be replaced in docks K, L, M, N and O. While the main docks are in decent shape, many of the finger docks are failing.

### 4. J Dock Replacement - \$4,500,000

These docks are the oldest remaining unimproved docks since the initial construction in the 1960s. These docks will be converted from small boat slips to slips for medium and larger boats, which should generate more revenue.

### 5. J and K Parking Lot - \$1,150,000

This parking lot is adjacent to the marina office, commercial fishing dock (K), a marina restaurant and the bait shop and has totally failed and needs complete replacement. This parking lot is the busiest marina parking lot and serves multiple public uses in the Berkeley waterfront.

### 6. Cesar Chavez Perimeter Path - \$1,000,000

This failing one-mile pathway needs to be widened to meet Bay Trail standards and there are several locations that do not meet current ADA standards.

### 7. Marina Office Piling Replacement - \$200,000

The twenty wood pilings which hold up the marina office/public restroom and related platform are near failure and need immediate replacement.





To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *zw*

Subject: Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities

#### RECOMMENDATION

We recommend City Council request that the City Manager report back by September 29, 2022, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Berkeley Police Department (BPD). They have agreed to our findings and recommendations. Please see our report for their complete response.

#### FISCAL IMPACTS OF RECOMMENDATION

Implementing the recommendations will ensure overtime worked by BPD officers is appropriate, saving BPD and the City costs related to unnecessary overtime. Implementation will also ensure the City is appropriately reimbursed for police services to outside entities.

If BPD and City do not implement recommended measures, overtime expenditures may continue to exceed BPD's budgeted amount in the following years. Without the ability to track revenues and expenses of work for outside entities, BPD risks continually underbilling for their services and not recovering the full costs of officer overtime. BPD and the City may also encounter liability costs if BPD continues to provide services to outside entities without contracts that include indemnity agreements.

#### CURRENT SITUATION AND ITS EFFECTS

BPD relies on overtime to achieve their sworn staffing levels. In Fiscal Year (FY) 2020, nearly a quarter or \$1.3 million of BPD's sworn overtime costs went toward backfilling for officer vacancies and absences.

BPD lacks a process to regularly assess the efficacy of minimum staffing levels, and cannot ensure that minimum staffing reflects the current needs of BPD and the community. BPD's minimum staffing levels could cause unnecessary overtime if not regularly updated.

BPD does not adhere to their overtime controls. In FY 2020, 21 percent of sworn officers exceeded BPD's overtime limit at least once. Without adequate enforcement and tools to manage overtime, BPD cannot mitigate risks of officer fatigue.

BPD's overtime security work for outside entities more than tripled in FY 2020. There are no procedures or contracts for this work, and it is unclear if BPD charges outside entities

appropriately. Without policies and documentation, BPD cannot ensure transparent and equitable services.

BACKGROUND

BPD's budget has increased significantly in the past several decades. BPD surpassed the budgeted amount four out of the last five years, with overtime being the primary cause of overspending. Though some amount of overtime is required, overreliance on overtime can increase fatigue and burnout, decrease productivity, and increase mistakes.

ENVIRONMENTAL SUSTAINABILITY

Our office manages and stores audit workpapers and other documents electronically to significantly reduce our use of paper and ink. Our audit recommendation for BPD to use modern staffing software could also reduce the use of paper and ink.

RATIONALE FOR RECOMMENDATION

Implementing our recommendations will improve BPD's management of overtime and mitigate risks associated with excessive overtime and officer fatigue. The recommendations will also ensure BPD's staffing levels are transparent, appropriate, and responsive to the current needs of the community. Additionally, the recommendation ensures BPD's work for outside entities is equitable and transparent, and in full compliance with relevant laws and policies.

CONTACT PERSON

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

Attachments:

1: Audit Report: Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities

Audit Report  
March 3, 2022

# Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities



BERKELEY CITY AUDITOR

Jenny Wong, City Auditor

Erin Mullin, Senior Auditor

Alejandra Barrio Gorski, Auditor I



# Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities

## Report Highlights

March 3, 2022

### Findings

1. Berkeley Police Department (BPD) relies on overtime to achieve their sworn staffing levels. In Fiscal Year (FY) 2020, nearly a quarter or \$1.3 million of BPD’s sworn overtime costs went toward backfilling for officer vacancies and absences.

#### Berkeley Police Department Top 10 Overtime Expenditures, FY 2020

|                                            |             |
|--------------------------------------------|-------------|
| 1. Vacancies and Absences                  | \$1,254,652 |
| 2. Protest/Demonstration                   | \$687,619   |
| 3. Security for Outside Entities           | \$498,758   |
| 4. Overtime Associated with Investigations | \$437,371   |
| 5. Community Patrol/ Security Coverage     | \$413,952   |
| 6. Shift Extend                            | \$412,322   |
| 7. Special Response Team/Bomb Detail       | \$351,390   |
| 8. Special Event                           | \$202,109   |
| 9. Grant-related                           | \$190,148   |
| 10. COVID-19                               | \$172,175   |

Total expenditures = \$5,153,176. See Figure 8 on Page 13 for further details.

Source: BPD Payroll Data

2. BPD lacks a process to regularly assess the efficacy of minimum staffing levels, and cannot ensure that minimum staffing reflects the current needs of BPD and the community. BPD’s minimum staffing levels could cause unnecessary overtime if not regularly updated.

### Objectives

1. What policing functions does BPD’s use of overtime cover?
2. Does BPD regularly assess minimum staffing levels to meet community needs?
3. Is BPD’s management of overtime sufficient to reduce excessive uses of overtime?
4. Are BPD’s agreements to provide work for outside entities transparent and in accordance with the law?

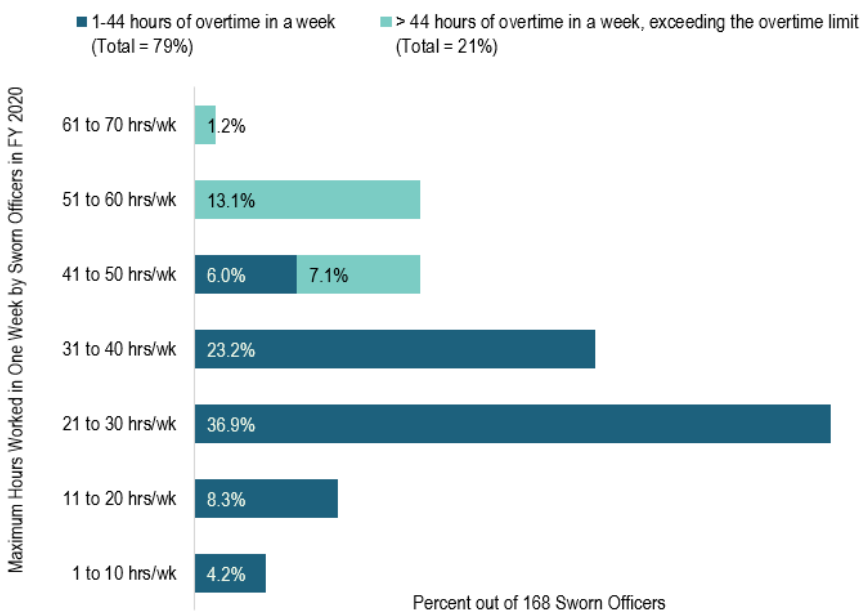
### Why This Audit Is Important

BPD exceeded its General Fund budget four out of the last five years. In FY 2020, BPD surpassed its \$71.0 million allocation by \$4.8 million. Overtime is the primary cause of BPD’s overspending, and this report seeks to understand why BPD’s overtime spending has increased in recent years. Some overtime is required for various reasons. It is often more cost-effective than hiring staff and allows employees to meet fluctuating workloads. However, overreliance on overtime can increase fatigue and burnout, decrease productivity, and increase mistakes.



- BPD does not adhere to their overtime controls. In FY 2020, 21 percent of sworn officers exceeded BPD’s overtime limit at least once. Without adequate enforcement and tools to manage overtime, BPD cannot mitigate risks of officer fatigue.

**BPD Officers Exceed BPD’s Overtime Limit of 44 Hours in a Week in FY 2020**



Source: BPD Payroll Data

- BPD’s overtime security work for outside entities more than tripled in FY 2020. There are no procedures or contracts for this work, and it is unclear if BPD charges outside entities appropriately. Without policies and documentation, BPD cannot ensure transparent and equitable services.

 **Recommendations**

We recommend that BPD publicly document minimum staffing levels and establish procedures to regularly assess their efficacy. BPD should also evaluate and update overtime policies, and monitor overtime and compensatory time using staffing software.

We also recommend that BPD update policies and procedures, create contracts, and increase transparency on work for outside entities. BPD should also regularly evaluate their billing and explore ways to track revenues and expenses.

This audit does not propose recommendations regarding BPD’s staffing levels or service delivery model.



Photo source: Berkeley Police Department



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

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## Introduction

In our 2021 Audit Plan, we identified the Berkeley Police Department (BPD) budget as an area needing objective and independent analysis of how limited City funds are allocated. In April 2020, our office produced a special report examining the impact of the COVID-19 pandemic on Berkeley's finances. We found that the City may need to reduce expenditures to focus on essential activities that prioritize public health and safety, as well as community values.<sup>1</sup> BPD's overtime expenditures have increased in recent years, and this report seeks to understand why. Some amount of overtime is required due to vacancies, emergencies, special events, staffing shortages, workload fluctuations, etc. It is often more cost-effective than hiring additional staff and allows employees to meet fluctuating workloads. However, overreliance on overtime can increase fatigue and burnout, decrease productivity, and increase mistakes.

In December 2020, the City entered into a contract with outside consultants to research, analyze, and make recommendations in regards to BPD's policing model including the size and scope of operations. It is important to have a staffing model that aligns with the needs of the community. To avoid duplication of work outlined in the City's reimagining public safety process, this report does not assess the adequacy of BPD's staffing levels or service delivery model. There are ongoing discussions in the City about appropriate staffing levels and what functions BPD should undertake.

<sup>1</sup>Navigating the Impact of the COVID-19 Pandemic on Berkeley's Finances: [https://www.cityofberkeley.info/uploadedFiles/Auditor/Level\\_3\\_-\\_General/Navigating%20Impact%20of%20COVID-19%20Pandemic%20on%20Berkeley%E2%80%99s%20Finances%20rpt.pdf](https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/Navigating%20Impact%20of%20COVID-19%20Pandemic%20on%20Berkeley%E2%80%99s%20Finances%20rpt.pdf)

## Objectives, Scope, and Methodology

Our objectives were to determine:

1. What policing functions does BPD's use of overtime cover?
2. Does BPD regularly assess minimum staffing levels to meet community needs?
3. Is BPD's management of overtime sufficient to reduce excessive uses of overtime?
4. Are BPD's agreements to provide work for outside entities transparent and in accordance with the law?

We examined BPD spending on overtime for fiscal years (FY) 2019 and 2020. We focused on this scope period due to its timeliness and relevance, bearing in mind that 2020 data may reflect the impacts of the COVID-19 pandemic. We assessed historic funding levels going as far back as FY 1970 when data was available. We specifically assessed internal controls significant to the audit objectives. This included a review of selected policies and procedures, interviews with staff from BPD, and source documents for payroll data. In performing our work, we identified concerns about the department's manual process for tracking officer schedules and hours worked to enforce overtime limits and manage staffing. For more information, see p. 43.

## Background

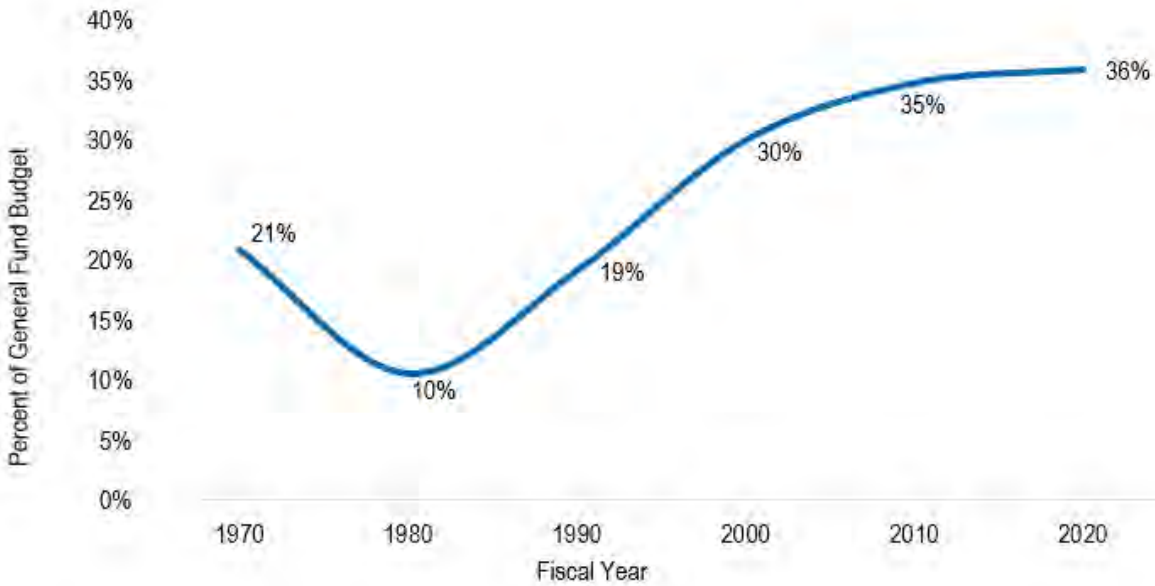
### **BPD's budget is the largest portion of the City's General Fund.**

BPD receives more General Fund money than any other department in the City. The Fire Department is the department with the second highest allocation of General Fund monies.<sup>2</sup> In FY 2020, BPD's allocation of General Fund monies accounted for 36 percent (\$70.6 million) of the City's \$196.9 million General Fund budget. The percentage of the General Fund allocated to BPD increased from 21 percent in 1970 to 36 percent in 2020, with one notable dip to 10 percent in 1980. In the context of Berkeley's total government expenditures, police spending has remained at a relatively constant level. BPD accounted for 14 percent of government expenditures in FY 2020 which is only a one percent decrease since 1970. Figure 1 only reflects the share of General Fund spending on police services and does not show how staffing and police operations have changed over time.

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<sup>2</sup> City of Berkeley, FY 2020-2021 Biennial Budget: <https://www.cityofberkeley.info/uploadedFiles/Manager/Budget/FY-2020-2021-Adopted-Budget-Book.pdf>

**Figure 1. BPD Received 36 Percent of the City’s General Fund Budget in FY 2020**

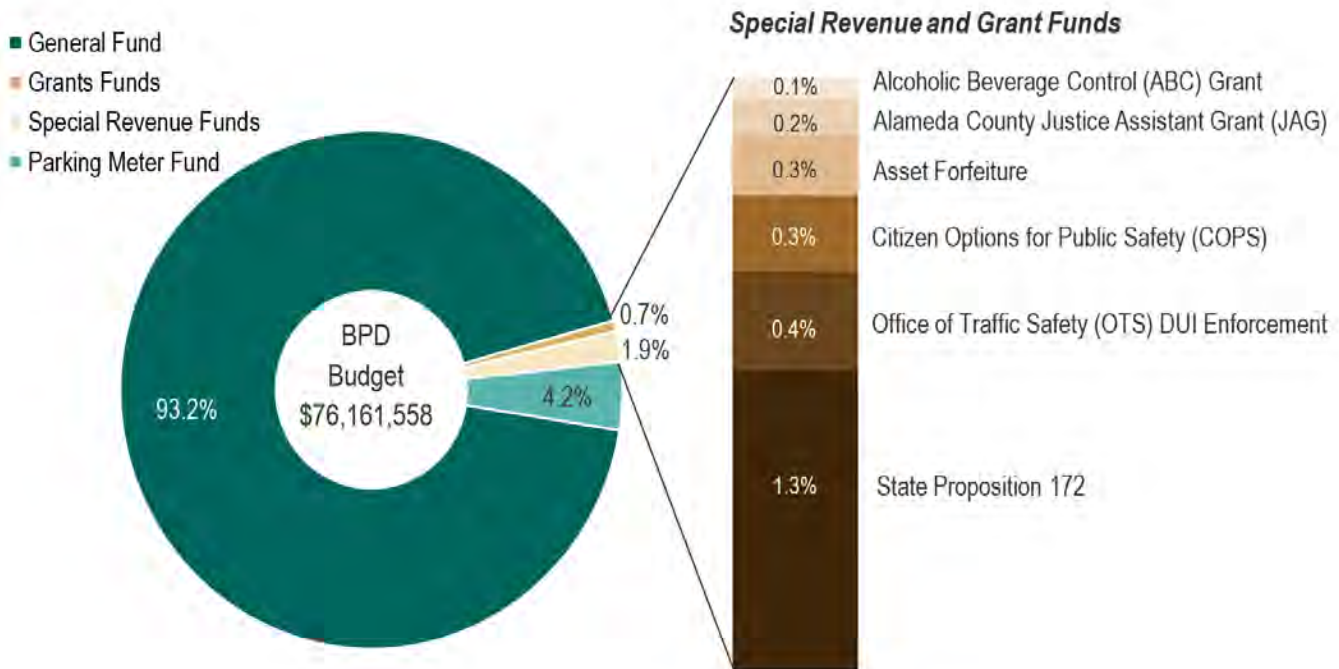


Source: FY 1970, 1980, 1990, 2000, 2010, and 2020 Adopted City Budgets

**Most of BPD’s budget comes from the City’s General Fund.**

Ninety three percent of BPD’s budget is paid for by the General Fund. Between 2015 and 2020, BPD’s funding streams were the General Fund, Parking Fund, Asset Forfeiture Fund, Federal Grants, and State/ County Grants. Appendix I provides further information about each fund.

**Figure 2. The General Fund Makes Up 93 Percent of the BPD Budget, FY 2020**



Source: FY 2020 Revised Budget Data

**BPD’s budget has increased over time.**

Since 1970, the BPD budget has grown significantly each decade, from \$21.86 million in 1970 (adjusted to 2020 purchasing power) to \$74.98 million in 2020. Personnel costs have accounted for the most significant portion of these budgets. Over the years, personnel costs have increased alongside BPD’s overall budget, but the portion of the budget that personnel costs account for has remained consistent at around 89 percent.

In contrast, since 1970, the number of BPD personnel has increased slightly by five percent, coinciding with a five percent increase in the City’s population during this period. Meanwhile, the average cost per employee has increased drastically: in 1970, 272 BPD personnel (sworn and non-sworn) cost the city \$19.45 million (adjusted to 2020 purchasing power) in wages and benefits, and by 2020, 285.2 employees in the same department cost the City \$67 million. On average, the cost of one BPD employee in 2020 was over three times that of one BPD employee in 1970.

Increases in fringe benefit rates contribute to the spike in personnel costs. We analyzed the overall cost of benefits, but did not look at the actual benefits personnel received. The cost of benefits for sworn police has increased significantly over the last five years, and police have the highest fringe benefit rate across the city. Between 2016 and 2020, the fringe benefit rate for sworn police increased 15.92 percent due mostly to an increase in the employer’s CalPERS rate. Fire had the next highest rate of 88.28 percent in FY 2020 which was 17 percent lower than Police. With a fringe benefit rate at 105.6 percent of an officer’s salary, it is always cheaper to have an officer work overtime rather than hire a new officer. However, it can be more expensive to have a higher ranked sergeant or lieutenant work overtime in place of hiring a new officer.

**Figure 3. Officer Fringe Benefit Rates Exceed 100 Percent of Salary**

| Citywide Composite Fringe Benefit Rates for Sworn and Non-sworn Employees |              |            |                      |        |         |
|---------------------------------------------------------------------------|--------------|------------|----------------------|--------|---------|
| Year                                                                      | Sworn Police | Sworn Fire | Non-sworn (citywide) |        |         |
|                                                                           |              |            | Office               | Field  | Laborer |
| 2016                                                                      | 89.68%       | 77.86%     | 69.33%               | 72.72% | 89.84%  |
| 2020                                                                      | 105.6%       | 88.28%     | 66.66%               | 70.72% | 85.09%  |

Note: These rates are estimates. Non-sworn fringe benefits rates include benefited city employees that are neither a sworn officer nor a firefighter. The type of non-sworn work of an individual position (office, field, laborer) determines the total benefit rate.

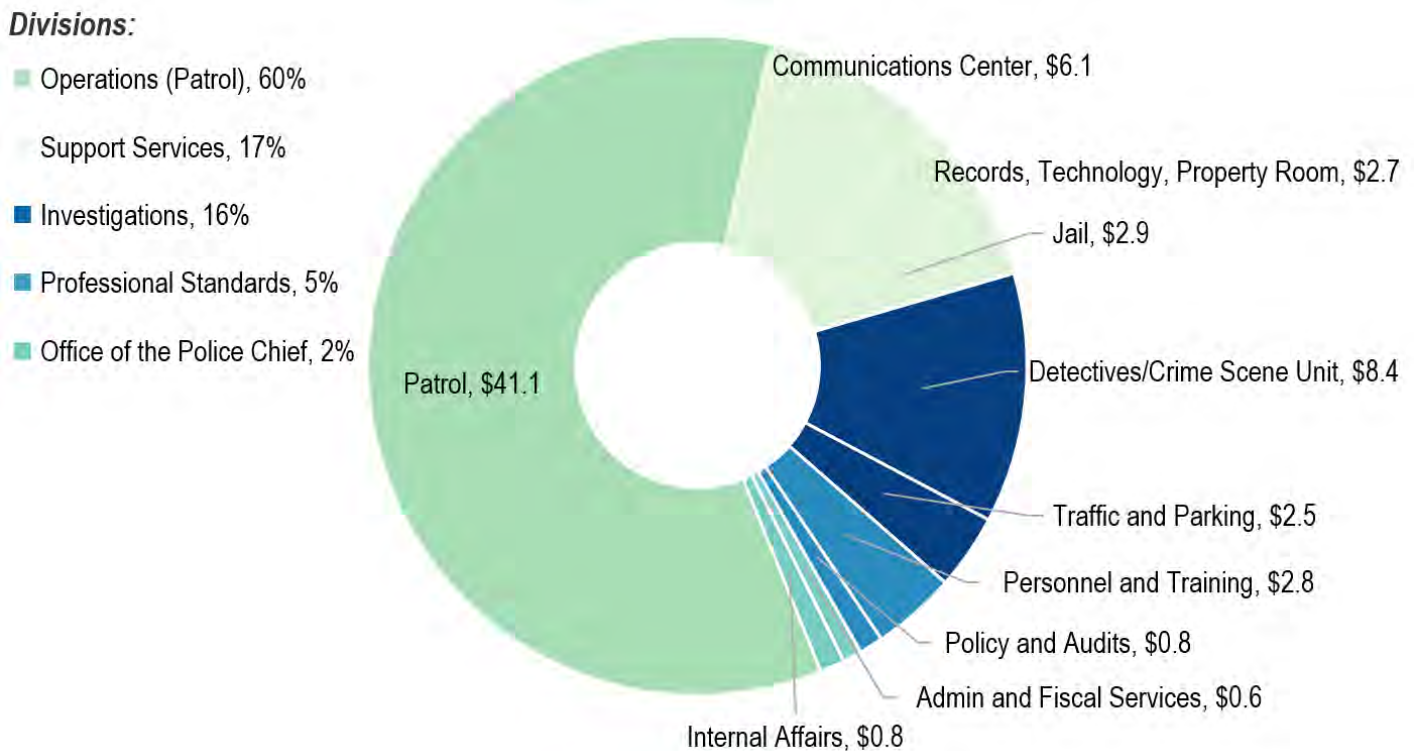
Source: City of Berkeley compensation matrices

**Patrol has received the greatest portion of funding.**

BPD has four divisions that report to the Chief of Police: Operations, Professional Standards, Support Services, and Investigations. The greatest share of BPD’s funding has historically gone toward the Operations Division, which manages the department’s Patrol Unit. Patrol is a core function of BPD, with 24/7 operations responding to emergency and non-emergency calls for service, conducting criminal investigations, and providing additional policing services.

Figure 4 shows personnel expenditures from BPD’s General Fund, by divisions and subdivisions. In FY 2020, BPD’s Patrol Unit accounted for \$41.1 million, or 60 percent of personnel costs within the department’s General Fund budget.

**Figure 4. Patrol Operations Utilized 60 Percent of Personnel Costs from the Department’s FY 2020 General Fund Budget, in Millions of Dollars**

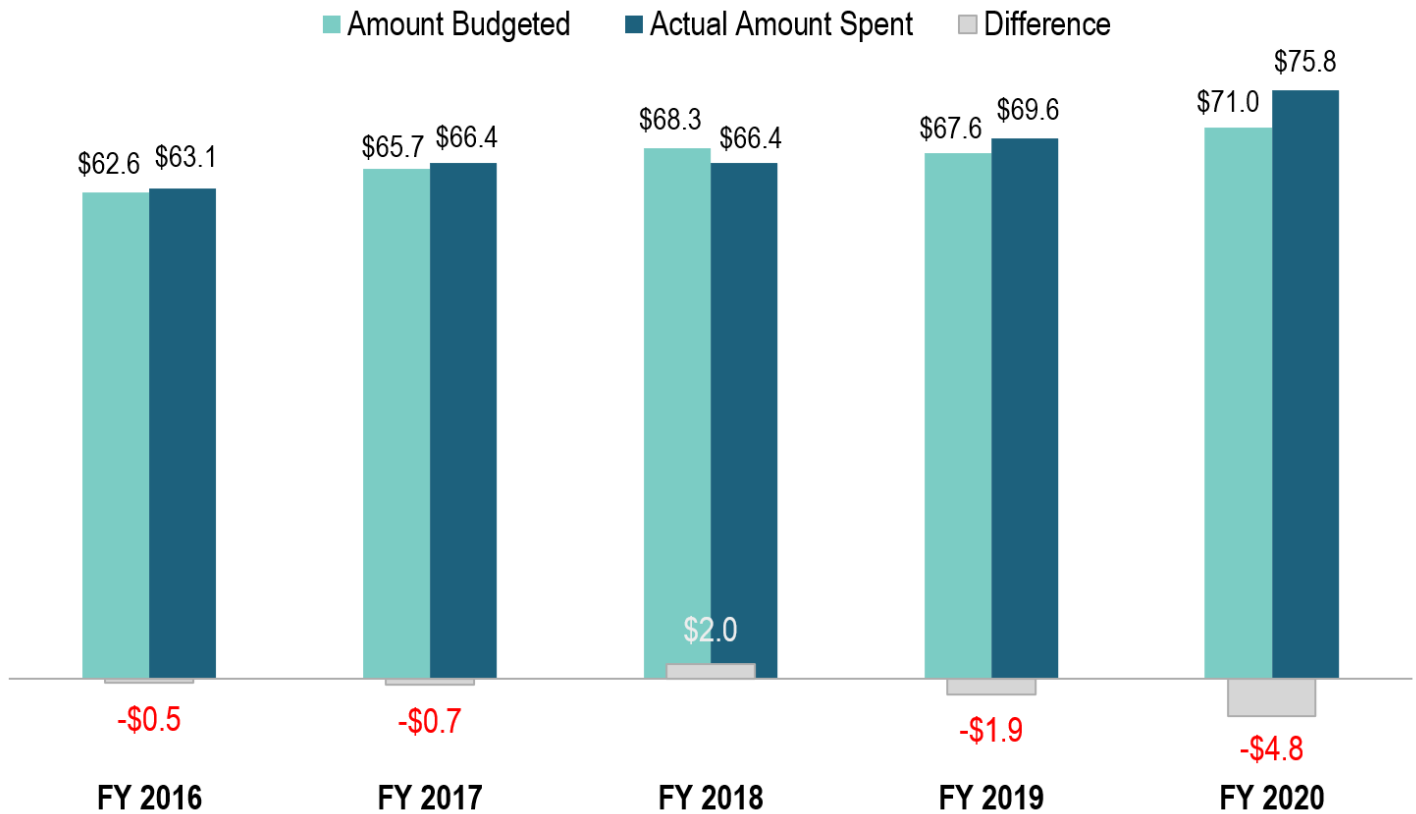


Source: FY 2020 Adopted City Budget

**BPD has exceeded its General Fund budget four out of the last five years.**

BPD has spent more from the General Fund than budgeted. BPD was half a million dollars over budget in FY 2016, and by FY 2020 the overage was nearing five million dollars. In FY 2020, BPD spent \$75.8 million of General Fund monies or approximately \$4.8 million more than the budgeted amount. According to the City Budget Office, General Fund savings from other departments are used to cover BPD overages after BPD has exhausted savings within their department.

**Figure 5. BPD Spent More General Funds than Budgeted Four Out of Five Years, FY 2016-2020 in Millions of Dollars**



Source: BPD presentation to the Budget and Finance Committee on October 22, 2020

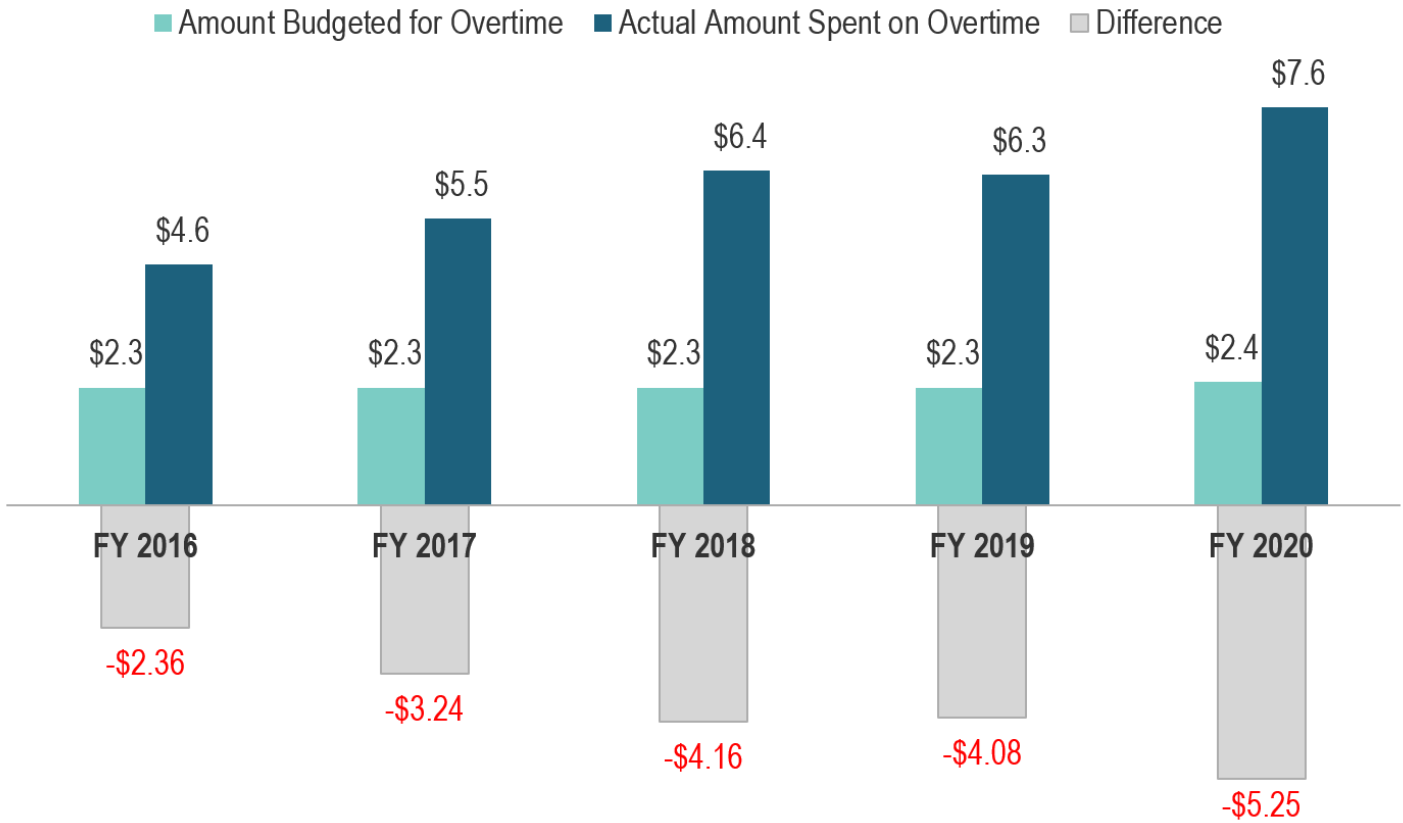
**Overtime is the primary cause of BPD overspending, with increased costs each year.**

The Operations Division, which contains the Patrol Unit, is BPD’s largest division and the biggest user of overtime. Policing is unpredictable and some overtime work is necessary and unavoidable. Officers may need to complete arrests at the end of their shifts, fill in to cover absences, or assist in safely facilitating public events. Police work also inevitably generates off-duty court appearances, trainings, and work on holidays. Some level of overtime can be viewed as a fixed cost of normal policing and will occur regardless of the number of officers employed. Knowing where, when, and why overtime was used is necessary if BPD is to anticipate overtime, to justify its payment, and to find ways to reduce the need for overtime expenditures.

BPD’s spending on overtime has consistently exceeded the \$2.25 million that the City has budgeted annually over the past ten years. Although BPD exceeded other budget line items in FY 2020, overtime was the biggest reason for the department overages. BPD increased overtime expenditures for public safety power shutoffs, COVID-19, protests, and work for outside entities from FY 2019 to 2020, contributing to an overall increase in overtime expenditures by nearly \$1.2 million (see Appendix II for more detail). According to the Budget Office, the City is committed to providing a police overtime budget that aligns with actual overtime expenditures going forward. In FY 2021, the City increased BPD’s overtime budget to \$5.3 million with an additional \$1 million in reserves.

The budget and expenditure data do not show the details of how overtime is paid. Some overtime is paid for by salary savings associated with department vacancies and other overtime is reimbursed from outside entities. However, reimbursements from outside entities are not credited back to the department, and we are unable to determine the reimbursed amounts under BPD’s current accounting structure (see page 33). Figure 6 offers a simple snapshot of overtime spending, and does not incorporate other ways in which BPD and the City recover the costs of overtime.

**Figure 6. The Cost of Overtime Has Increased, While the Budgeted Funding Has Remained Insufficient, FY 2016-2020 in Millions of Dollars**



Note: Includes sworn and non-sworn personnel.

Source: BPD presentation to the Budget and Finance Committee on October 22, 2020

The majority of overtime activities are paid for using BPD’s General Fund budget. In FY 2020, 81 percent of overtime activities were budgeted from BPD’s General Fund. The remaining 19 percent of overtime activities were budgeted from Grants and the Parking Meter Funds.



## Overtime is used to maintain minimum patrol staffing set by BPD.

BPD relies on overtime to achieve the sworn staffing levels set by the department for regular duty operations. In FY 2020, overtime costs for sworn officers exceeded \$5 million or 75 percent of the department's total overtime expenditures. Overtime has a variety of beneficial uses, but a large part of overtime at BPD is simply backfilling officer vacancies and absences. While it is generally less expensive to use overtime to fill shift vacancies than it is to hire more staff, BPD relies on backfill in patrol often. In FY 2020, 45 percent of sworn officer's overtime hours in BPD were used to maintain regular duty operations and nearly half of those overtime hours were due to staffing vacancies and absences (Figure 8). Sworn officer vacancies contribute to BPD's reliance on overtime, and more work is needed to understand the full impact. Additionally, BPD does not adequately monitor compensatory time to ensure it does not increase the need for overtime.

### Backfilling for officer vacancies and absences was the most common reason for overtime.

In FY 2020, backfilling for officer vacancies and absences was the most common and costly reason for overtime, accounting for 21 percent of sworn officer's overtime hours and costing nearly \$1.3 million, or 24 percent of the BPD's total overtime costs (Figure 8). Backfilling is the practice of filling a position to maintain staffing levels after a sworn officer goes on a leave of absence or vacates the position. Sworn officers are most frequently used to backfill to meet minimum staffing levels in the Patrol Unit.

Minimum staffing levels are the lowest number of sworn officers determined by the department that can be deployed while still providing satisfactory levels of service and protection to the public. For BPD, patrol minimum staffing is based on the number of sworn officers needed to cover the City's 16 beats at any given time of day.



According to Policy 1019, BPD overtime compensation is available to Officers,

Sergeants, and Lieutenants, and overtime work should ideally have prior approval by a supervisor and be documented with an overtime form.

The overtime form should be reviewed and approved by the Supervisor and Division Captain before going to the Payroll Clerk. Actual hours worked should be recorded on a timesheet.









Overtime is defined as time worked by an employee in excess of 40 hours per week. All overtime is awarded at time and a half unless specifically stated otherwise. An employee may request compensatory time off in lieu of receiving overtime payment (see extraordinary duty form in Appendix III).<sup>3, 4</sup>

<sup>3</sup> Policy 1019: Overtime Compensation Requests, [https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/1019%20Overtime\\_Compensation\\_Requests.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/1019%20Overtime_Compensation_Requests.pdf)

<sup>4</sup> See Section 19: Overtime/Shift Extension in Berkeley Police Association MOU: [https://www.cityofberkeley.info/uploadedFiles/Human\\_Resources/Home/Union\\_Negotiations/Signed%20BPA%20MOU%20-%20Final%2008262021.pdf](https://www.cityofberkeley.info/uploadedFiles/Human_Resources/Home/Union_Negotiations/Signed%20BPA%20MOU%20-%20Final%2008262021.pdf)

According to BPD command staff, patrol maintains a minimum of 60 sworn officers, broken into seven teams with minimums of eight or nine officers based on their beat and shift allocations (Figure 7). Teams are staffed with additional officers above the minimum level to absorb absences. It is unclear if this staffing level in patrol is appropriate, as we discuss further on page 18.

**Figure 7. BPD Patrol Unit maintains a minimum staffing level of 60 sworn officers, split into 7 teams to cover 16 beats at all times of the day**

|                 | Teams                                                                                       | Minimum of 60 Officers Total | Shift Time        |
|-----------------|---------------------------------------------------------------------------------------------|------------------------------|-------------------|
| Monday-Thursday |  Team 1    | 9 officers minimum           | 6:00am – 4:00pm   |
|                 |  Team 2    | 8 officers minimum           | 11:00am – 9:00pm  |
|                 |  Team 3    | 8 officers minimum           | 3:30pm – 1:30am   |
|                 |  Team 4    | 9 officers minimum           | 8:30pm – 6:30am   |
| Friday-Saturday |  Team 5   | 9 officers minimum           | 6:00am – 6:30pm   |
|                 |  Team 6a | 4 officers minimum           | 11:30am – 12:00am |
|                 |  Team 6b | 4 officers minimum           | 2:00pm – 2:30am   |
|                 |  Team 7  | 9 officers minimum           | 6:00pm – 6:30am   |

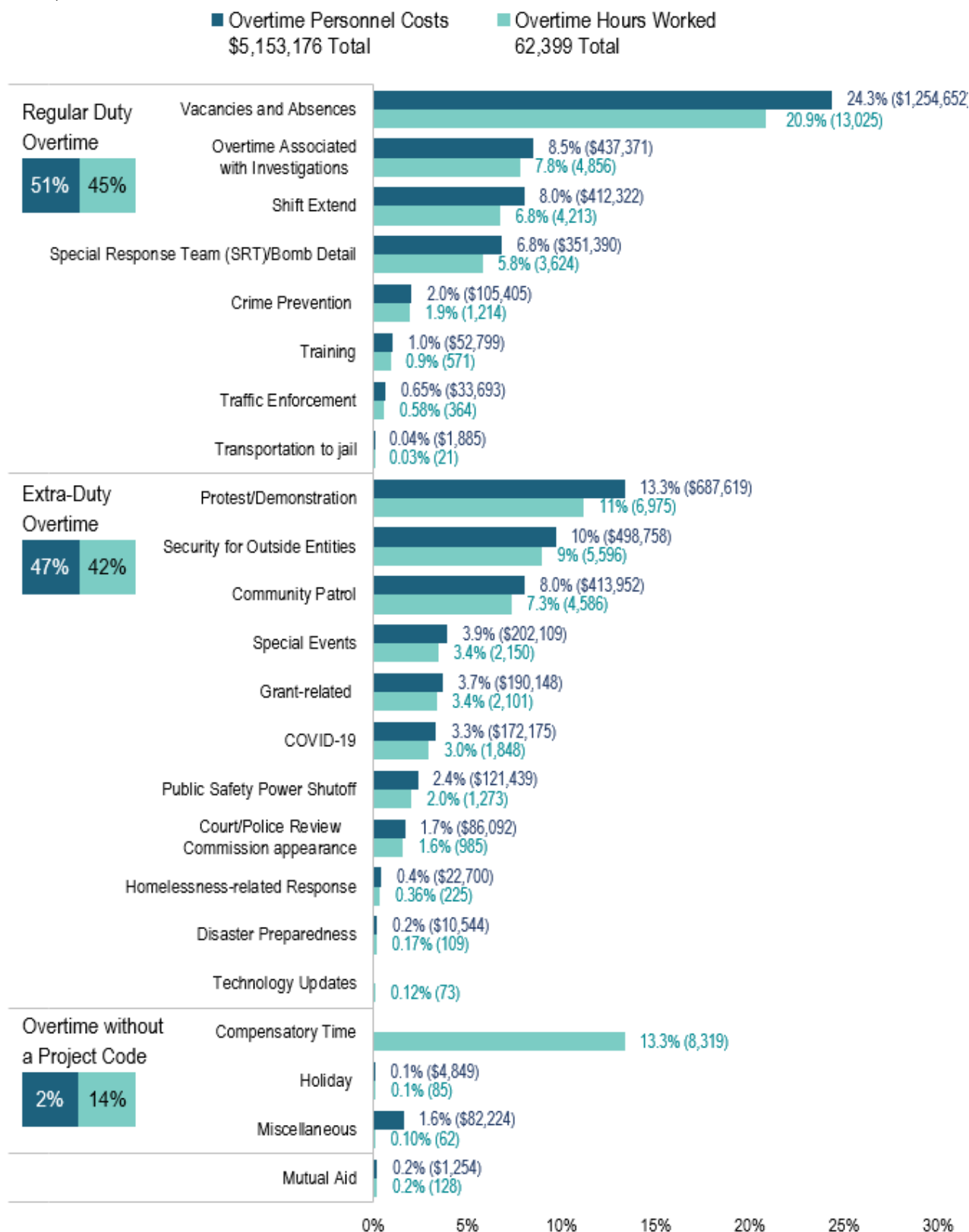
Note: Each team has a minimum of two supervising sergeants. There are four lieutenants, each overseeing two patrol teams. Teams with a minimum of 8 officers cover one beat per officer, while teams with minimums of 9 officers cover two beats per officer, with an additional swing officer when they are the only working team. Swing officers patrol the entire city or fill for absent officers.

Source: Berkeley Police Department

When teams lack sufficient staff to meet their minimums, command staff call in off-duty sworn officers to work overtime and backfill the absences.

Persistent backfilling indicates a chronic shortage of personnel in relation to the minimum staffing requirements. We did not determine whether BPD has appropriate minimum staffing or budgeted staffing levels; we only examined the process they use to determine minimum staffing in the next finding section.

**Figure 8. Nearly 25 Percent of All Sworn Officer Overtime Was Used Filling Vacancies and Absences, FY 2020**



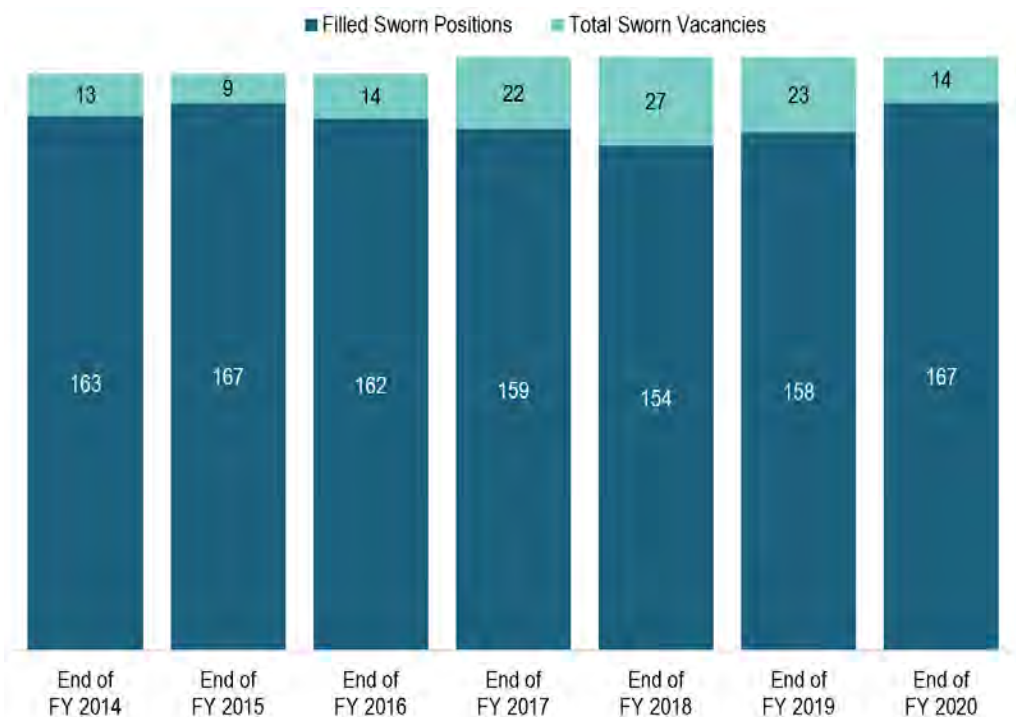
Note: Compensatory time does not have associated personnel costs because the payroll system does not count earned compensatory time as a charge to the City. The miscellaneous category includes hours that did not have a project code assigned due to the individual being a police recruit, an administrative lag, or human error. See Appendix II for a comparison of FY 2019 and FY 2020.

Source: BPD Payroll Data

### Vacancies contribute to BPD’s reliance on overtime.

BPD’s minimum staffing levels are untenable without overtime to backfill vacancies and absences. BPD has experienced sustained vacancies in sworn staffing positions, fluctuating from only nine at the end of FY 2015 to a high of 27 at the end of FY 2018 (Figure 9). According to BPD, patrol teams often do not meet the minimum staffing on a day-to-day basis without overtime due to vacancies and absences related to anticipated leave (e.g., vacation or family leave) or unanticipated leave (e.g., injury, training, sick leave). We found that in FY 2020, sworn officers applied overtime to backfill absences for 353 days, or 97 percent, of the entire year.

**Figure 9. Sworn Officer Positions Across BPD’s Divisions Have Continuously Been Underfilled Since 2015**



Note: This chart is based on year end actuals. We did not do an analysis of sworn vacancies prior to 2015 to see if this is a normal trend or a 5-year anomaly.

Source: Employment and vacancy data from the Berkeley Human Resources Department

According to BPD, the list of full-time patrol officers in the Patrol Unit's timesheets have declined since 2016, when BPD updated current patrol minimum staffing levels (see Appendix IV for a sample timesheet). The number of patrol officers listed on timesheets has approached the minimum of 60 staff; for instance, in the timesheet spanning September 2021 to March 2022, six out of seven patrol teams had just one officer above the minimum. In October 2021, BPD reported that their sworn staffing levels fluctuate at or just below 157 filled sworn positions after the City deferred 23 sworn positions in BPD as a cost saving measure in response to the COVID-19 pandemic. As of this writing, the City continues to hold those sworn positions vacant.

It is important to note that the number of filled positions is not the same as the number of officers available to work. For example, new hires, although counted as a filled position, are not available for solo officer duties for nearly a year. Of the 157 sworn positions filled, seven of those positions are being held by individuals in academy bringing the number of fully-fledged officers down to 150. It is also not uncommon to have officers out on leave due to illness, injury, family leave, or military leave.

According to BPD, staffing shortages impact all police operations. In response to sustained sworn vacancies in 2020, BPD suspended the Special Investigations Bureau and bike patrol assignments, and reduced the number of Traffic enforcement officers. Absences impact other divisions, as off-duty sworn officers in other BPD divisions conduct overtime patrol when not enough off-duty patrol officers are available. Additionally, BPD has instituted mandatory overtime during periods in which not enough staff volunteer for overtime. All of these factors, among others, contribute to burnout and staff turnover, which reinforces BPD's use of overtime to backfill vacancies. Staffing is only slated to decline, as there are 15 current sworn employees eligible to retire during the writing of this audit.

More work can be done to better understand how recruitment and retention of sworn officers impact overtime. There are other facets of staffing that deserve further attention to understand BPD's reliance on overtime, including the overall budgeted staffing positions, staff workload, the deployment of officers, and the use of leaves of absence.

## Compensatory time may decrease policing capacity and increase costs

When BPD officers work overtime, generally they can choose to either be paid for the overtime hours or they can earn additional paid time off (compensatory time) to be used at a later date. According to BPD, officers cannot earn compensatory for overtime that is reimbursable (i.e., work for outside entities and grants). In FY 2020, sworn officers accumulated a total of 8,319 hours of compensatory time, which accounts for approximately 831 10-hour shifts, or a full year of work (2080 hours) for 4 full time employees.

When an officer elects to receive compensatory time in lieu of overtime pay, that may decrease the policing resources available because every hour worked must be repaid by the department at time and a half—time taken away from other activities. Compensatory time comes out of existing capacity. In addition, earned compensatory time may imply additional costs to staffing because it is associated with an officer’s absence in the future that may need to be filled with overtime. Because earned compensatory time does not come out of existing budgetary allocations, BPD does not monitor its use as systematically as they do paid overtime.

Compensatory time is not costless, and has the potential to cause a chain reaction of more backfill and more compensatory time. For example, if a patrol officer works 10 hours of overtime, they could choose to earn 15 hours of compensatory time for that work, or they could choose to be compensated for their overtime work at time-and-a-half pay. When that officer takes those 15 hours of compensatory leave, another officer must work overtime to fill the vacancy. The officer might backfill in exchange for 22.5 hours of compensatory time. That 22.5 hours of leave might then be backfilled for 33.75 hours, and so on. Additionally, unused compensatory time is paid out when an officer leaves the City. BPD does have a policy limiting sworn officers’ accumulation of compensatory time to 120 hours, which should limit the amount of unfunded liability that comes with accumulated compensatory time and the potential chain reaction of backfilling and compensatory time. Our audit did not determine whether this policy is being enforced.

Staffing analytics tools and processes can factor in the costs of compensatory time, including projected salary increases and the impacts of compensatory time on future staffing. Monitoring compensatory time usage would allow supervisors to see if backfill increases over time.

According to the Berkeley Police Association Memorandum of Understanding, compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half hours for each hour worked beyond 40 hours. Officers can accumulate up to a maximum of 120 compensatory hours. Upon termination of employment, the City must pay out the full amount of compensation for accumulated but unused compensatory time. Whether compensatory time is earned or overtime is paid is up to the discretion of the Police Chief. (BPA MOU sections 19.4 and 19.1.1.2)

## Recommendations

To manage costs associated with compensatory time and the impact of vacancies on overtime, we recommend Berkeley Police Department:

- 1.1 Collect and monitor data on how often compensatory time leads to additional backfill overtime and develop a plan to monitor it.
- 1.2 Fill vacancies deemed necessary and/or reallocate staff pending the reimagining process and a determination of appropriate staffing levels.



## Minimum staffing levels in BPD's Patrol Unit could cause unnecessary overtime if not regularly updated.

In 2016, BPD updated minimum staffing levels in the Patrol Unit to meet service demands and ensure officer safety; however, it is difficult to know whether these levels continue to reflect the City and the department's needs. Additionally, patrol minimum staffing levels are based on what BPD is responsible for responding to, which is subject to the reimagining process. BPD does not have a process to regularly assess the efficacy of minimum staffing levels in their Patrol Unit. Without regularly reassessing minimum staffing levels, BPD cannot ensure that staffing reflects the changing nature of the department and community needs and expectations.

### It is unclear whether minimum staffing reflects the current needs of the City and BPD.

Minimum staffing levels can be informed by a variety of factors. The Patrol Unit's minimum staffing is informed by a study of police beats by Matrix Consulting Group that was commissioned by the City in 2014.<sup>5</sup> The study considered factors including community and town hall meetings, population, geography, officer workload, calls for service, response time (including proactive patrol time), and industry standards/best practices. As a result of the study, BPD transitioned to the current 16-beat structure in 2016 and assigned minimum staffing accordingly (Figure 7).

<sup>5</sup> Police Patrol Beat Evaluation Study, City Of Berkeley, Final Report: [https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/Berkeley%20Beat%20Structure%20Final%20Report%2008-20-14\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/Berkeley%20Beat%20Structure%20Final%20Report%2008-20-14(1).pdf)



In recent years, BPD officers have encountered situations requiring increased collaboration across City departments, such as homelessness and mental health. BPD has taken measures to adapt to these needs, whether by revamping the Bike Unit, collaborating with Berkeley Mental Health, or fielding homeless-related inquiries through the Community Services Bureau. Following a request from City Council as part of the reimagining process, we initiated an audit of calls for service and proposed recommendations on how BPD can better track calls for service related to mental health and homelessness.<sup>6</sup> The City is currently working with the Reimagining Public Safety Task Force and consultants to identify areas of police work that can be achieved through alternative approaches.

As of the writing of this report, BPD's Patrol Unit continues to adhere to the same staffing model from 2016, and minimum staffing remains unchanged. Currently, it is difficult to know whether the Patrol Unit's staffing model aligns with the evolving needs of the community and the department's adaptation. Without a regular assessment of their staffing levels, BPD cannot determine the extent to which operational changes exceed their staffing capacity. Given limited capacity and a lack of staffing software in the Department, it is difficult for BPD to quantify the extent to which patrol teams struggle to meet minimum staffing. More work can be done to quantify how often BPD falls below minimum staffing.

### **BPD does not regularly assess the efficacy of their minimum staffing model.**

While minimum staffing is intended to meet the needs of the community, it should not stretch officers too thin nor lead to an excessive number of officers on duty. According to a best practice review by San Francisco's Budget and Legislative Analyst Office, effective minimum staffing is grounded in an up-to-date assessment of community needs and staffing levels which often evolve over time.<sup>7</sup> It is important that departments regularly assess that their model is dynamic, appropriately addresses community needs, and accounts for staffing realities.

<sup>6</sup> Data Analysis of the City of Berkeley's Police Response: [https://www.cityofberkeley.info/uploadedFiles/Auditor/Level\\_3\\_-\\_General/Data%20Analysis%20of%20the%20City%20of%20Berkeley's%20Police%20Response.pdf](https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/Data%20Analysis%20of%20the%20City%20of%20Berkeley's%20Police%20Response.pdf)

<sup>7</sup> Best Practices Related to Police Staffing and Funding Levels: <https://sfbos.org/sites/default/files/FileCenter/Documents/54867-012616%20Police%20Staffing%20Methodology.pdf>

According to BPD, command staff routinely assess staff capacity in order to meet patrol minimum staffing levels. However, BPD does not regularly assess the Patrol Unit’s staffing model in response to changing community needs. While minimum staffing is an important determinant of overtime, the patrol minimum staffing levels are not documented by BPD. There is no explicit reference to minimum staffing in BPD’s list of policies, nor are they stated in BPD’s publicly accessible list of patrol beats and officers. While an appendix in BPA’s 2017-2020 MOU refers to minimum staffing, the document refers to BPD’s outdated 18 beat structure.

It is unclear whether the Patrol Unit’s minimum staffing is sufficient, and BPD does not use a standard to quantify or regularly assess the adequacy of staffing. Command staff rely on informal precedent, professional judgement, and feedback from officers to determine if staffing levels are adequate. According to BPD, command staff especially consider safety and officer engagement as factors for considering staffing adequacy.

In their 2021 annual crime report, BPD reported that low staffing has impacted the Patrol Unit’s ability to proactively address and solve problems in the community. BPD identifies four main metrics to consider when determining patrol staffing and allocation: service levels, staffing levels, response time, and patrol time. These metrics are related and when one is impacted there are likely impacts to others. According to BPD, when they are fully staffed they are able to provide full service, reliable response times, proactive preventative patrol presence, and community engagement.

An effective staffing model includes regular assessments that are built into the department’s internal operations. Using staffing software, BPD can draw insights from small, regular reports rather than extensive staffing assessments conducted by a third party. Codifying this process into a procedure or policy helps the department proactively respond to staffing needs and promotes transparency. Additionally, internal reports can serve as tools to communicate the department’s capacity to decisionmakers and the public, align expectations with the community, and promote knowledge transfer between command staff and leadership.

## Recommendations

To ensure staffing levels are transparent, appropriate, and can be adapted to the current needs of the community, we recommend Berkeley Police Department (BPD):

- 2.1 Establish a procedure to regularly assess minimum staffing and overall staffing needs of the department. This process should document and incorporate criteria to assess staffing levels, such as calls for service, other workload, community input, and other relevant factors. As BPD prepares for the rollout of a new software system, BPD should consider how to best align the program's capabilities with this assessment process.

To increase transparency to decision makers and the public, we recommend Berkeley Police Department:

- 2.2 Document and define the Patrol Unit's minimum staffing levels in a publicly assessable format.
- 2.3 Document the results of staffing assessments along with the assessment criteria. Incorporate results into staffing projections for budgetary decision making, including establishing a sufficient and appropriate overtime budget.

## Officers work excessive overtime, increasing health and safety risks.

BPD does not adhere to their overtime policies and controls. In FY 2020, 21 percent of BPD officers exceeded the 44 hour overtime limit at least once. Excessive overtime can lead to fatigue-impaired officers, increasing risks to officers, the City, and the public. They do not have an effective system to enforce their policy and manage overtime. BPD relies on manually prepared paper records for scheduling and tracking regular and overtime hours worked. Without adequate enforcement of policies and tools to manage overtime, BPD cannot fully mitigate risks associated with officer fatigue.

### Officers exceed overtime limits set by BPD.

On average, BPD officers worked 13.2 hours of overtime per week during FY 2020, and some worked significantly more. According to BPD, most overtime shifts are filled on a voluntary basis. Some amount of overtime work in policing is necessary and unavoidable, and will occur regardless of the number of officers employed. Officers may need to complete arrests at the end of their shifts, fill in to cover absences, or assist in safely facilitating public events. Police work also inevitably generates court appearances, trainings, and work on holidays (see Figure 8 for details of how BPD used overtime in FY 2020).

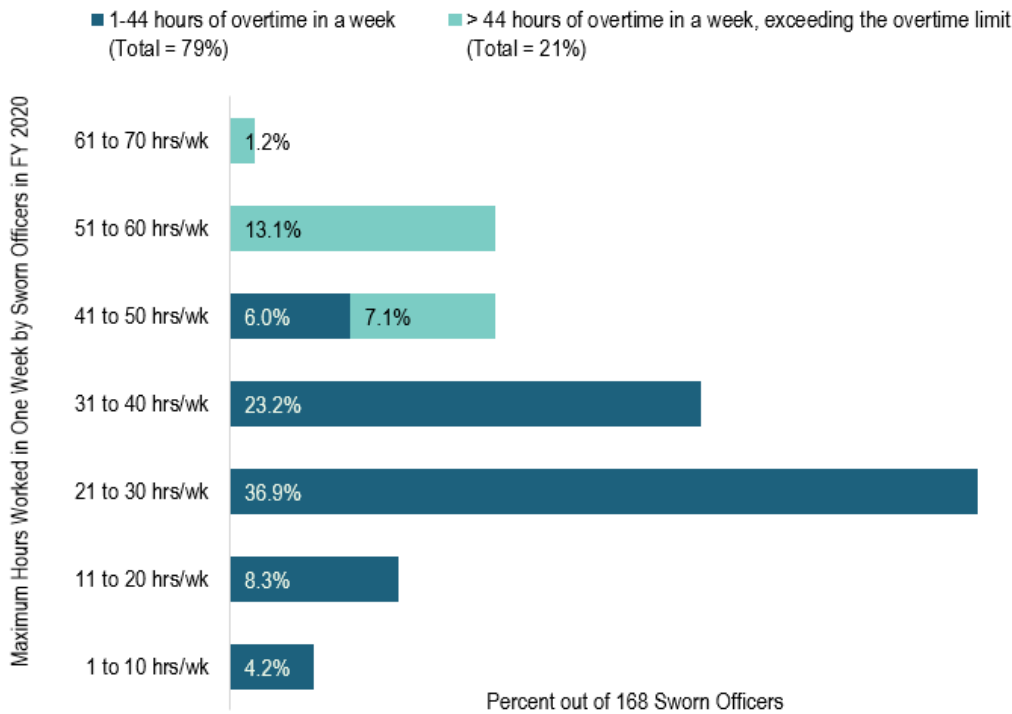
BPD has a policy to regulate overtime by placing limits on the total number of hours that officers can work within specific periods and requires officers have a minimum of eight hours off between shifts. In FY 2020, there were 62 occurrences of officers exceeding BPD’s weekly limit of 44 hours of overtime in a week. Twenty-one percent of BPD officers (36 officers) exceeded this limit at least once, however, one officer exceeded the limit 11 times in FY 2020 (Figure 10). Without enforcement and oversight of these limits, BPD’s policies may not be sufficient to manage the burnout and fatigue associated with overtime. For instance, an officer who works 44 hours of overtime in one week with recommended levels of sleep will only have 4 daily hours of off-duty time. As officers exceed this limit, they cut into their recovery time and increase their risk of burnout. There were two times when an officer worked more than 60 hours of overtime in a week, which is more than 100 total hours worked in a week.

BPD’s internal Policy 1015 states that BPD staff should not work more than:

- 16 hours in one day (24 hour) period or
- 30 hours in any 2-day (48 hour) period or
- 84 hours in any 7-day (168 hour) period

Additionally, the policy recommends a minimum of 8 hours between shifts except in very limited circumstances. These limitations apply to overtime. Supervisors should consider reasonable rest periods and are authorized to deny overtime or relieve any member who has exceeded the above guidelines. Limitations on the number of hours worked apply to shift changes, shift trades, rotation, holdover, training, general overtime and any other work assignments.

**Figure 10. BPD Officers Exceed BPD’s Overtime Limit of 44 Hours in a Week in FY 2020**



Note: The chart represents a total of 168 sworn officers. It does not include Captains, the Police Chief, Reserve Officers, and Retired Annuitants as they do not receive overtime pay. In addition, it excludes 1 officer who worked only one shift in FY 2020.

Source: BPD Payroll Data

Additionally, we found that more officers are working longer stretches without days off. In FY 2019, nearly half of sworn officers worked a week or more with no days off at least once, and one officer worked 47 consecutive days in a row. By FY 2020, 85 percent of officers worked a week or more with no days off at least once. BPD does not have a policy limiting the number of consecutive days officers can work. The department policy requires officers to take eight hours of rest between shifts, except in very limited circumstances, however, due to the manual nature of BPD’s staffing and time tracking we were unable to confirm that this policy is enforced.

## Long work hours and fatigue can negatively impact officer safety, health, and performance.

While we did not perform specific analysis of the impact of overtime on BPD officers, excessive overtime can lead to fatigue-impaired officers, increasing risks to officers, the City, and the public. Police are required to be alert and use good judgment in order to respond appropriately to emergency calls. They must be able to make split second decisions and act on them with limited time and information in situations where there may be an element of danger. They are not only responsible for the safety of the public but also for other responding public safety officials (police, firefighters, paramedics). Overtime, when used in excess, can inhibit these essential skills and increase the safety risk to the public and other personnel.

Working more hours can increase fatigue, which has been found to increase injuries and accidents. Studies have found that fatigue negatively affects both police and the communities they serve.<sup>8</sup> Fatigue increases the risk of accidents and other safety incidents, such as decreasing officer alertness, impairing decision-making ability, and slowing down reaction time. According to research, impairment after 20 hours of wakefulness equals that of an individual with a blood-alcohol concentration of 0.10. Fatigue also harms work performance by weakening memory, lowering frustration tolerance, and increasing stress and burnout. Finally, fatigue can have long-term health implications for officers, increasing blood pressure, hypertension, metabolic syndrome, and obesity.

We did not do an analysis of these impacts on BPD specifically as that would have required more resources than this report covered.

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<sup>8</sup> Vila et al., 2002: Improving shift schedule and work-hour policies and practices to increase police officer performance, health, and safety; and Lindsey, D., 2007: Police fatigue: An accident waiting to happen

## BPD does not effectively track officer hours to enforce overtime limits.

Limits on overtime rely on effective monitoring and enforcement from supervisors. BPD's overtime policy without enforcement does not control for excessive overtime. The monitoring and enforcement for these limits lies with supervisors, as Policy 1015 states, "Supervisors should give consideration to reasonable rest periods and are authorized to deny overtime or relieve to off-duty status any member who has exceeded the above guidelines." BPD relies on manually prepared paper records for scheduling and tracking hours worked. Regular shifts and overtime hours are tracked on separate forms, with each overtime shift requiring a new form (Appendix III).

When tracing a sample of instances where officers exceeded overtime limits to paper overtime forms, there was no indication that supervisors were aware that these officers exceeded the overtime limits or why they were allowed to do so. There are legitimate reasons why supervisors might approve officers to exceed these limits, and the policy states that limitation of hours worked should be enforced absent emergency operations. We were unable to verify that any of these instances of exceeding the overtime limits were to staff for emergency operations.

Additionally, signing up for voluntary patrol overtime shifts are manual and first come, first serve. Supervisors post open overtime shifts on a corkboard in a central location in the public safety building. Officers manually write their badge number on an open shift to claim the overtime. This system does not necessarily block or limit officers from signing up for multiple spots. According to BPD, officers are not required to seek approval from their supervisor, unless officers think it may impact or overlap their regular job duties.

**Figure 11. Sign-ups for Patrol Overtime Shifts Are Manual and First Come, First Serve**



Source: Berkeley Police Department

As a result of BPD's manual processes, supervisors likely do not know how many hours an officer has worked leading up to a shift. This means that supervisors may select an officer for a new overtime shift who has already worked more than the supervisor thinks is safe.

Tracking all hours of work in one place is important because it can help supervisors ensure that officers are working safe amounts of hours, within the department's limits, and that extra-duty overtime does not affect their regular duty assignments. One study by the Department of Justice states that overtime can be successfully managed through a combination of analysis, recordkeeping, management, and supervision.<sup>9</sup> Without staffing software and digitized timekeeping, BPD policies and management may not be sufficient to manage the burnout and fatigue associated with overtime.

<sup>9</sup> National Institute of Justice, Police Overtime: An Examination of Key Issues: <https://www.ojp.gov/pdffiles/167572.pdf>



## Recommendations

To mitigate the risks associated with excessive overtime and officer fatigue, we recommend Berkeley Police Department:

- 3.1 Update the department overtime policy to address the fact that there currently is no limit to the number of consecutive days worked and determine the appropriate limit for overtime that is enforceable with the goal of avoiding officer fatigue. The department may examine other jurisdictions' overtime limits as possible criteria.

To ensure efficient and effective management of staffing and overtime, we recommend Berkeley Police Department:

- 3.2 Work to implement a staffing software solution that integrates overtime management and scheduling software. Develop management reports that provide timely, accurate, and complete information on overtime usage. Develop a process for filling overtime shifts on a voluntary and mandatory basis, including supervisor approval. Build in warnings for when an individual is approaching overtime limits and an approval process for allowing individuals to exceed limits when deemed necessary according to the policy.

## BPD has no contracts for overtime security with outside entities.

The hours BPD officers spent conducting extra-duty, overtime security work for both public and private entities (work for outside entities) more than tripled in FY 2020. Personnel costs for providing security to outside entities also tripled from \$160,000 in FY 2019 to almost \$500,000 in FY 2020, amounting to 10 percent of all of BPD’s overtime personnel costs. BPD does not have written policies that define and govern this work. In addition, BPD does not have contracts with outside entities, which unnecessarily increases the City’s risks and liabilities. BPD’s process for tracking costs associated with work for outside entities is insufficient and we are unable to determine if the City is being reimbursed appropriately. Without documented policies and processes for establishing work for outside entity agreements, BPD cannot ensure their services are equitable and transparent.

### Officers’ overtime work for outside entities more than tripled in FY 2020.

The overtime hours BPD officers spent working for outside entities more than tripled in FY 2020, representing nine percent of all sworn overtime hours previously shown in Figure 8. The hours BPD officers work for outside entities contribute to the total strain overtime places on the department and individual officers. Outside entities are public and private organizations such as local businesses, schools, or private event organizers that request police services ranging from security, crowd and traffic management, to neighborhood patrol. Officers provide security in their capacity as BPD sworn officers and BPD pays them at the overtime rate, while outside entities submit reimbursements to the City. Officers worked with six major employers in FY 2020, and more than half (53 percent) of the overtime hours worked were for the Apple store (Figure 12). During this period, the 2,952 hours associated with the Apple store encompassed the equivalent of one full-time staff hours for an entire year.



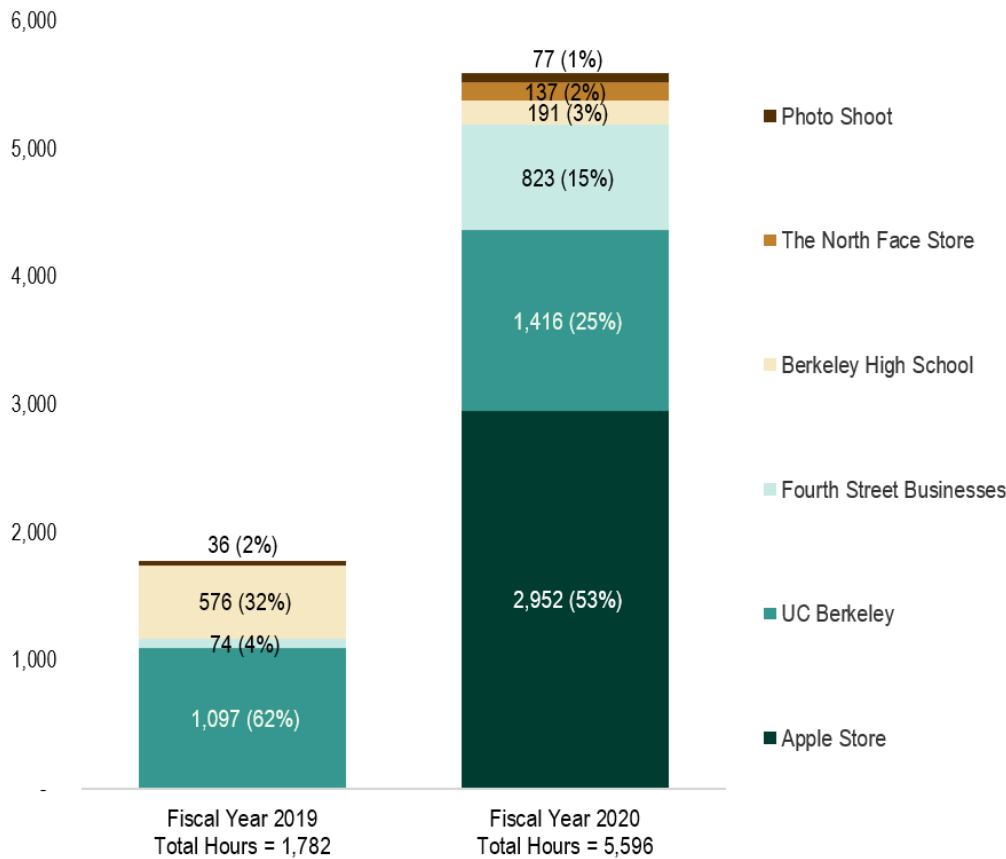
A range of outside entities have requested BPD’s services, including but not limited to:

**Retailers.** BPD has provided dedicated security services to retail stores including the Apple Store, Lululemon, and North Face. BPD also provides patrol and security for a merchant’s association representing businesses on Fourth Street.

**Schools and universities.** BPD provides services to local educational institutions including UC Berkeley and Berkeley High School (BHS). According to BPD, services to UC Berkeley are often for **football games**. BPD’s agreement with BHS supports the cost for overtime incurred by the full time School Resource Officer or any other officer that works in an overtime capacity for BHS.

**One-time events for private companies.** BPD also provides services to companies for one-time events. For instance, BPD has provided security during movie filming, security for moves between commercial or private residences, and crowd management for demonstrations against installations of AT&T private equipment.

**Figure 12. BPD More than Tripled the Hours Spent Working Overtime for Outside Entities in FY 2020**



Note: Fourth Street businesses includes holiday patrol.

Source: BPD Payroll Data

The employment of public officers for private security work, whether at an individual or department level, is not unique to BPD. Both the Davis Police Department<sup>10</sup> and San Jose Police Department<sup>11</sup> have procedures that enable sworn officers to provide private security overtime.

<sup>10</sup> Davis Police Department, Extra-Duty and Off-Duty Employment Policy: <https://www.cityofdavis.org/home/showpublisheddocument/13243/636951554881270000>

<sup>11</sup> San Jose Police Department, Instructions for Secondary Employment: <https://www.sjpd.org/home/showpublisheddocument/350/637469312631370000>

According to an Illinois Law Review study, outside entities are sometimes willing to pay the costs of hiring officers due to their capacity as sworn officers, including the ability to detain, search, arrest, and use force on suspects.<sup>12</sup> In August 2019, the San Francisco Chronicle surveyed security businesses, retailers, and police officers to explore the growth in San Francisco police as private paid security, known as the 10-B program.<sup>13</sup> They found that outside entities rely on the visibility of a uniformed officer in a patrol vehicle to deter unwanted theft. Additionally, outside entities benefit from officers' broader connection and communications to local law enforcement agencies. Our audit did not investigate the complex reasons for the growth in requests.

### **The BPD has no procedures or written agreements for working overtime with outside entities.**

BPD does not have policies nor criteria that govern the approval and administration of department agreements for work for outside entities. We also did not find evidence of contracts or written agreements between BPD and outside entities on these overtime arrangements. Without written contracts or agreements regarding the role or authority of a private company, BPD and the City of Berkeley may bear the cost of potential hazards that surface from work for outside entities. Updated policies and procedures are essential for the proper transparency and accountability of government resources and for achieving efficient and effective program results.

<sup>12</sup> Stoughton, Seth W., Moonlighting: The Private Employment of Off-Duty Officers (August 26, 2016). 2017 U. Ill. L. Rev. 1848 (2017), Available at SSRN: <https://ssrn.com/abstract=2830652> or <http://dx.doi.org/10.2139/ssrn.2830652>

<sup>13</sup> San Francisco Chronicle, Businesses hiring real SF cops on OT to keep crime down, employees safe; <https://www.sfchronicle.com/bayarea/philmatier/article/Businesses-hiring-real-SF-cops-on-OT-to-keep-14365181.php>

In 2020, sworn officers in every BPD division provided security for outside entities, amounting to 50 percent of all sworn staff eligible for overtime on BPD's payroll. Unlike self-employment or employment by others, work for outside entities is executed by the department and paid for by reimbursements to the City from outside entities. Nevertheless, the City and BPD's policies on outside employment (A.R. 2.10 and Policy 1020, respectively) do not define nor address reimbursed work for outside entities pursuant to an agreement between the department and those entities. Unlike BPD, Davis Police Department has policies guiding their contracted security work for outside entities. Davis' policies in their arrangements with outside entities include liability and worker's compensation, application protocols, account management, time of payment, and selection of officers.

**Figure 13. Apple Accounted for the Majority of BPD's Work for Outside Entities**



Source: Berkeley City Auditor

It is City practice in other areas to enter into contracts and/or execute agreements when providing or obtaining services from outside entities. For example, the City has an administrative regulation that establishes a framework for approvals, contract execution, financial recording, and billing of grants and any other agreements such as reimbursement contracts, cooperative agreements, Memorandums of Understanding, or other participation agreements that provide an award of financial assistance to support a City program or project. Adopting similar processes for work for outside entities would improve transparency and decrease risk and liability to the City.

A lack of written agreements and policies, together with the increase in BPD's work for outside entities, introduce unnecessary risks and liabilities across a variety of areas. We identified the following potential risks, among others:

**Liabilities.** Without an indemnity agreement to clarify the role and authority of outside entities, BPD and the City of Berkeley may open itself up to additional liability. A lack of agreements also creates ambiguity as to the responsibility of an officer working on behalf of an outside entity. While working for outside entities, officers are assigned to provide security for that entity. They do not respond to calls or perform other general police functions, yet they maintain police powers and can exercise those powers while working on behalf of the outside entity. There may also be misperception on the part of the public, the officer, or the private entity as to the scope of duties and role of the outside entity and relationship with the officer.

**Conflict of interest.** A lack of priorities or criteria informing BPD's approval of contracts introduces the risk of working arrangements with a conflict of interest or divergence from City values. Without criteria, there are no formal measures against working for businesses with a history of criminal activity, or businesses involved in legal proceedings against the City.

**Administrative Gaps.** Without formalized procedures, BPD risks executing important administrative steps partially and inconsistently, or missing some steps altogether. A formal application provides opportunities to collect information about services needed, review and approve contracts in a uniform manner, ensure alignment with the municipal code and BPD's stated values, and establish expectations with prospective outside entities.

**No limits to hours working for outside entities.** It is difficult for officers and supervisors to monitor hours spent working for outside entities without overarching guidelines or limits regarding officer's assignments. According to BPD, the Patrol Unit prioritizes other forms of overtime above work for outside entities.

**Fewer data to manage the workload.** Without methods to track the number of requests, approvals, and contracts for working with outside entities, BPD is unable to understand trends over time and proactively manage their workload accordingly. Tracking data on outside entity requests, along with project codes in BPD’s payroll data, would provide opportunities to inform beats and staff assignments in the future.

**BPD does not effectively track costs of overtime security and it is unclear if the City is charging outside entities appropriately.**

BPD’s personnel costs of working for outside entities tripled from \$160,000 in FY 2019 to almost \$500,000 in FY 2020, amounting to 10 percent of all of BPD’s overtime personnel costs. Under BPD’s current process for tracking costs associated with work for outside entities, we cannot determine if the City is recovering the full cost for their services to outside entities.

According to BPD, they charge outside entities only for the payroll costs incurred by the officer’s work for outside entities, including benefits that are paid for overtime. The City does not recover costs associated with the use of City vehicles nor the administration of these agreements including planning, staffing, and invoicing. We also found BPD charges the businesses on Fourth street a flat fee of \$5,000 during the winter holidays, even if the cost of services exceeds this amount. This arrangement pre-dates the current Fiscal Management staff, and it is unclear when or why it was established. We cannot know the full excess costs of flat fee arrangements as BPD does not identify them in their billing documents.

Without clearly understanding invoices and revenue, BPD cannot reconcile costs with their reimbursements. As a result, BPD may continually underbill for their services and not recover the full costs of officer overtime. On the other hand, BPD may overbill outside entities, which can influence perceptions about working with the City. It is difficult to track the appropriateness of reimbursements for several reasons:

**BPD cannot separate out revenue.** Checks are deposited into a general revenue account along with other revenues. As such the City cannot separate out specific revenues tied to work for outside entities.

**Manual process subject to error.** Data entry errors may surface as the payroll clerk manually calculates the hours worked by each individual plus the benefitted amount, as well as invoice amounts in the system. It is possible that hours do not get added to payroll, or that they get added to the wrong project code.

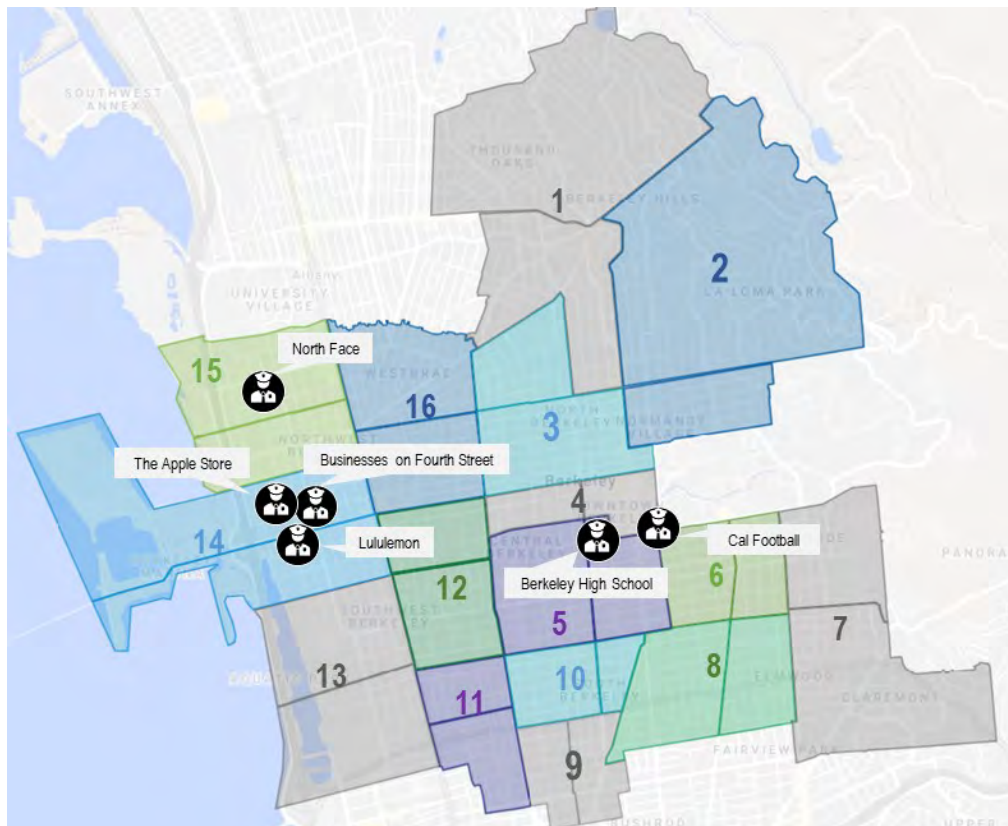
**BPD’s billing can have errors.** BPD follows a billing procedure that exists outside of the City’s accounts receivable system using spreadsheets. The department does not have quality controls to review the spreadsheets for accuracy, and the growth in requests for outside entities is outgrowing BPD’s capacity to closely monitor a growing number of the invoices to outside entities.

Additionally, revenues from outside party reimbursements are not fully credited back to BPD. Reimbursements from outside entities are deposited into the City’s General Fund, and BPD’s expenditures for overtime work with outside entities can exceed the City’s budgeted amount. According to BPD’s Fiscal Services Manager, the budgeted expenditures for work with outside entities have remained fixed at \$150,000 for over a decade, despite the growth of personnel expenditures to \$498,685 in FY 2020. Reimbursements for overtime work with outside entities do not replenish the overtime fund from which BPD officers were paid, and are not guaranteed to be allocated to BPD.

**Without policies and documentation, BPD cannot ensure transparent and equitable services.**

BPD leadership should know how to best deploy its officer resources, but work for outside entities as it is currently operating may undermine that judgment. The breadth and prevalence of work for outside entities in FY 2020 has essentially privatized a portion of officer overtime, and without policies to manage this growth, BPD may encounter unforeseen impacts related to equity and transparency of their services for businesses and residents alike. Occasionally, multiple officers will provide services simultaneously for companies located in the same beat alongside the regular beat officer; this is especially true for security for various companies on Fourth street (Figure 13). BPD does not have agreements or written procedures to prevent policing from skewing toward one specific contract or type of entity at the expense of other businesses or neighborhoods with higher service and crime response.



**Figure 14. Work for Outside Entities in FY 2020 by Police Beats**

Source: BPD Beats Map on the Open Data Portal and Berkeley Police Department

The lack of documentation surrounding outside entities also raises concerns around transparency and equity. As discussed previously, BPD historically provided a flat fee of \$5,000 to the businesses on Fourth Street, and expenditures were higher than this fee. Without procedures, BPD may continue to use inconsistent flat fee arrangements leading the City to inadvertently charge one company less than another without criteria as to why. In addition, certain companies have dedicated contractors that coordinate their security. For instance, the firm Security Industry Specialists Inc. (SIS) handles Apple's agreements with BPD, while smaller businesses may benefit from BPD security but lack these resources to acquire BPD's services. Larger-income businesses can afford the additional protection afforded by sworn officers, while smaller businesses may be unable to benefit from City-sponsored security. Further, there is potential for bias or perception of bias if police working as private security encounter a dispute between a member of the public and the private entity. An officer that is providing security for a private entity may not be viewed as objective in resolving a conflict between that private entity and a member of the public. This risk is heightened by lack of regulation, documentation, and public communication.

While any community that wants security has a right to pay for it, it raises questions of equity of access when that extra security is provided by City-employed officers. BPD can improve equity if every business is able to access information about these services, and they provided a transparent application process for community members interested in obtaining these services. This brings up questions and considerations around BPD's overall scope of work for outside entities given BPD's staffing gaps, high levels of overtime, potential perceptions of bias, and the risks detailed above.

Transparency is especially important in the case of police work. Unlike most public officials—who may also be employed by outside entities—police officers retain their public authority in their capacity as sworn officers on behalf of outside entities. Since work as BPD officers is an extension of work for the City, relevant information about their work with private entities should be available internally to the City and/or the public. This practice is worthy of public discussion and evaluation.

## Recommendations

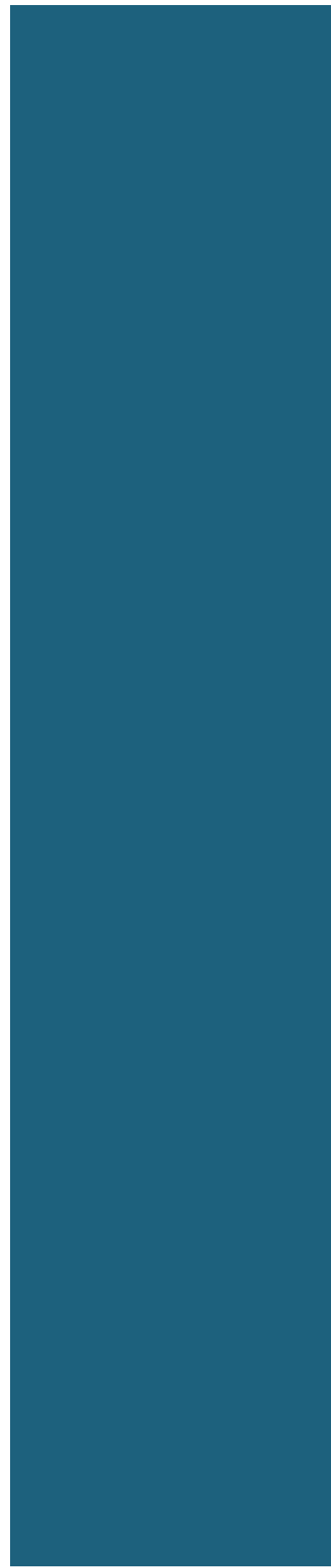
To ensure work with outside entities is in full compliance with relevant laws and policies, and to increase transparency and reduce liabilities, we recommend Berkeley Police Department (BPD):

- 4.1 Update A.R. 2.10 and other department policies to explicitly include guidance around department agreements for work for outside entities, which is paid for by reimbursements to the City from the outside entities. Internal procedures should include appropriate criteria to identify and document the benefit to the City gained by work for outside entity agreements, and to allocate resources in a way that does not negatively impact City operations. Additionally, BPD should document their criteria for when officers are not available or eligible for work for outside entities.
- 4.2 In consultation with the City Attorney, create contracts with outside entities in compliance with City policies and applicable laws.

- 4.3 Develop an application for BPD’s services that is publicly available and accessible online to any interested party. Set pay uniformly according to rank and hourly rate and include a reasonable fee that covers the expenses of administering work for outside entities including workers compensation, fuel, use of equipment, and any other actual or potential costs to the City.

To ensure the City is being appropriately reimbursed for policing services contracted out to outside entities or any other agreements (i.e., special events), we recommend Berkeley Police Department:

- 4.4 Reconcile invoices with the amounts received for work with outside entities at regular intervals. BPD should also implement procedures to check invoices for errors prior to billing outside entities.
- 4.5 Explore ways to clearly account for different funds to track revenues and expenses.



## Recommendations and Management Response

We provided a draft of this report to City Management and BPD for review and comment. City Management agreed to our findings, conclusions, and recommendations. Below is the BPD's initial corrective action plan and proposed implementation date. We find their plan to address our audit recommendations reasonable. As part of the follow-up process, the Berkeley City Auditor will be actively engaged with the Police Department every six months to assess the progress they are making towards complete implementation. The department will submit a council item every 6 months with an update on the progress of their recommendations.

### 1.1 Collect and monitor data on how often compensatory time leads to additional backfill overtime and develop a plan to monitor it.

**Management Response:** Agree.

**Proposed Implementation Plan:** BPD is currently working to implement an electronic staffing solution. The Department will assess the ability to monitor and track this information in electronic staffing in order to understand the expense and impacts of compensatory time. BPD will explore the possibility of developing a report through existing payroll and finance programs to understand the impact of compensatory time usage and practices.

**Proposed Implementation Date:** Estimated completion within 18 months from date of audit response.

### 1.2 Fill vacancies deemed necessary and/or reallocate staff pending the reimagining process and a determination of appropriate staffing levels.

**Management Response:** Agree.

**Proposed Implementation Plan:** BPD understands the impact that reduced staffing has on overtime costs and always strives to fill vacancies and operate within our budget. Challenges in retention of existing officers, difficulty hiring new officers and many imminent retirements make it difficult to apply a timeline on implementation of this recommendation. Recruitment efforts, prioritization of hiring and related processes and budget authority to hire will be instrumental to the department's success.

**Proposed Implementation Date:** Ongoing.

**2.1** Establish a procedure to regularly assess minimum staffing and overall staffing needs of the department. This process should document and incorporate criteria to assess staffing levels, such as calls for service, other workload, community input, and other relevant factors. As BPD prepares for the rollout of a new software system, BPD should consider how to best align the program’s capabilities with this assessment process.

**Management Response:** BPD agrees with this recommendation in that regular assessments assist the department with the best allocation and deployment of resources. Our staffing needs may fluctuate as priorities change, but our responsibility to meet public safety demands is always paramount.

**Proposed Implementation Plan:** Internal evaluations will be completed annually to address constantly changing conditions, call volume, crime data and other external factors. The reimagining public safety efforts may also necessitate changing focus and deployment strategies. BPD will explore engaging outside consultants every ten years to evaluate patrol staffing levels so as to have a useful body of data for evaluation (for example; tying staffing evaluations to census reports).

**Proposed Implementation Date:** Estimated completion within 18-24 months from date of audit response.

**2.2** Document and define the Patrol Unit’s minimum staffing levels in a publicly assessable format.

**Management Response:** Agree.

**Proposed Implementation Plan:** BPD will update the department webpage to include information on beat structure, teams, and deployment. This will also include current beat officer assignment.

**Proposed Implementation Date:** Estimated completion within 6 months from date of audit response.

**2.3** Document the results of staffing assessments along with the assessment criteria. Incorporate results into staffing projections for budgetary decision making, including establishing a sufficient and appropriate overtime budget.

**Management Response:** Agree. Our staffing needs may fluctuate as priorities change, but our responsibility to meet public safety demands is always paramount.

**Proposed Implementation Plan:** Internal evaluations will be completed annually to address constantly changing conditions, call volume, crime data and other external factors. BPD will explore engaging outside consultants every ten years to also evaluate this item.

**Proposed Implementation Date:** Estimated completion within 18-24 months from date of audit response though this is subject to change as it is part of the overall budget process.

**3.1** Update the department overtime policy to address the fact that there currently is no limit to the number of consecutive days worked and determine the appropriate limit for overtime that is enforceable with the goal of avoiding officer fatigue. The department may examine other jurisdictions' overtime limits as possible criteria.

**Management Response:** Agree.

**Proposed Implementation Plan:** BPD will review existing policy and ensure that any policy updates or clarification are completed. BPD will conduct research to review fatigue mitigation programs and contact other agencies to learn what they are using successfully. A byproduct of reduced staffing can be increased or excessive overtime where minimum staffing levels or public safety needs necessitate police response. The Department will explore options to develop data collection and monitoring within the electronic staffing solution to be able to regularly assess if there is an issue.

**Proposed Implementation Date:** Estimated completion within 24 months from date of audit response.

**3.2** Work to implement a staffing software solution that integrates overtime management and scheduling software. Develop management reports that provide timely, accurate, and complete information on overtime usage. Develop a process for filling overtime shifts on a voluntary and mandatory basis, including supervisor approval. Build in warnings for when an individual is approaching overtime limits and an approval process for allowing individuals to exceed limits when deemed necessary according to the policy.

**Management Response:** BPD agrees that a staffing software solution could assist with overtime management and scheduling needs.

**Proposed Implementation Plan:** BPD is already heavily engaged in seeking a software solution. The RFP process is completed, and the vetting process is nearing completion to select the vendor. Following completion of a contract, the steps towards implementation will begin. The Department will have to rely on Information Technology for implementation, consequently timing will depend how this project fits the PD/IT workplan.

**Proposed Implementation Date:** Estimated completion within 24 months from date of audit response.

**4.1** Update A.R. 2.10 and other department policies to explicitly include guidance around department agreements for work for outside entities, which is paid for by reimbursements to the City from the outside entities. Internal procedures should include appropriate criteria to identify and document the benefit to the City gained by work for outside entity agreements, and to allocate resources in a way that does not negatively impact City operations. Additionally, BPD should document their criteria for when officers are not available or eligible for work for outside entities.

**Management Response:** Agree.

**Proposed Implementation Plan:** BPD will work with the City Manager’s Office to identify necessary adjustments to the CoB A.R.2.10, current BPD practices engaging in reimbursable service contract, and the overall administration of departmental agreements for work with outside entities.

The Department will create a webpage on the Department’s website with information explaining the process for requesting services. This would include a point of contact to discuss criteria and evaluation of service requests, including staffing impacts. Also included will be clear language explaining that public safety response will be the highest priority.

**Proposed Implementation Date:** Estimated completion within 12 months from date of audit response.

**4.2** In consultation with the City Attorney, create contracts with outside entities in compliance with City policies and applicable laws.

**Management Response:** Agree.

**Proposed Implementation Plan:** BPD will work with the City Manager’s Office, and in consultation with the City Attorney, to determine appropriate contract(s) for reimbursable service contracts.

**Proposed Implementation Date:** Estimated completion within 24 months from date of audit response.

**4.3** Develop an application for BPD’s services that is publicly available and accessible online to any interested party. Set pay uniformly according to rank and hourly rate and include a reasonable fee that covers the expenses of administering work for outside entities including workers compensation, fuel, use of equipment, and any other actual or potential costs to the City.

**Management Response:** Agree.

**Proposed Implementation Plan:** We intend to create a webpage on the Department’s website with information explaining the process for requesting services. This would include a point of contact to discuss criteria and evaluation of service requests, including staffing impacts. Also included will be clear language explaining that public safety response will be the highest priority.

**Proposed Implementation Date:** Estimated completion within 12-18 months from date of audit response.

**4.4** BPD should reconcile invoices with the amounts received for work with outside entities at regular intervals. BPD should also implement procedures to check invoices for errors prior to billing outside entities.

**Management Response:** Agree.

**Proposed Implementation Plan:** BPD will discuss possible solutions with other city stakeholders, including the Finance Department.

**Proposed Implementation Date:** Estimated 12 months from date of audit completion.

**4.5** Explore ways to clearly account for different funds to track revenues and expenses.

**Management Response:** Agree.

**Proposed Implementation Plan:** BPD will discuss possible solutions with other city stakeholders, including other city departments.

**Proposed Implementation Date:** Estimated 12 months from date of audit completion.



## Methodology and Statement of Compliance

### Methodology

We audited the Berkeley Police Department's (BPD) budget and operations for fiscal years (FY) 2015 through 2020. We assessed historic funding levels going as far back as FY 1970 when data was available. We performed a risk assessment of BPD's practices and procedures to identify potential internal control weaknesses, including fraud risks, within the context of our audit objectives. This included a review of selected policies and procedures, as well as interviews with subject matter experts and BPD staff.

To gain an understanding of BPD's operations and internal controls and to achieve our audit objectives, we reviewed the following:

- Biennial budget reports, financial reports, and census data summarizing historic trends in BPD's budget and staffing.
- State and federal laws governing police overtime, staffing, and work with outside entities.
- Previous audit recommendations, staffing assessments, and BPD's organization chart informing BPD's departmental structure and practices.
- General orders and protocols detailing BPD's limits on overtime and minimum staffing.
- Existing agreements for BPD's police services including grants, mutual aid, special events, and outside entities.
- Written procedures and common forms used by BPD supervisors to monitor and approve overtime.
- National media on police budgeting and reimagining policing.
- Professional literature on effective management of overtime and staffing in police operations.
- Other audits and police practices in comparison cities related to police budgeting, staffing and overtime.

We also conducted interviews with:

- BPD police officers in the Operations and Support Services departments spanning the ranks of police officer, sergeant, lieutenant, captain, and chief.
- Berkeley Police Association President and Vice President.
- BPD administrative staff including the Administrative and Fiscal Services Manager and the Department's payroll clerks.
- City leadership including the Manager of the Budget Office, the Berkeley City Attorney, and City Councilmembers.
- Peer auditors in the City of San Jose that conducted an audit on police staffing.

We analyzed:

- The City’s financial system payroll data for BPD from FY 2019 to FY 2020.
- BPD budget and expenditures for each year from FY 2015 to FY 2021; BPD budgets for FY 1960, 1970, 1980, 1990, 2000, and 2010.
- BPD’s record of invoices for work with outside entities.

## Data Reliability

We assessed the reliability of payroll data by reviewing it for completeness, appropriateness, and consistency. We determined it is sufficient and reliable for the purposes of our work. The data captures that date of the hours, the staff member, authorized and actual position title, and hour code. We noted a limitation in the data in that the position title associated with individuals is their current title and does not necessarily reflect the title at the time the hours were earned. Additionally, the data does not capture adjustments made to correct labor distributions and project charges. These limitations do not significantly impact our use of the data.

## Independence

Payroll Audit is a Division of the City Auditor’s Office. Payroll Audit Division performs citywide payroll functions and is a module leader for the payroll/personnel module used to record payroll costs. BPD is solely responsible for identifying the payroll codes applicable to their staff’s time reported on timesheets and overtime forms and for providing sufficient documentation to support those hours for payroll processing. Payroll Audit is not responsible for verifying the employee’s time or the use of budget codes by the department. Payroll limits its review to ensuring that BPD payroll clerks provide the appropriate and sufficient documentation for the reported time.

To reduce the threat to our independence, we limited our work to exclude areas overseen by our office. We also selected data from closed payroll periods that was in read only status and we traced select data back to source documents to verify that the data is reliable.

We consulted with representatives from the Government Accountability Office to discuss the engagement and the safeguards we put in place. They determined that with the safeguards mentioned above we had reduced the identified threats to our independence to an acceptable level to proceed with the audit.

## Statement of Compliance

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

## Appendix I. BPD Funding Streams

### City Funding

**General Fund.** The General Fund is the chief operating fund in the City. It accounts for all financial resources of the general government, except those required to be accounted for in another fund.

**Parking Meter Fund.** The Parking Meter Fund is one of the City's major enterprise funds. It accounts for the collection of coins from the City's parking meters and for the purchasing, leasing, installing, repairing, maintaining, operating, removing, and policing of the meters.

### State Funding

State funding to BPD derives from a combination of grant funding and revenue from state ballot measures.

**Alcohol and Beverage Control (ABC) Grant.** This program focuses on reducing the number of alcohol related calls for service to BFD and reducing the availability of alcohol to underage persons. It includes a partnership with UC Berkeley to work with student groups in organized events involving alcohol, including "operation trapdoor" to identify students using fake IDs, and conducting patrol on house parties.

**State Public Safety Sales Tax Proposition 172.** Ballot measure approved in 1993, imposed a state sales tax to be used for local public safety activities. As of FY20-21, it formed 0.25 percent of the total sales tax rate in Alameda County. The state distributes Proposition 172 revenues to each county based on its proportionate share of statewide taxable sales.

**Citizens' Option for Public Safety (COPS).** The State Controller's Office allocates the Citizens' Option for Public Safety funds to law enforcement agencies according to the relative population for each county and city. In FY 2021, Berkeley was projected to be allocated \$186,209 COPS funding. The allocations may be slightly different from the projections made by the State Controller's Office due to rounding.

**Asset Forfeiture Fund.** Asset forfeiture is the process by which legal ownership of an asset is transferred to BPD. According to the Health and Safety Code Section 11495, the funds received by the law enforcement agencies are deposited into an account maintained by the controller, county auditor, or city treasurer. From there, they are distributed to law enforcement agencies at their request. Sixty-five percent of State asset forfeiture proceeds are distributed to state and/or local law enforcement agencies that participated in the seizure of the assets. Fifteen percent of those funds must be deposited in a special fund maintained by a council made up of local government entities. These funds are restricted to be used for the sole purpose of funding programs designed to combat drug abuse and divert gang activity (Health and Safety Code 11489). In FY 2019, Berkeley PD received \$127,629.88 in state asset forfeiture funds from Alameda, Contra Costa, and Solano County. There were no reported state asset forfeiture funds received by Berkeley PD in FY 2020.

**Mutual Aid from State Agencies.** Mutual aid costs are paid for by the state for instances when the state becomes involved. Otherwise, the cost of mutual aid is the responsibility of each agency participating. Five state agencies have specific responsibilities to support local law enforcement during emergency situations: California Highway Patrol, State Military Department, Department of Justice, Department of Corrections, and the Officer of the California State Police.

## Federal Funding

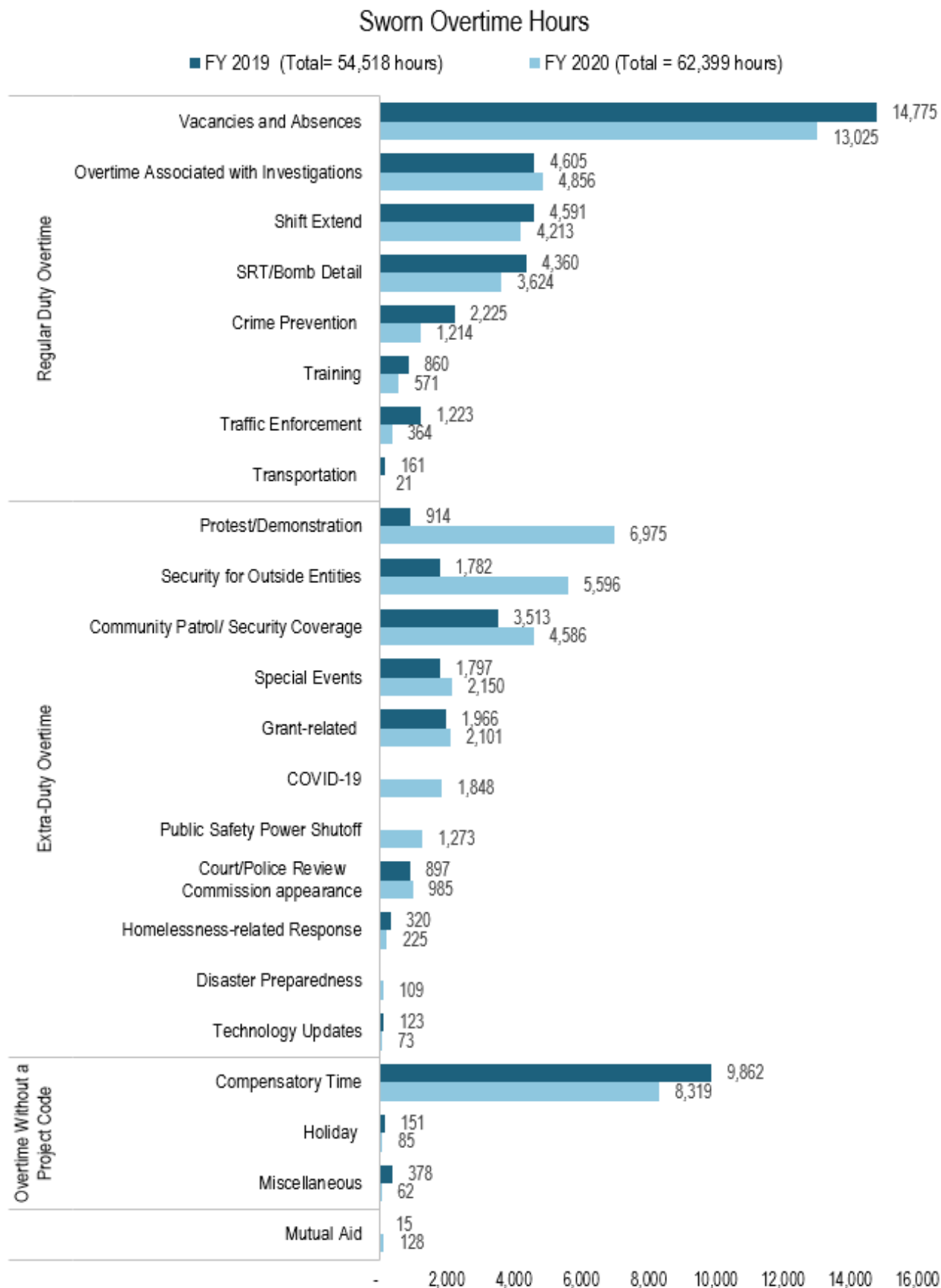
Federal funding for BPD derives exclusively from grants. BPD has received funding from the following grants:

**Alameda County Justice Assistance Grant (JAG) Grant.** JAG-funded projects address crime by improving the effectiveness and efficiency of criminal justice systems, processes, and procedures. BPD receives funding from the JAG as a member of a consortium with the Alameda County Sheriff’s office and other cities of Alameda County. As part of the JAG Consortium, BPD used funds to supplement overtime and benefits for sworn and non-sworn personnel engaged in targeted crime suppression activities.

**Office of Traffic Safety (OTS) Selective Traffic Enforcement Program (STEP).** The goal of the STEP program is to reduce the number of persons killed and injured in traffic crashes using “best practice” strategies. The grant funds strategies related to traffic enforcement including but not limited to: DUI checkpoints, DUI saturation patrols, warrant service operations, stakeout operations, educational presentations, court stings. There is also a media element to enhance deterrence.

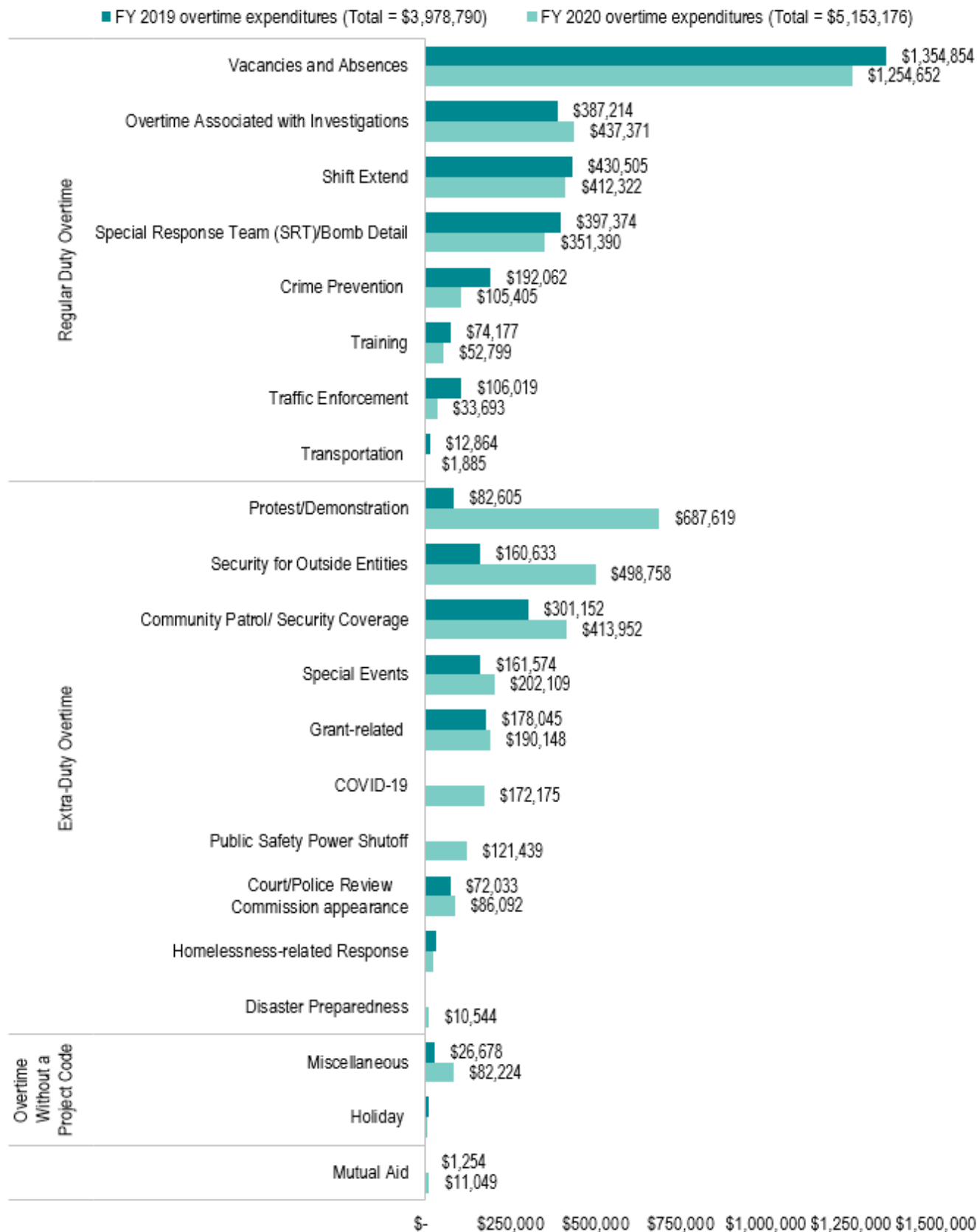
**Office of Traffic Safety (OTS) Avoid the 21 Campaign.** The grant activities target those who drink too much and get behind the wheel. DUI/Driver’s License Checkpoints are a key component of the grant, being highly visible, highly publicized events. Officers staff DUI/Driver License Checkpoints, multi-agency DUI Task Force deployments, and local DUI saturation patrols for each partnering agency.

## Appendix II. Reasons for Overtime: Hours and Expenditures



Source: BPD Payroll Data

### Sworn Overtime Expenditures



Source: BPD Payroll Data

# Appendix III. Extraordinary Duty Form



## BERKELEY POLICE DEPARTMENT EXTRAORDINARY DUTY REPORT

Name \_\_\_\_\_ To \_\_\_\_\_  
(Last) (Initials) (Badge #) (Rank) (Div/Team) (Regular duty hours)

Overtime worked \_\_\_\_\_  
(Date) (Day of Week) (Beginning) (Ending) (Hours) (Minutes) (Days Off)

**Reason:**

Shift Extended \_\_\_\_\_ Pre-approved by: \_\_\_\_\_  
(Case #) (Signature Mandatory) (Badge#)  
 Special Detail \_\_\_\_\_  
(Case #) (Explanation Mandatory)  
 Backfill/Shortage \_\_\_\_\_  
(For Badge #) (Explanation Mandatory)  
 Court \_\_\_\_\_  
(Attach Subpoena) (Case #) Did you testify? \_\_\_ No \_\_\_ Yes (Hours) (Minutes)

Premium Pay:  SRT  FTO  EOD  Phone Standby

On-duty \_\_\_\_\_ Off-duty \_\_\_\_\_ Comp time / Vacation time taken this week? \_\_\_ Yes \_\_\_ No  
(Hours) (Minutes) (Hours) (Minutes)

Signed: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_ Prefer: Time / \$\$\$  
(Signature) (Date) (Time) (Circle One)

### Approval

| Budget Code:                                       | Activity Code:                                     | Project Code:                                              |
|----------------------------------------------------|----------------------------------------------------|------------------------------------------------------------|
| <input type="checkbox"/> 1301 Regular OT           | <input type="checkbox"/> 6901 Admin                | <input type="checkbox"/> XX3069 SRT                        |
| <input type="checkbox"/> 1303 Hourly OT            | <input type="checkbox"/> 6902 Media                | <input type="checkbox"/> XX3070 Court (needed)             |
| <input type="checkbox"/> 1311 Special Events       | <input type="checkbox"/> 6903 IAB                  | <input type="checkbox"/> XX3071 Court (NOT needed)         |
| <input type="checkbox"/> 1312 Training             | <input type="checkbox"/> 7002 Prof. Standards      | <input type="checkbox"/> XX3072 PRC Appearance             |
| <input type="checkbox"/> 1313 Vacation Relief      | <input type="checkbox"/> 7003 P&T / Court / PRC    | <input type="checkbox"/> XX3A01 Workers Comp               |
| <input type="checkbox"/> 1315 Misc.                | <input type="checkbox"/> 7101 SS Admin             | <input type="checkbox"/> XX3A02 Parental Leave             |
| <input type="checkbox"/> 1316 Sick Time Relief     | <input type="checkbox"/> 7004 Jail                 | <input type="checkbox"/> XX3A03 Military Leave             |
| <input type="checkbox"/> 1317 Court / PRC          | <input type="checkbox"/> 7206 Comm. Center         | <input type="checkbox"/> XX3A04 Replace LD (on duty)       |
| <input type="checkbox"/> 1338 Work Private Parties | <input type="checkbox"/> 7104 Records/Liaison/Warr | <input type="checkbox"/> XX3A05 Replace LD (off duty)      |
|                                                    | <input type="checkbox"/> 7202 Operations           | <input type="checkbox"/> XX3A06 Suspension                 |
|                                                    | <input type="checkbox"/> 7301 Investigations       | <input type="checkbox"/> XX3A07 Administrative Leave       |
|                                                    | <input type="checkbox"/> 7302 Traffic              | <input type="checkbox"/> XX3A08 Leave w/o pay              |
|                                                    | <input type="checkbox"/> 7303 Parking              | <input type="checkbox"/> XX3A09 Under Strength             |
|                                                    | <input type="checkbox"/> 7304 SEU                  | <input type="checkbox"/> XX3A10 Shift Extended             |
|                                                    | <input type="checkbox"/> 7305 CAU                  | <input type="checkbox"/> XX3A11 Crime Prevention           |
|                                                    | <input type="checkbox"/> 7306 ABC                  | <input type="checkbox"/> XX3A12 Community Events           |
|                                                    | <input type="checkbox"/> 7307 Crime Scene          | <input type="checkbox"/> XX3A13 Auto Theft                 |
|                                                    |                                                    | <input type="checkbox"/> XX3A14 Fraud                      |
|                                                    |                                                    | <input type="checkbox"/> XX3A15 Homicide                   |
|                                                    |                                                    | <input type="checkbox"/> XX3A16 Property Crimes            |
|                                                    |                                                    | <input type="checkbox"/> XX3A17 Robbery                    |
|                                                    |                                                    | <input type="checkbox"/> XX3A18 SVU / Sex Crimes           |
|                                                    |                                                    | <input type="checkbox"/> 15PO02 SVU / YSD                  |
|                                                    |                                                    | <input type="checkbox"/> 15PO10 SVU / DV                   |
|                                                    |                                                    | <input type="checkbox"/> 15PO01 Traffic / FAIT             |
|                                                    |                                                    | <input type="checkbox"/> XX3A19 SEU / Narcotics            |
|                                                    |                                                    | <input type="checkbox"/> XX3A20 SEU / Prostitution         |
|                                                    |                                                    | <input type="checkbox"/> XX3A21 Santa Rita Transportation  |
|                                                    |                                                    | <input type="checkbox"/> XX3A22 Hospital Transportation    |
|                                                    |                                                    | <input type="checkbox"/> XX3A23 Other Transportation       |
|                                                    |                                                    | <input type="checkbox"/> XX3A24 Telegraph (Fri / Sat)      |
|                                                    |                                                    | <input type="checkbox"/> XX3A25 City Council               |
|                                                    |                                                    | <input type="checkbox"/> XX3A26 Private Property (General) |
|                                                    |                                                    | <input type="checkbox"/> XX3A72 DUI Checkpoint             |
|                                                    |                                                    | <input type="checkbox"/> XX3B74 Private Property (UCB)     |
|                                                    |                                                    | <input type="checkbox"/> XX3B75 Private Party (BUSD)       |
|                                                    |                                                    | <input type="checkbox"/> XX8P14 EOD                        |
|                                                    |                                                    | <input type="checkbox"/> XX8P15 Range Training / FTU TTT   |
|                                                    |                                                    | <input type="checkbox"/> XX8P16 DT Training / DTU TTT      |
|                                                    |                                                    | <input type="checkbox"/> XX8P17 Demonstrations             |
|                                                    |                                                    | <input type="checkbox"/> XX8P18 Special Training           |
|                                                    |                                                    | <input type="checkbox"/> Other: _____                      |

Time / \$\$\$\* \_\_\_\_\_  
(Circle One) \*Grants \$\$\$ only

Total Hours \_\_\_\_\_  
(Hours) (Minutes)

\_\_\_\_\_  
(Supervisor) (Date) (Commander) (Date) (Div. Commander) (Date)

Revised 9/2014

Overtime Reference Information – Overtime regulations are codified in General Order D-15 and Union Agreements between the City and the BPA or Local 1021. See referenced materials for more detail.

- **Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the employee's department director. MOU BPA §19.1.1.2.**
- No employee may work overtime or extend his or her shift without express prior approval of his or her supervisor. General Order D-15 §17.
- For paid overtime to be credited, an employee is required to submit an Extraordinary Duty Report immediately following the overtime assignment. General Order D-15 §17.
- Unless specifically requested by a commanding officer, employees shall not work overtime on their regularly scheduled shift on days they would normally work. MOU BPA §19.1.
- On days when they have taken paid time off for any reason other than workers' compensation, they are not automatically restricted from working overtime during those same days on shifts other than their own. MOU BPA §19.1.
- An employee who is placed on emergency on-call status on his or her regularly scheduled day off shall be paid or be credited with compensatory time off at a one quarter (¼) time rate. General Order D-15 §40(a) / MOU BPA §19.3.1.
- If the emergency on-call status continues into a second day during the month, an employee placed on emergency on-call status shall be paid or be credited with compensatory time off at a one quarter (¼) time. General Order D-15 §40(b) / MOU BPA §19.3.2.
- Emergency Overtime - An employee is guaranteed at least three (3) hours overtime when called to emergency overtime duty from his or her residence. MOU BPA §19.7.
- Unless otherwise approved by a Commanding Officer, all court overtime shall be paid. General Order D-15 §27 / MOU BPA §20.1.2.
- A sworn employee who makes an off-duty court appearance shall receive a minimum of four (4) hours overtime unless his or her scheduled duty reporting time, regular shift or overtime shift is less than four hours after the scheduled court appearance in which case the employee will receive overtime in the lesser amount. General Order D-15 §28 / MOU BPA 20.1.3.
- For off-duty, out-of-town court appearances, travel constitutes court overtime and is determined by the round trip time from the Hall of Justice. General Order D-15 §31 / MOU BPA D-15 20.1.5.
- Sworn employees who are placed on telephone stand-by for the court will be compensated by earned compensatory time as follows: General Order D-15 §34 / MOU BPA 20.2.1-20.2.2.
  - Duty Day: One hour minimum compensatory time and hour for hour thereafter.
  - Day Off: Two hour minimum compensatory time and hour for hour thereafter.
- Subpoena should be attached and case number indicated if either or both are available. General Order D-15 §35(a) / MOU BPA 20.2.2.1.
- Report is to be completed by the officer and shall specify the case number and the name of the Deputy District Attorney placing him or her on telephone stand-by. General Order D-15 §35(b) / MOU BPA D-15 20.2.2.2.

#### SEIU Local 1021 Only

- Employees who are called into work outside their normal work schedule shall be paid overtime compensation for actual time worked. The minimum time for which such overtime compensation shall be paid shall be four (4) hours. If such overtime work is performed prior to the beginning of the regularly scheduled work period and overtime continues into the regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked. Memorandum Agreement SEIU Local 1021 §14.5.



## Appendix IV. Sample BPD Patrol Timesheet

### TIMESHEET – OPERATIONS DIVISION

Month, Day, 2021 – Month, Day, 2022 [Six-month period]

| Team 1 – Lieutenant 1<br>0600-1600 M/T/W/T                                                       |         |             |         | Team 2 – Lieutenant 1<br>1100-2100 M/T/W/T   |         |                                         |         |                                                                                                                                                                     |  |  |  |
|--------------------------------------------------------------------------------------------------|---------|-------------|---------|----------------------------------------------|---------|-----------------------------------------|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
| Sergeant 1                                                                                       |         | Sergeant 2  |         | Sergeant 3                                   |         | Sergeant 4                              |         |                                                                                                                                                                     |  |  |  |
| Officer 1                                                                                        | Badge # | Officer 6   | Badge # | Officer 11                                   | Badge # | Officer 16                              | Badge # |                                                                                                                                                                     |  |  |  |
| Officer 2                                                                                        | Badge # | Officer 7   | Badge # | Officer 12                                   | Badge # | Officer 17                              | Badge # |                                                                                                                                                                     |  |  |  |
| Officer 3                                                                                        | Badge # | Officer 8   | Badge # | Officer 13                                   | Badge # | Officer 18                              | Badge # |                                                                                                                                                                     |  |  |  |
| Officer 4                                                                                        | Badge # | Officer 9   | Badge # | Officer 14                                   | Badge # | Officer 19                              | Badge # |                                                                                                                                                                     |  |  |  |
| Officer 5                                                                                        | Badge # | Officer 10  | Badge # | Officer 15                                   | Badge # | Officer 20                              | Badge # |                                                                                                                                                                     |  |  |  |
| Team 3 – Lieutenant 2<br>1530-0130 M/T/W/T                                                       |         |             |         | Team 4 – Lieutenant 2<br>2030-0630 M/T/W/T   |         |                                         |         |                                                                                                                                                                     |  |  |  |
| Sergeant 5                                                                                       |         | Sergeant 6  |         | Sergeant 7                                   |         | Sergeant 8                              |         |                                                                                                                                                                     |  |  |  |
| Officer 21                                                                                       | Badge # | Officer 26  | Badge # | Officer 30                                   | Badge # | Officer 35                              | Badge # |                                                                                                                                                                     |  |  |  |
| Officer 22                                                                                       | Badge # | Officer 27  | Badge # | Officer 31                                   | Badge # | Officer 36                              | Badge # |                                                                                                                                                                     |  |  |  |
| Officer 23                                                                                       | Badge # | Officer 28  | Badge # | Officer 32                                   | Badge # | Officer 37                              | Badge # |                                                                                                                                                                     |  |  |  |
| Officer 24                                                                                       | Badge # | Officer 29  | Badge # | Officer 33                                   | Badge # | Officer 38                              | Badge # |                                                                                                                                                                     |  |  |  |
| Officer 25                                                                                       | Badge # |             |         | Officer 34                                   | Badge # | Officer 39                              | Badge # |                                                                                                                                                                     |  |  |  |
| Team 5 – Lieutenant 3<br>0600-1830                                                               |         |             |         | Team 6 A -<br>Lieutenant 3<br>1130-Midnight  |         | Team 6 B -<br>Lieutenant 4<br>1400-0230 |         |                                                                                                                                                                     |  |  |  |
| Sergeant 9                                                                                       |         | Sergeant 10 |         | Sergeant 11                                  |         | Sergeant 12                             |         |                                                                                                                                                                     |  |  |  |
| Officer 41                                                                                       | Badge # | Officer 46  | Badge # | Officer 51                                   | Badge # | Officer 56                              | Badge # |                                                                                                                                                                     |  |  |  |
| Officer 42                                                                                       | Badge # | Officer 47  | Badge # | Officer 52                                   | Badge # | Officer 57                              | Badge # |                                                                                                                                                                     |  |  |  |
| Officer 43                                                                                       | Badge # | Officer 48  | Badge # | Officer 53                                   | Badge # | Officer 58                              | Badge # |                                                                                                                                                                     |  |  |  |
| Officer 44                                                                                       | Badge # | Officer 49  | Badge # | Officer 54                                   | Badge # | Officer 59                              | Badge # |                                                                                                                                                                     |  |  |  |
| Officer 45                                                                                       | Badge # | Officer 50  | Badge # | Officer 55                                   | Badge # | Officer 60                              | Badge # |                                                                                                                                                                     |  |  |  |
| <b>Vacation Relief</b><br>M-TH: Sergeant 15<br>M-TH: Officer 71<br>Sergeant 16<br>FSS Officer 77 |         |             |         | <b>Team 7 - Lieutenant 4<br/>1800 - 0630</b> |         |                                         |         | <b>Bikes:</b><br>Sergeant 17<br>Officer 72      Badge #<br>Officer 73      Badge #<br>Officer 74      Badge #<br>Officer 75      Badge #<br>Officer 76      Badge # |  |  |  |
| Sergeant 13                                                                                      |         | Sergeant 14 |         |                                              |         |                                         |         |                                                                                                                                                                     |  |  |  |
| Officer 61                                                                                       | Badge # | Officer 66  | Badge # |                                              |         |                                         |         |                                                                                                                                                                     |  |  |  |
| Officer 62                                                                                       | Badge # | Officer 67  | Badge # |                                              |         |                                         |         |                                                                                                                                                                     |  |  |  |
| Officer 63                                                                                       | Badge # | Officer 68  | Badge # |                                              |         |                                         |         |                                                                                                                                                                     |  |  |  |
| Officer 64                                                                                       | Badge # | Officer 69  | Badge # |                                              |         |                                         |         |                                                                                                                                                                     |  |  |  |
| Officer 65                                                                                       | Badge # | Officer 70  | Badge # |                                              |         |                                         |         |                                                                                                                                                                     |  |  |  |

Official [Date] Timesheet

Source: Berkeley Police Department

**Mission Statement**

Promoting transparency and accountability in Berkeley government.

**Audit Team**

Erin Mullin, Senior Auditor  
Alejandra Barrio Gorski, Auditor I

**City Auditor**

Jenny Wong

**Office of the City Auditor**

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



BERKELEY CITY AUDITOR



02a.26

CONSENT CALENDAR  
March 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Taplin  
Subject: Support for AB-2053 (Social Housing Act)

RECOMMENDATION

Send a letter in support of Assembly Bill 2053 to the state legislature.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

Assembly Bill 2053 is an updated version of Assembly Bill 387 (2021) by Assemblymember Alex Lee (D-San Jose). The bill would establish the California Housing Authority, a new agency to develop and operate mixed-income social housing throughout the state. The bill defines social housing as publicly backed, self-sustaining housing that accommodates a mix of household income ranges. Social housing is protected from being sold to a private for-profit entity for the duration of its useful life, and residents are granted the same protections as tenants in private property, if not more. Dwelling units would be provided both for leasehold ownership and as rental housing.

Because social housing is internally cross-subsidized by higher income households (including rents at market rate), it would avoid the problems of concentrated poverty, disinvestment, and lack of operating subsidies that has afflicted public housing throughout the United States in the past. This model is already working successfully elsewhere in the United States, including Montgomery County, Maryland under the supervision of the Housing Opportunity Commission (HOC)<sup>1</sup>, and Sacramento's CADA agency.<sup>2</sup>

On November 9, 2021, the Berkeley City Council unanimously passed a resolution recognizing housing as a human right, as well as committing to a study of social housing models in Berkeley, which is currently pending future funding. The City Council has recognized that housing security and fair housing opportunity is a core mandate of the public sector, and that it can learn from other countries with successful public sector housing development models, such as Vienna and Singapore.

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<sup>1</sup> <https://www.hocmc.org/news-archive/775-hoc-breaks-ground-at-900-thayer-in-silver-spring.html>

<sup>2</sup> <https://www.cadanet.org/resources-agendas/fast-facts>

[Title of Report]

CONSENT CALENDAR  
March 22, 2022

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS  
None.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

Attachments:

1: Letter

The Honorable Alex Lee  
State Capitol – Room 2170  
P.O. Box 942849  
Sacramento, CA 94249-0025

Assembly member Lee:

The City Council of the City of Berkeley is proud to support Assembly Bill 2053, the Social Housing Act. We believe that a state housing agency developing publicly-owned, mixed-income housing with a skilled and trained workforce and maintained by diverse communities of residents offers a promising path toward housing abundance and economic justice.

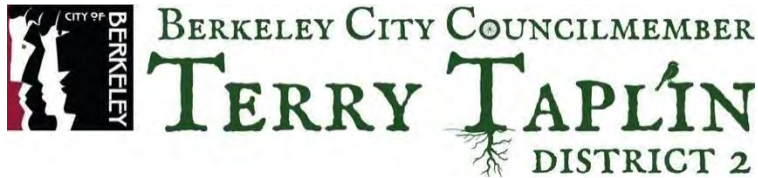
On November 9, 2021, the Berkeley City Council unanimously passed a resolution recognizing housing as a human right, as well as committing to a study of social housing models in Berkeley. The City Council has recognized that housing security and fair housing opportunity is a core mandate of the public sector, and that it can learn from other countries with successful public sector housing development models, such as Vienna and Singapore. By establishing a statewide Housing Authority to produce and preserve social housing, your bill could have transformative impacts with regards to expanding housing opportunity and providing sustainable community autonomy for Berkeley residents and residents-to-be.

California currently ranks 49<sup>th</sup> out of all 50 states in new homes built per capita, and roughly one-fifth of the population bears an extraordinary rent burden, paying over half of their income in rent. According to the Public Policy Institute of California, over 800,000 households in the state would have stayed above the poverty line in 2019 if housing costs had remained constant at 2013 levels. While progress is incremental, even minor improvements represent real material gains for our most vulnerable residents. Berkeley and other cities are making substantive efforts to increase housing supply, but we are well aware that neither the private market nor publicly subsidies alone can build us out of a housing shortage that was decades in the making. It will take every available strategy on the table, and the City of Berkeley is heartened by your bold and innovative proposal.

With gratitude,

The Berkeley City Council  
2180 Milvia St  
Berkeley, CA 94704





02a.27

CONSENT CALENDAR  
March 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Taplin, Councilmember Wengraf (co-sponsor)  
Subject: Support for AB-2336

RECOMMENDATION

Send a letter of support for Assembly Bill 2336: Speed Safety System Pilot Program.

BACKGROUND

The California Vehicle Code currently does not permit the use of cameras for enforcement of speeding laws. Assembly Bill 550 (Chiu, 2021) would have established a pilot program for speeding cameras in several cities including Oakland, San Francisco, San Jose, and Los Angeles. It failed to pass through the Assembly Appropriations Committee, despite being widely supported by local governments and street safety advocates.

This bill is a revived version of AB-550.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

ATTACHMENTS

1. Letter

The Honorable Laura Friedman  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0043

Assembly Member Friedman:

The City Council of the City of Berkeley is proud to support your bill, AB-2336, to establish a pilot program for speeding cameras. Speeding cameras are used for traffic enforcement successfully in jurisdictions throughout the country to hold irresponsible motorists accountable for putting lives at risk, reducing dangerous speeding and potentially saving countless lives. Without basic tools for accountability, the public sector cannot meaningfully uphold the social contract that is supposed to preserve life and limb on our public infrastructure.

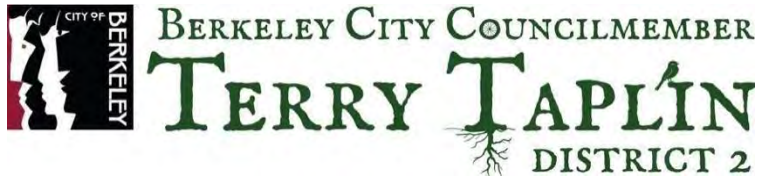
In 2021, there were eight traffic fatalities in the City of Berkeley, a 34% increase from the previous year. Five of the eight were pedestrians. It was the deadliest year on Berkeley's streets since 1984. Each death is a devastating loss for the slain person's loved ones, local community, and society at large. Moreover, each death represents a failure of public policy to enact common sense restrictions on motor vehicles. Your bill is a much-needed step in the right direction.

Thank you very much for your tireless dedication to safe streets and transportation justice.

Sincerely,

The Berkeley City Council  
2180 Milvia St  
Berkeley, CA 94704





02a.28

CONSENT CALENDAR  
March 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Taplin  
Subject: Support for AB-2713

RECOMMENDATION

Send a letter of Support for Assembly Bill 2713: Rent caps

BACKGROUND

Assembly Bill 1482 (Chiu, 2019) caps gross rent increases to 5% per year plus the annual change in Consumer Price Index for All Urban Consumers for All Items (CPI-U), or 10%, whichever is lower. However, it lacks a statewide enforcement mechanism and puts the onus on tenants to seek legal counsel to protect their rights.

AB-2713 would make any lease provision that violates AB-1482 rent caps legally unenforceable. Additionally, it would narrowly define the “intent to occupy” provision for a “just cause” tenancy termination to be a “good faith intention to occupy” a residential unit, prohibiting the use of this provision if the owner or a relative of the owner inhabits another unit on the property, or if there are vacant units on the property. Additionally, the owner must provide written notice to the tenant 180 days prior if they intend to withdraw the property from the rental market.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

Attachments:

1: Letter

The Honorable Buffy Wicks  
State Capitol  
Sacramento, CA 95814

Dear Assembly Member Wicks:

The Berkeley City Council is proud to support your bill, AB-2713, to strengthen just cause eviction protections and caps on annual rent increases. As you know, rental prices in the Bay Area continue to skyrocket amid a statewide housing shortage, and lower-income residents and communities of color remain at highest risk of displacement. Evictions and displacement have well-documented impacts on individual health and safety, as well as widespread detriments to racial justice and equity.

Despite the statewide moratorium on rental evictions during the COVID-19 pandemic, owner move-in evictions under the so-called Ellis Act have remained a disturbing problem for communities throughout the state. Furthermore, in spite of Berkeley's strong rent control laws, the statewide cap on annual rent increases pursuant to AB-1482 offers little by way of enforcement, putting the burden on tenants to enforce the law to protect their rights. The City of Berkeley does not have the resources to provide sufficient legal assistance to every rental household, inclusive of those whose units are exempt from local rent control under the Costa-Hawkins Act, in order to enforce AB-1482.

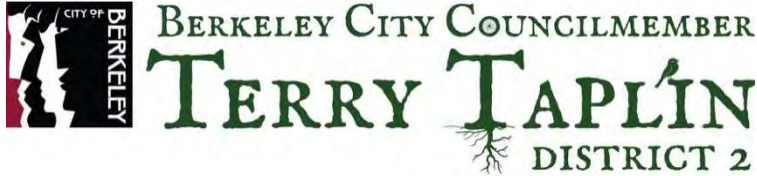
Your bill offers fair and common-sense solutions to the difficult problem of balancing constitutional property rights with tenant stability and the serious humanitarian needs that stability entails. Narrowly curtailing a property owners' "intent to occupy" provision for just cause termination, and requiring 180 days' written notice prior to removing a unit from the rental market, increase stability for tenants without imposing an onerous burden on law-abiding property owners.

Thank you for your leadership on this important issue.

Sincerely,

The Berkeley City Council  
2180 Milvia St  
Berkeley, CA 94704

02a.29



CONSENT CALENDAR

March 22, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin

Subject: Budget Referral: West Berkeley Transportation Plan

RECOMMENDATION

That the City Council refer \$300,000 to the FY23-24 budget process for the hiring of a consultant to do a study and draft a comprehensive plan for transportation in West Berkeley through 2050.

FISCAL IMPACTS

An estimated \$300,000 for the hiring of a consultant to study West Berkeley transportation patterns and craft the West Berkeley Transportation Plan.

BACKGROUND

Out of all the unique areas in the City of Berkeley, it is arguable that none have undergone more changes in the past century than the residential, commercial, and industrial sector of West Berkeley, which encompasses the City west of Sacramento Street. What is now known as West Berkeley was home to the native Ohlone people for thousands of years, who lived on or near the West Berkeley Shellmound. Following the European colonization of North America and the Bay Area, Berkeley was eventually incorporated in 1878 and West Berkeley became a quickly growing industrial and residential area. This growth, encouraged by the proximity of the waterfront, the Central Pacific Railroad, and the University of California, led to West Berkeley's development into one of the Bay Area's primary industrial areas during the first half of the twentieth century.

Initiated in 1985 and adopted in 1993, the West Berkeley Plan sought to reexamine and reinforce West Berkeley's traditionally diverse use of light-industrial, commercial, and residential zoning in a way that would bring more economic life back to West Berkeley and plan for the area's development through 2005.<sup>1</sup> Though written nearly three decades ago, the Transportation section of the West Berkeley Plan raises many of the same concerns and goals that the City is still grappling with today.

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<sup>1</sup>[https://www.cityofberkeley.info/Planning\\_and\\_Development/Redevelopment\\_Agency/West\\_Berkeley\\_Plan\\_\(The\).aspx](https://www.cityofberkeley.info/Planning_and_Development/Redevelopment_Agency/West_Berkeley_Plan_(The).aspx)

The Transportation section of the West Berkeley Plan highlighted West Berkeley's historically poor public transportation service and large amount of free parking, while seeking to plan for a West Berkeley with the reduced use of single-occupant automobiles, protection of local residential streets from through-traffic, reduced congestion, improved public transportation, and an overall improved environment for pedestrians and cyclists.<sup>2</sup> All of these and more are issues for West Berkeley transportation in 2022. Automobile use is still much higher than is necessary to meet Berkeley's climate and Vision Zero goals. Bus service has been reduced as AC Transit suspended Line 80, which serviced West Berkeley along Sixth Street, following pandemic-related budget cuts.

Encompassing almost the entirety of the Equity Priority Area under the Vision Zero Action Plan, West Berkeley is also the most dangerous part of all of Berkeley for pedestrians.<sup>3</sup> Decades after the West Berkeley Plan, it is clear that the City Council must reexamine the state of transportation in West Berkeley and plan for a more accessible and sustainable future.

#### RATIONALE FOR RECOMMENDATION

As the City of Berkeley undergoes a Housing Element process to plan for the addition of a minimum of 8,943 new homes by 2031, West Berkeley corridors of San Pablo Avenue and University Avenue are among the Priority Development Areas (PDAs) targeted for infill housing in early plans.<sup>4</sup> While the growth in West Berkeley's population in the next decade will bring a welcome burst of new life and community to the City as a whole, the continued poor condition of transportation in West Berkeley as the population grows will only encourage these thousands of new residents to continue their reliance on cars and threaten Berkeley's climate and Vision Zero goals. Transportation planning in West Berkeley must be updated in order to finally address the deficiencies of transportation that the area has faced for decades, while also planning for the future of West Berkeley so that new residents will move to a historic district that allows them to give up their car, feel safe as pedestrians and cyclists, and be connected to the broader Bay Area with a world-class public transportation system.

To achieve this vision, no possibilities should be left off the table. Berkeley must draw on old ideas from the West Berkeley Plan like removing Ashby Avenue from the State Highway system, working closely with AC Transit for the expansion of low-emission bus services, institute charges for parking, expanding bicycle parking, and improved traffic control devices. Furthermore, the City can draw from its strong community of cyclists, urbanists, and the new generation of planners who are already clamoring for more ambitious ideas such as bus-only lanes, the wider use of protected bike lanes, redesigning the directions that cars can currently travel on streets, and even the full pedestrianization of some streets.

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<sup>2</sup> [https://www.cityofberkeley.info/Planning\\_and\\_Development/Home/West\\_Berkeley\\_-\\_Transportation.aspx](https://www.cityofberkeley.info/Planning_and_Development/Home/West_Berkeley_-_Transportation.aspx)

<sup>3</sup> [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley\\_Vision\\_Zero\\_Action\\_Plan\\_Approved\\_03102020.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf)

<sup>4</sup> <https://www.berkeleyaside.org/wp-content/uploads/2021/09/Item-1-Pres-Planning-1.pdf>

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

By planning for a West Berkeley that is less reliant on the use of private automobiles through the strengthening of the area's network of bicycle and pedestrian infrastructure, the expansion of public transportation service, and the placing of limitations on car traffic, a West Berkeley Transportation Plan stands to aide Berkeley in its climate goals in incalculable ways.

CONTACT

Terry Taplin, Councilmember, District 2, (510) 981-7120



**BEN BARTLETT**

CITY COUNCILMEMBER, DISTRICT 3

02a.30

CONSENT CALENDAR

March 22, 2022

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett (Author), Sophie Hahn, Terry Taplin, and Mayor Jesse Arreguin (Co-Sponsors)  
 Subject: Budget Referral: Reparations in Berkeley– Funding for a Consultant to Facilitate Community Process to Design and Implement a Local Reparations Plan

RECOMMENDATION

Refer to the Fiscal Year 2022/2023 Budget Process, an allocation of \$350,000 to fund a Consultant to develop policy recommendations for reparations in Berkeley. These recommendations will address the economic injury and intergenerational trauma experienced by Berkeley's descendants of slavery and the ongoing harm caused to all African Americans by systems that uphold the legacy of segregation. The Consultant will design a process to develop short, medium, and long-term recommendations for reparation policies in Berkeley designed to promote the creation of generational wealth and boost economic mobility, and opportunity in Berkeley's African American community.

1. *Inform.* The Consultant should hold a series of educational events, truth-telling symposiums, sessions, and community gatherings on Berkeley's history. The Consultant should engage a myriad of Berkeley stakeholders, including residents who have experienced harm with economists and historians to provide context. Subject matter experts will employ financial and historical data to illuminate the generational wealth gap, describe barriers to economic mobility, and detail the systemic racism against Berkeley's African American community.
2. *Interact.* The Consultant should aim to foster an interactive dialogue centered on the community's historical experiences and legacy of racism. These group settings should be between persons of diverse vantage points and opinions. The Consultant's facilitation of these emotive conversations should aspire to enable learning and deep listening, connection, and ultimately trust, healing, and the desire to repair the community.
3. *Recommend.* Draw from the community dialogues to issue short, medium, and long-term recommendations, for reparations policies. The policy recommendations should focus on creating significant, sustainable progress towards repairing the damage caused by public and private systemic racism; and mitigate racial disparities in wealth, education, employment, homeownership, health, criminal justice, and more. The recommendations should include a portfolio of policies aligned under the following framework:
  - i. Reckoning
  - ii. Acknowledgment
  - iii. Accountability
  - iv. Redress

## **FRAMEWORK DEFINITIONS<sup>1</sup>**

### Reckoning

The reparations process requires a reckoning with the truth. Participants share statistical data that accurately illustrates the history being examined. This initial part of the framework might take the form of educational presentations from diverse speakers. Reckoning allows all Berkeley residents to understand the harm that has been caused in their City: not only what happened, but how it happened, and why it happened. Reckoning creates an opportunity for people to express their subjective, individual experiences with racial exclusion and abuse from all vantage points and perspectives.

Reckoning can take place on a number of topics, including but not limited to:

- Redlining
- Social Integration
- Food Deserts
- Healthcare inequities
- Environmental Racism
- Policing
- Wealth Preservation
- Lack of Opportunity for Wealth Creation
- Housing

By localizing such topics, the audience within the City of Berkeley can better understand the issues close to home.

Truth is integral to the reparations process because it presents a common understanding of the history of African Americans in Berkeley.

### Acknowledgment

Acknowledgment names the harm that has been surfaced in a public way by an official body. Acknowledgment may include an official declaration, a public apology that includes Acknowledgment of facts, or ways to commemorate those who have been harmed, such as cultural sites, monuments, or museums.

### Accountability

Accountability shifts the conversation toward the future and demonstrates ownership and willingness to take responsibility for harmful actions. Accountability includes making a commitment to non-repetition and considers who must be at the table to hold the institution accountable to providing redress in an effective way.

### Redress

Redress includes acts of restitution and compensation to those who have been harmed to create better outcomes in areas that may include but are not limited to wealth creation, housing, healthcare, and education.

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<sup>1</sup> Florant, A., 2022. *Liberation Ventures*. [online] Liberation Ventures. Available at: <<https://www.liberationventures.org>> [Accessed 9 February 2022].



## **BACKGROUND**

In 1868 General Sherman issued Special Field Orders No. 15. This Civil War-era order declared that each newly freed Black family would, at last, be compensated for being used to enrich the United States with generations of coerced labor. The order promised “not more than forty acres of tillable ground”, and became known as “40 acres and a mule”. This phrase stands as both a symbol of America’s broken promise and a quantifiable , economic deficit owed to foundational Black Americans. The value of that land today is more than \$6.4 trillion<sup>2</sup>.

From 1619 to 1865, more than 4,000,000 Africans and their descendants were enslaved in what became the United States. Constitutionally and statutorily sanctioned by the United States government, the institution of slavery constituted an immoral and inhumane deprivation of Africans’ life, liberty, citizenship rights, cultural heritage, and denial of compensation. Following the abolition of slavery, federal, state, and local laws and practices have sustained systems of oppression and exclusion that disadvantage African American persons.

These segregationist policies and practices are full-spectrum. The spectrum includes Jim Crow, voting restrictions, redlining, denial of remedies in civil court, inability to join labor unions, employment discrimination, criminal justice abuse, mass incarceration, denial of access to capital by lenders, denial of federal land grants, and housing loan guarantees, concentrated exposure to pollution, and inequitable access to education. These government-sanctioned conditions have perpetuated the economic, educational, social, and health hardships into modern times. In 2016, the net worth of a typical White family (\$171,000) was nearly ten times greater than that of a Black family (\$17,150).<sup>3</sup> The racial homeownership gap is tied to the racial wealth gap and the trend of rising economic inequality more generally. Since the Great Recession, the gap between Black and White homeownership rates in the United States has increased to its highest level in 50 years -- from 28.1 percentage points in 2010 to 30.1 percentage points in 2017.<sup>4</sup> The gap in the rate between Black and White families is wider today than it was when it was legal to refuse to sell someone a home because of the color of their skin.

The unemployment rate is also historically about twice as high for Black people as for White people amid even the best economic conditions.<sup>5</sup> In addition, the wage gap between these groups was significantly wider in 2019 than at the start of the century.

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<sup>2</sup> NEUMANN, J. and MATSUE LOEFFELHOLZ, T., 2022. *40 Acres and a Mule Would Be at Least \$6.4 Trillion Today—What the U.S. Really Owes Black America - YES! Magazine*. [online] YES! Magazine. Available at: <<https://www.yesmagazine.org/issue/make-right/2015/05/14/infographic-40-acres-and-a-mule-would-be-at-least-64-trillion-today>> [Accessed 12 February 2022].

<sup>3</sup> Shambaugh, J. and McIntosh, K., 2022. *Examining the Black-white wealth gap*. [online] Brookings. Available at: <<https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>> [Accessed 18 January 2022].

<sup>4</sup> Choi, J., 2022. *Breaking Down the Black-White Homeownership Gap*. [online] Urban Institute. Available at: <<https://www.urban.org/urban-wire/breaking-down-black-white-homeownership-gap>> [Accessed 28 February 2022].

<sup>5</sup> Smialek, J. and Tankersley, J., 2022. *Black Workers, Already Lagging, Face Big Economic Risks (Published 2020)*. [online] Nytimes.com. Available at: <<https://www.nytimes.com/2020/06/01/business/economy/black-workers-inequality-economic-risks.html>> [Accessed 19 January 2022].

Even among those who attain advanced degrees, Black people were paid 82.4 cents for every dollar earned by their White peers.<sup>6</sup>

If the racial wealth divide is left unaddressed, the median Black household wealth will reach zero dollars (\$0.00) by 2053<sup>7</sup>. Moreover, the Covid 19 pandemic has likely accelerated the evaporation of Black wealth.

Black people have been disproportionately forced to reside in, adjacent to, or near toxic and polluted sites that negatively impact their health and property value.<sup>8</sup> This group is also more likely to reside in neighborhoods with food deserts--areas that lack access to foods that provide for a nutritionally adequate diet of whole grains, fresh fruits and vegetables, fresh meat, and high-quality dairy.<sup>9</sup>

In addition to poor food and housing access, Black people historically and currently receive inadequate and often detrimental health care. The state of health inequity in America is evidenced by the disproportionate morbidities and mortality rates, due to discriminatory and biased treatment by medical professionals, discriminatory medical practices, and the generational trauma of systemic racism.<sup>10</sup> Currently, Black Americans face higher COVID-19 hospitalization and infection rates than any other racial group because of systemic racism. The compounding effect of existing inequities put Black communities at greater risk of infection and death than their counterparts. For example, Black people are more likely to have other preexisting conditions that put them at risk, have less access to affordable and quality health care, work in more vulnerable sectors, and/or rely on public transit as their main form of transportation.<sup>11</sup>

In addition to experiencing significant economic and health disparities, Black people are also disproportionately impacted by the criminal justice system. In 2018, Black people represented 33% of the sentenced prison population, nearly triple their 12% share of the U.S. adult population.<sup>12</sup> Black male offenders receive sentences on average 19.1 percent longer than White male offenders guilty of the same offense<sup>13</sup>. According to a

<sup>6</sup> Gould, E., 2022. *State of Working America Wages 2019: A story of slow, uneven, and unequal wage growth over the last 40 years*. [online] Economic Policy Institute. Available at: <<https://www.epi.org/publication/swa-wages-2019/#table-3>> [Accessed 21 December 2021].

<sup>7</sup> Collins, C., Hoxie, J., Asante-Muhammad, D. and Nieves, E., 2017. *Report: The Road to Zero Wealth - Institute for Policy Studies*. [online] Institute for Policy Studies. Available at: <<https://ips-dc.org/report-the-road-to-zero-wealth/>> [Accessed 1 February 2022].

<sup>8</sup> Newkirk II, V., 2022. *Environmental Racism Is Real, According to Trump's EPA*. [online] The Atlantic. Available at: <<https://www.theatlantic.com/politics/archive/2018/02/the-trump-administration-finds-that-environmental-racism-is-real/554315/>> [Accessed 13 December 2021].

<sup>9</sup> Barker, C., Francois, A., Goodman, R. and Hussain, E., 2022. [online] Digitalcommons.nyls.edu. Available at: <[https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1002&context=racial\\_justice\\_project](https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1002&context=racial_justice_project)> [Accessed 10 November 2021].

<sup>10</sup> Taylor, J., 2022. *Racism, Inequality, and Health Care for African Americans*. [online] The Century Foundation. Available at: <<https://tcf.org/content/report/racism-inequality-health-care-african-americans/?session=1>> [Accessed 4 January 2022].

<sup>11</sup> MENASCE HOROWITZ, J., 2022. *Views on why Black Americans face higher COVID-19 hospitalization rates vary by party, race and ethnicity*. [online] Pew Research Center. Available at: <<https://www.pewresearch.org/fact-tank/2020/06/26/views-on-why-black-americans-face-higher-covid-19-hospitalization-rates-vary-by-party-race-and-ethnicity/>> [Accessed 7 January 2022].

<sup>12</sup> GRAMLICH, J., 2022. *Black imprisonment rate in the U.S. has fallen by a third since 2006*. [online] Pew Research Center. Available at: <<https://www.pewresearch.org/fact-tank/2020/05/06/share-of-black-white-hispanic-americans-in-prison-2018-vs-2006/>> [Accessed 14 January 2022].

<sup>13</sup> Schmitt, G., Reedt, L. and Blackwell, K., 2012. *Demographic Differences in Sentencing: An Update to the 2012 Booker Report*. [online] Ussc.gov. Available at: <[https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114\\_Demographics.pdf](https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf)> [Accessed 23 February 2022].

2017 Police Violence Report, Black people were also more likely to be killed by police, more likely to be unarmed, and less likely to be threatening someone when killed.<sup>14</sup> Many police reforms have been instituted here in Berkeley, but inequities persist. BPD police statistics show Black stops are exactly 50% of the total 608 stops at 304, with White stops at 143 for 23.52% of all stops. When adjusted to take into account the low number of Black people residing in Berkeley, Black stops are about 42.7 per 1,000 of their population, where White stops are about 2.9 per 1,000, a disparity of 14.5 to 1.<sup>15</sup>

Racism and discrimination have not ended with the abolition of slavery and instead, have shifted and transformed through institutions, policies, and practices of federal, state, and local governments. The legacy of slavery remains with us today. To address the fundamental injustice, brutality, and inhumanity of slavery in the United States and the subsequent racial and economic discrimination against Black people, the Council should adopt a resolution that supports reparations for the Black community.

An early leader to prominently call for the United States to make reparations to African Americans was Randall Robinson, who authored *The Debt: What America Owes to Blacks*. In his bestselling book, Robinson challenges the nation to provide compensation to African Americans as a way to repair the intergenerational wounds that slavery has created. He posits that because slavery was so instrumental to America, it is still deeply ingrained into the present-day American economy. Randall cites the history of Wall Street and how it became the center of the slave trade from 1711 to 1762. The slave trade was a foundational element of the New York Stock Exchange, which banks and insurance companies actively participated in. As a result, major financial institutions—such as Wells Fargo and J.P Morgan Chase—grew exponentially. As Randall reflected in his book, Americans do not fully understand the roots of the existing American economy<sup>16</sup>. The complete truth about slavery being a critical component of the economy is often hidden in American education. In order to fully address the reparations needed, the psychological implications of slavery are just as important to understand as the economic implications, which leads us back to the call for America to make reparations to African Americans.

To go forward with reparations, the process of truth sharing and some form of reconciliation should first be undertaken. Truth and Reconciliation as a model originated in the context of South Africa. The Truth process there brought together victims and perpetrators in a setting of open and honest dialogue. Reconciliation was a safe forum to air grievances and enter into the public record, as a form of both collective catharsis and, ultimately, accountability<sup>17</sup>.

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<sup>14</sup>Sinyangwe, S., 2022. *2021 Police Violence Report*. [online] [Policeviolencereport.org](https://policeviolencereport.org). Available at: <<https://policeviolencereport.org/>> [Accessed 28 February 2022].

<sup>15</sup>City of Berkeley, 2022. *Berkeley PD's Stop Data Now on City's Open Data Portal - City of Berkeley, CA*. [online] [Cityofberkeley.info](https://www.cityofberkeley.info). Available at: <[https://www.cityofberkeley.info/Police/Home/Berkeley\\_PD\\_s\\_Stop\\_Data\\_Now\\_on\\_City\\_s\\_Open\\_Data\\_Portal.aspx](https://www.cityofberkeley.info/Police/Home/Berkeley_PD_s_Stop_Data_Now_on_City_s_Open_Data_Portal.aspx)> [Accessed 19 November 2021].

<sup>16</sup> Robinson, Randall. *The Debt: What America Owes to Blacks*. Plume, 2001.

<sup>17</sup> Truth and Reconciliation Commission - Department of Justice, 2020. *Truth and Reconciliation Commission*. [online] [Justice.gov.za](https://www.justice.gov.za). Available at: <<https://www.justice.gov.za/trc/>> [Accessed 7 February 2022].

The goal for Truth, in a Berkeley context, is to establish a common understanding of the history of Black Americans in Berkeley. This can be accomplished through educational presentations localized for the Berkeley community.

The process of Reconciliation in Berkeley entails using a panel of experts to help format and begin the framework for community dialogue. This community dialogue will be done through workshops to bring about community policy on reparations. It is important that the dialogue go beyond the City of Berkeley and promote reconciliation and repair for the harm done to Black Americans in other communities throughout the United States. In other words, the hope is that the dialogue and actions taken in Berkeley join the national conversation on Reparations, and serve as a model for other jurisdictions who wish to repair their communities.

### Reparations in Action

#### *The United States of America*

- Alaska Native Claims Settlement Act
  - Recognition of aboriginal land rights in Alaska was a sharp departure from American Indian policy in other parts of the US. Observers believe this was more a result of slow economic development within Alaska than rejection of Indian policy
  - 1971, Given Around \$1 billion + 44 million acres of land<sup>18</sup>
- Tuskegee victims of study of untreated syphilis
  - 1974 - A \$10 million out-of-court settlement was reached between the U.S. government and Tuskegee victims, Black men who had been unwitting subjects of a study of untreated syphilis<sup>19</sup>, and who did not receive available treatments<sup>20</sup>
- Japanese Internment
  - The U.S. government disbursed \$1.6 billion to 82,219 Japanese-Americans who had been interned. The Civil Liberties Act of 1988 mandated education for the public on the injustices Japanese-Americans faced<sup>21</sup>
- Rosewood Massacre<sup>22</sup>
  - The state of Florida approved \$2.1 million for the living survivors of a 1923 racial pogrom that resulted in multiple deaths and the decimation of the Black community in the town of Rosewood in 1994<sup>23</sup>
- JPMorgan Chase & Ties to Slave Trade

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<sup>18</sup>," citing Cooley, R.A. 1983. "Evolution of Alaska land policy." in Morehouse, T. A. (editor). *Alaskan Resources Development: Issues of the 1980s*. Boulder: Westview Press, pp. 13-49

<sup>19</sup> Newkirk, Vann R. II (June 17, 2016). "A Generation of Bad Blood". *The Atlantic*.

<sup>20</sup> Baker, Shamim M.; Brawley, Otis W.; Marks, Leonard S. (June 2005). "Effects of untreated syphilis in the negro male, 1932 to 1972: a closure comes to the Tuskegee study, 2004"

<sup>21</sup> Yoshida, H., 2022. *Redress and Reparations for Japanese American Incarceration | The National WWII Museum | New Orleans*. [online] The National WWII Museum | New Orleans. Available at: <<https://www.nationalww2museum.org/war/articles/redress-and-reparations-japanese-american-incarceration>> [Accessed 9 February 2022].

<sup>22</sup>Glenza, J., 2022. *Rosewood massacre a harrowing tale of racism and the road toward reparations*. [online] the Guardian. Available at: <<https://www.theguardian.com/us-news/2016/jan/03/rosewood-florida-massacre-racial-violence-reparations>> [Accessed 7 January 2022].

<sup>23</sup> "Rosewood Massacre: A Harrowing Tale of Racism and the Road toward Reparations" by Jessica Glenza, *The Guardian*, January 3, 2016.

- In 2005, Banking corporation JPMorgan Chase issues an apology for their historical ties to the slave trade. The corporation set up a \$5 million scholarship fund for Black students to attend college. The scholarship program, called Smart Start Louisiana, was likened to reparations by several commentators, including Rev. Jesse Jackson
- North Carolina & Survivors of State’s Eugenic Program
  - In 2014, the state of North Carolina set aside \$10 million for reparations payments to living survivors of the state’s eugenics program, which forcibly sterilized approximately 7,600 people<sup>24</sup>
- US Government Settlement with 17 Native American Tribes
  - In 2016, the U.S. government reached a settlement of \$492 million with 17 Native American tribes to resolve lawsuits alleging the federal government mismanaged tribal land, resources, and money<sup>25</sup>
- California & Survivors of State’s Eugenic Program .
  - In 2021, the California legislature enacted a law requesting \$7.5 million of the budget be put towards providing reparations to survivors of the state's former eugenics law, by which over 20,000 institutionalized women were forcibly sterilized<sup>26</sup>
- St. Petersburg, Florida’s City Council
  - In 2021, the City Council of St. Petersburg approved the creation of a reparations program and the implementation of an equity officer in response to a study that identified structural racism in the state. The program will establish affordable housing, educational opportunities, and other means of economic development that would contribute to an equal environment for Black residents<sup>27</sup>
- The City of Evanston, Chicago
  - Evanston created a reparations program in which victims of historical segregation were provided grants of up to \$25,000 to help purchase or mortgage a house<sup>28</sup>.

Globally

- Rwanda
  - *Rwanda*. Following the 1994 genocide in Rwanda, the government created a fund to provide financial compensation as well as support for education, agriculture, and healthcare.<sup>29</sup>

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<sup>24</sup> "North Carolina Set To Compensate Forced Sterilization Victims" by Scott Neuman, *NPR*, July 25, 2013; "Families of NC Eugenics Victims No Longer Alive Still Have Shot at Compensation" by Anne Blythe, *News & Observer* (Raleigh, N.C.), March 17, 2017.

<sup>25</sup> "U.S. Government To Pay \$492 Million To 17 American Indian Tribes" by Rebecca Hersher, *NPR*, September 27, 2016.

<sup>26</sup> California passes landmark law to provide reparations to survivors of state-sponsored forced sterilization. (2021, July 13). *Disability Rights Education & Defense Fund*

<sup>27</sup> Wright, C. (2021, December). St. Petersburg City Council approves 'reparations' to address structural racism. *Tampa Bay Times*

<sup>28</sup> Adams, C., 2022. *Evanston is the first U.S. city to issue slavery reparations. Experts say it's a noble start.* [online] nbcnews.com. Available at: <<https://www.nbcnews.com/news/nbcblk/evanston-s-reparations-plan-noble-start-complicated-process-experts-say-n1262096>> [Accessed 15 January 2022].

<sup>29</sup> Des Forges, A., 2022. *Rwanda: Justice After Genocide—20 Years On.* [online] Human Rights Watch. Available at: <<https://www.hrw.org/news/2014/03/28/rwanda-justice-after-genocide-20-years>> [Accessed 28 February 2022].

- The National Unity and Reconciliation Commission was established in Rwanda in 1999 and it was an approach that involved several elements:
  - peace education
  - leadership academy,
  - Seminars
  - national summits
  - research<sup>30</sup>
- Germany
  - In acknowledgment of The Holocaust, Germany's reparation program consists of financial compensation to the Jewish community, care for refugees in Israel, and sponsors ongoing education and remembrance<sup>31</sup>.
- South Africa
  - South Africa financially compensated those affected by the apartheid by promoting Black land ownership and permitting Black residents to participate in land economics and invest in national property<sup>32</sup>.
  - In 2003 the government decided to start distributing reparations to those affected by the apartheid<sup>33</sup>. By financially supporting the victims of the apartheid they are able to promote Black land ownership and permit Black residents to participate in land economics and invest in national property

## CURRENT SITUATION

Federal, state, and local policymakers have developed reparation proposals that aim to address the harms perpetuated by the institution of slavery and subsequent systems of oppression that have brutalized and disadvantaged Black people.

H.R.40, introduced by Congressperson Sheila Jackson Lee, calls for the creation of a commission to study and develop reparation proposals for African Americans on a federal level.<sup>34</sup> Specifically, the commission will recommend appropriate remedies based on their research into how slavery from the Trans-Atlantic and domestic "trades," along with the de jure and de facto discrimination faced by the African American community from the end of the Civil War to the present, has impacted their livelihoods. While originally introduced in 1989 by former Congressperson John Conyers, the idea is now becoming a mainstream conversation. In May 2019, Berkeley City Council adopted a resolution in support of H.R. 40.

<sup>30</sup>Department of Public Information, 2014. *The Justice and Reconciliation Process in Rwanda*. [online] un.org. Available at: <<https://www.un.org/en/preventgenocide/rwanda/assets/pdf/Backgrounder%20Justice%202014.pdf>> [Accessed 28 February 2022].

<sup>31</sup>Vigdor, N., 2021. *Germany Sets Aside an Additional \$767 Million for Holocaust Survivors, Officials Say*. [online] Nytimes.com. Available at: <<https://www.nytimes.com/2021/10/06/world/europe/holocaust-settlement-germany.html>> [Accessed 15 December 2021].

<sup>32</sup>The Irish Times, 2003. *South Africa to pay reparations to victims of apartheid*. [online] The Irish Times. Available at: <<https://www.irishtimes.com/news/south-africa-to-pay-reparations-to-victims-of-apartheid-1.472227>> [Accessed 4 November 2021].

<sup>33</sup>Thompson, G., 2003. *South Africa to Pay \$3,900 to Each Family of Apartheid Victims (Published 2003)*. [online] Nytimes.com. Available at: <<https://www.nytimes.com/2003/04/16/world/south-africa-to-pay-3900-to-each-family-of-apartheid-victims.html>> [Accessed 13 August 2021].

<sup>34</sup>Jackson Lee, S., 2019. *H.R.40 — 116th Congress (2019-2020)*. [online] <https://www.congress.gov/>. Available at: <<https://www.congress.gov/bill/116th-congress/house-bill/40/text?q=%7B%22search%22%3A%5B%22hr40%22%5D%7D&r=1&s=1>> [Accessed 4 October 2022].

On a state level, California Assemblymember Shirley Weber introduced AB 3121 in February 2020. AB 3121 would establish a task force of 8 members to study and develop reparation proposals for African Americans who are descendants of people who were enslaved in the United States.<sup>35</sup> If passed, the bill would require the task force to identify, compile, and synthesize the collection of evidentiary documentation of the institution of slavery that existed within the United States. With this analysis, the bill would recommend the form of compensation that should be awarded, the methods through which it should be awarded, and who should be eligible for this compensation. In addition, the bill would state that any authorized state-level reparations are not to be considered as a replacement for any reparations enacted at the federal level.

On a local level, Asheville City Council in North Carolina recently and unanimously passed a resolution that supports community reparations for the Black community in the City of Asheville.<sup>36</sup> The resolution marks a move that officially recognizes the injustices of centuries and attempts to right the wrongs by formally apologizing to Black residents for the City's role in slavery, discriminatory housing practices, and other racist policies throughout its history. It also directs the City Manager to establish a process within the next year to develop recommendations to boost economic mobility in the Black community. In addition, it sought to establish a new commission composed of businesses, local groups, and elected officials who will be empowered to make recommendations for reparations.

In Durham, North Carolina, the City's Racial Equity Task Force created a plan with concrete goals and measures for the City to adopt, including a plan for Durham to work in conjunction with other local governments across the country to push for a national reparations response.<sup>37</sup> In defining this aim, the task force wrote that any federal program must acknowledge who benefited from slavery, retribute the descendants of those who were enslaved, and offer closure by partnering with them to understand what fair compensation looks like.

While federal and state reparation proposals are moving through the legislatures, it is time that municipalities also address the injustices, brutality, racism, and discrimination that the Black community has faced in the past and the present. Berkeley City Council must join the conversation and take responsibility to adopt programs, policies, and practices that effectively bridge the generational wealth gap and boost economic mobility and opportunity in the Black community. The Council can take a step towards dismantling systemic oppression by creating a process for developing short, medium, and long-term solutions.

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<sup>35</sup>Weber, S., 2020. *Bill Text - AB-3121 Task Force to Study and Develop Reparation Proposals for African Americans..* [online] Leginfo.legislature.ca.gov. Available at: <[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB3121](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3121)> [Accessed 3 September 2021].

<sup>36</sup>Davis, N., 2020. *Asheville reparations resolution is designed to provide Black community access to the opportunity to build wealth - The City of Asheville.* [online] The City of Asheville. Available at: <<https://www.ashevillenc.gov/news/asheville-reparations-resolution-is-designed-to-help-black-community-access-to-the-opportunity-to-build-wealth/>> [Accessed 15 January 2022].

<sup>37</sup>Durham Racial Equity Task Force, 2020. *Report of the Durham Racial Equity Task Force: An Urgent and Loving Call to Action.* [online] Durhamnc.gov. Available at: <<https://durhamnc.gov/DocumentCenter/View/32853/FINAL-REPORT-Durham-Racial-Equity-Task-Force-72220>> [Accessed 14 November 2021].

ACTIONS/ALTERNATIVES CONSIDERED

Evanston City Council in Illinois approved a resolution to create a Reparations Committee, which would invest in housing assistance and relief initiatives as well as establish economic development programs and opportunities for Evanston's Black community. In addition, the resolution instituted a process for depositing into a Reparations Fund up to \$10 million in City tax revenues collected from the sale of recreational marijuana. The Council, or the commission that would be established through this resolution's passage, could consider using Evanston's method of funding reparations.

RATIONALE FOR RECOMMENDATION

An expert Consultant will allow the City to develop policies and invest in programs that boost opportunities for the Black community. It is time that cities and local governments join state and federal policymakers in addressing the injustices, brutality, racism, and discrimination that the Black community continues to face.

FISCAL IMPACTS OF RECOMMENDATION

Staff time to develop the structure, powers, and implementation process of the reparations commission, and create short, medium, and long-term recommendations that would boost opportunity for Berkeley's Black community.

CONTACT PERSON

Councilmember Ben Bartlett  
Commissioner James Chang  
Shakira Khonje  
Kailen Grottel-Brown  
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Susan Wengraf  
Councilmember District 6

02a.31

CONSENT CALENDAR

March 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf (author)  
Subject: Support for AB 1755 (Levine)

RECOMMENDATION

Adopt a Resolution in Support of AB-1755: Homeowners Insurance: Home Hardening (Levine). AB-1755 will require, beginning in 2025, an insurance provider licensed in California to issue an insurance policy to a homeowner that has taken science-based actions to harden their property from wildfire risk. This legislation would also create the Wildfire Protection Grant Program under the Department of Insurance that would administer grants to residential property owners of up to \$10,000 to help pay for costs associated with home hardening and wildfire mitigation improvements. Send copies of the Resolution to Assembly Member Levine, Assembly Member Wicks, Senator Skinner, Governor Newsom and Insurance Commissioner Lara.

FINANCIAL IMPLICATIONS

None

BACKGROUND

California's wildfires have resulted in loss of life and catastrophic damage to communities and the environment. As Californians try to protect themselves from future loss, they are facing insurance companies who are cancelling policies or are increasing deductibles and premiums to the point where the policy is unaffordable or insufficient. Residents in Berkeley's VHFHZ have experienced non-renewal of insurance policies on a scale never seen before.

AB-1775 resolves the often-arbitrary practice of insurance policy non-renewal or cancellation of a homeowner who may live in an area considered at risk to wildfire. Continued drought conditions, rising global temperatures and other impacts of the climate crisis are quickly turning most of California into a high-risk wildfire zone. Without legislation, Californians could find their homes uninsurable.

AB-1755 would require insurance carriers to issue home insurance policies to homeowners who have hardened their home against fire, regardless of the home's location. The bill would also create the Wildfire Protection Grant Program to help homeowners pay for costs associated with wildfire mitigation improvements, up to \$10,000 per home. AB-1755 would be effective January 1, 2025.

ENVIRONMENTAL SUSTAINABILITY

AB-1755 encourages homeowners in fire prone areas to increase their wildfire mitigation efforts in order to be eligible to be insured. Home hardening is one strategy to help protect property from the spread of wildfire. A key source of air pollution, wildfires release large quantities of carbon dioxide, carbon monoxide and fine particulate matter into the atmosphere. Resulting air pollution can cause a range of health issues, including respiratory and cardiovascular problems. Efforts to lower the risk of out of control wildfires align with Berkeley's environmental sustainability goals.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

- 1: Resolution
2. [AB-1755](#)

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

CITY OF BERKELEY SUPPORTS AB-1755 (LEVINE)

WHEREAS, California's wildfires have resulted in loss of life and catastrophic damage to communities and the environment; and

WHEREAS, As Californians try to protect themselves from future loss, they are facing insurance companies who are cancelling policies or are increasing deductibles and premiums to the point where the policy is unaffordable or insufficient; and

WHEREAS, Residents in Berkeley's VHFHZ have experienced non-renewal of insurance policies on a scale never seen before; and

WHEREAS, AB-1775 resolves the often-arbitrary practice of insurance policy non-renewal or cancellation of a homeowner who may live in an area considered at risk to wildfire; and

WHEREAS, Continued drought conditions, rising global temperatures and other impacts of the climate crisis are quickly turning most of California into a high-risk wildfire zone; and

WHEREAS, Without legislation, Californians could find their homes uninsurable.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it unanimously supports AB-1755.

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

**ASSEMBLY BILL**

**NO. 1755**

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**Introduced by Assembly Member Levine**

**February 01, 2022**

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An act to add Sections 675.2 and 2033 to the Insurance Code, relating to property insurance.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1755, as introduced, Levine. Homeowners' insurance: home hardening.

Existing law creates the Department of Insurance to regulate the business of insurance. Existing law generally regulates classes of insurance, including homeowners' insurance. Existing law prohibits an insurer, for one year after the declaration of a state of emergency, from canceling or refusing to renew a residential property insurance policy solely because the property is in an area in which a wildfire occurred.

This bill would require an admitted insurer licensed to issue homeowners' insurance policies to issue a policy to a homeowner who has hardened their home against fire, regardless of the home's location, on and after January 1, 2025, and would require an insurer to make conforming changes to its internet website and print materials on or before July 1, 2025. The bill would create the Wildfire Protection Grant Program, under which the department would be required to award grants of up to \$10,000 each to help homeowners pay for costs associated with wildfire mitigation improvements. The bill would require the department to promulgate regulations to define home hardening for required issuance of homeowners' insurance policies and to administer the Wildfire Protection Grant Program.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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## BILL TEXT

### THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

#### **SECTION 1.**

Section 675.2 is added to the Insurance Code, to read:

##### **675.2.**

(a) On and after January 1, 2025, an admitted insurer licensed to issue homeowners' insurance policies shall issue a policy to a homeowner who has hardened their home against fire, regardless of the home's location. The insurer shall make conforming changes to its internet website and print materials on or before July 1, 2025.

(b) On or before January 1, 2024, the department shall promulgate regulations to define home hardening for purposes of subdivision (a).

#### **SEC. 2.**

Section 2033 is added to the Insurance Code, to read:

##### **2033.**

(a) The Wildfire Protection Grant Program is hereby created to help homeowners pay for costs associated with wildfire mitigation improvements.

(b) The department shall award grants of up to ten thousand dollars (\$10,000) each to homeowners under the Wildfire Protection Grant Program.

(c) The department shall promulgate regulations to administer the Wildfire Protection Grant Program.





Susan Wengraf  
Councilmember District 6

02a.32

CONSENT CALENDAR  
March 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf (Author), Councilmember Taplin (Co-Sponsor),  
Councilmember Bartlett (Co-Sponsor)  
Subject: Support for AB-1594 Firearms: Civil Suits

RECOMMENDATION

Adopt a Resolution in support of AB-1594 (Assembly Member Ting) which would allow gun manufacturers to be sued for creating a public nuisance if their failure to follow federal, state or local law caused injury or death or if the gun industry member engaged in unfair business practices.

Send the Resolution to Assembly Members Ting, Gipson, Ward and Wicks along with Senator Skinner and Governor Newsom.

FINANCIAL IMPLICATIONS

None

BACKGROUND

AB1594 authorizes private citizens harmed by illegal gun use to sue manufacturers, distributors and sellers of firearms. The bill is a direct response to the Texas scheme to insulate its abortion ban through a law authorizing private citizen suits against essentially anyone who helps a woman seek access to abortion.

Governor Newsom stated “if states can now shield their laws from review by the federal courts that compare assault weapons to Swiss Army knives, then California will use that authority to protect people’s lives, where Texas used it to put women in harm’s way.”

The bill is still in its very early stages, but as it stands in its current form, AB1594 proposes adding the following language to the California Civil Code: “A gun industry member shall have created or maintained a public nuisance, as defined in Section 3480, if their failure to follow federal, state, or local law caused injury or death or if the gun industry member engaged in unfair business practices.”

AB1594 will effectively permit lawsuits against members of the gun industry who failed to follow firearm laws, thereby creating and/or maintaining a public nuisance.

The Protection of Lawful Commerce in Arms Act (“the Act”), passed in 2005, generally protects members of the gun industry from being sued for damages a person experiences as a result of the misuse of firearms. However, the law does not protect against lawsuits brought as a result of a violation of state law.

As such, any member of the gun industry who breaks California laws will not be shielded by the Act and can be sued under AB1594 if their illegal act involving a firearm caused damages to an individual.

Gun violence is a public health crisis in the United States. A leading cause of premature death in the U.S.<sup>1</sup>, Americans account for just 4% of the world’s population but 35% of global firearm suicides<sup>2</sup>. On average, at least 200 Americans are non-fatally injured with a firearm each day. The majority of these injuries are gun assaults<sup>3</sup>. Gun homicides and assaults disproportionately impact historically underserved communities of color. Black Americans are 10 times more likely than white Americans to be murdered with a gun<sup>4</sup>.

The City of Berkeley has a history of promoting gun safety. In early 2004, the Berkeley Police Department provided 1,100 free firearm safety kits to local residents through a partnership with Project ChildSafe<sup>5</sup>. The City Council supported Governor Newsom’s “Safety for All” 2016 Ballot Initiative which included a series of gun reform measures<sup>6</sup>. Council adopted a Safe Storage of Firearms Ordinance, adding BMC Chapter 13.69<sup>7</sup>, in November 2018, and in October 2021, adopted a Ghost Gun Ordinance<sup>8</sup> in order to eliminate non-serialized, untraceable firearms in the City of Berkeley.

AB-1594 aligns with Berkeley’s gun safety goals by encouraging gun manufacturers to follow federal, state or local laws and to engage in fair business practices. If they don’t, and someone is injured or killed by their gun, they can be sued for creating a public nuisance.

## ENVIRONMENTAL SUSTAINABILITY

No direct impact on environmental sustainability.

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<sup>1</sup> <https://www.apha.org/topics-and-issues/gun-violence>

<sup>2</sup> Mohsen Naghavi, et al., “Global Mortality from Firearms, 1990–2016,” *JAMA* 320, no. 8 (2018): 792–814.

<sup>3</sup> Based on three most recent years of complete data (2013, 2014, and 2016). Agency for Healthcare Research and Quality, Healthcare Cost and Utilization Project, last accessed June 25, 2020, [hcupnet.ahrq.gov](https://hcupnet.ahrq.gov).

<sup>4</sup> Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), “Fatal Injury Reports,” last accessed June 24, 2020, <https://www.cdc.gov/injury/wisqars>. Calculations were based on five years of the most recently available data: 2014 to 2018.

<sup>5</sup> <https://www.cityofberkeley.info/police/newsandpress/2004files/ChildSafe%20Gun%20Locks.html>

<sup>6</sup> [Safety for all](#)

<sup>7</sup> [Safe Storage Ordinance](#)

<sup>8</sup> [Ghost Gun Ordinance](#)



CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

2: [AB-1594](#)

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

THE CITY OF BERKELEY SUPPORTS AB-1594

WHEREAS, Gun violence is a public health crisis and a leading cause of premature death in the United States; and

WHEREAS, Americans account for just 4% of the world's population but 35% of global firearm suicides: and

WHEREAS, Gun homicides and assaults disproportionately impact historically underserved communities of color. Black Americans are 10 times more likely than white Americans to be murdered with a gun; and

WHEREAS, The City of Berkeley has a history of striving for gun safety legislation to protect its residents, including adopting a Safe Storage of Firearms Ordinance in 2018 and a Ghost Gun Ordinance in 2021; and

WHEREAS, AB-1594 would further gun safety by allowing gun manufacturers to be sued for creating a public nuisance if their failure to follow federal, state or local law caused injury or death or if the gun industry member engaged in unfair business practices.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it strongly supports AB-1594.

BE IT FURTHER RESOLVED that the Council appreciates the work of Assembly Members Ting, Gipson, Ward, Berman, Bloom, Levine and Quirk, and Senators Newman and Wiener for authoring AB-1594 and their efforts in reducing gun violence.

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

**ASSEMBLY BILL**

**NO. 1594**

**Introduced by Assembly Members Ting, Gipson, and Ward  
(Coauthors: Assembly Members Berman, Bloom, Levine, and Quirk)  
(Coauthors: Senators Newman and Wiener)**

**January 03, 2022**

An act to add Part 2.5 (commencing with Section 3450) to Division 4 of the Civil Code, relating to firearms.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1594, as introduced, Ting. Firearms: civil suits.

Existing law defines a public nuisance and provides that a public nuisance may be remedied by an indictment or information, a civil action, or abatement. Existing law also regulates the manufacture, sale, and marketing of firearms.

This bill would specify that a gun industry member has created or maintained a public nuisance, as defined, if their failure to follow federal, state, or local law caused injury or death or if the gun industry member engaged in unfair business practices.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS  
FOLLOWS:

**SECTION 1.** Part 2.5 (commencing with Section 3450) is added to Division 4 of the Civil Code, to read:

**PART 2.5. Civil Suits Relating to Firearms**

**3450.** A gun industry member shall have created or maintained a public nuisance, as defined in Section 3480, if their failure to follow federal, state, or local law caused injury or death or if the gun industry member engaged in unfair business practices.



02a.33

Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
March 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf (Author) and Councilmember Hahn (Author)  
Subject: 2022 Virtual Holocaust Remembrance Day Program: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 each from Councilmember Wengraf and Councilmember Hahn to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf's and Hahn's discretionary Council Office Budgets and all other Councilmembers who would like to contribute, allows the City of Berkeley to invite the community to the City's 19<sup>th</sup> Annual Holocaust Remembrance Day virtual program, created by the community with City Council support. In light of the vulnerability of many of the attendees, and the continuing threat of the COVID pandemic, this year's program will be held virtually on April 28, 2022.

FINANCIAL IMPLICATIONS

No General Fund impact: up to \$500 is available from contributing Councilmember's Council Office Budget discretionary accounts.

BACKGROUND

The City of Berkeley's Annual Holocaust Remembrance Day program has been supported by the City Council since it was initiated by former Councilmember Kriss Worthington in 2002. The event has occurred annually, except in the year 2020 when the pandemic hit without enough time to pivot to a virtual program. Berkeley's Holocaust Remembrance Day has become a treasured event for both Holocaust Survivors, family members and the Bay Area community as the only secular, city-sponsored program in the region. The community program invites attendees to honor those who perished in the Holocaust and those you survived. With rising hate incidents and hate crimes in our region and nation-wide, it is critical that we hear the stories of survivors of the Holocaust and re-affirm our resolve to never forget.

We are asking for The Mayor and Councilmember's generous support to continue the legacy of the City of Berkeley's Annual Holocaust Remembrance Day in 2022.

ENVIRONMENTAL SUSTAINABILITY

No impact

[Title of Report]

CONSENT CALENDAR  
March 22, 2022

CONTACT PERSON

Councilmember Wengraf  
Attachment: 1. Resolution

Council District 6

510-981-7160

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

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

WHEREAS, Councilmember Wengraf and Councilmember Hahn have surplus funds in their office expenditure accounts and will contribute \$500 each, and invite the Mayor and other Councilmembers to join them in contributing; and

WHEREAS, a California nonprofit tax-exempt corporation, The Jewish Community Center, serves as the fiscal sponsor of the Holocaust Remembrance Day program and will receive funds in an amount up to \$500 per contributing Councilmember's discretionary account; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of providing a community program supporting Holocaust survivors, community recognition and education about the Holocaust and unity among Berkeley residents. The grants will provide funds to produce the virtual event.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget, up to \$500 per office, shall be granted to the Jewish Community Center to fund the City of Berkeley's virtual 19<sup>th</sup> Annual Holocaust Remembrance Day program on April 28, 2022.







CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
DISTRICT 7

02a.34

CONSENT CALENDAR  
March 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Rigel Robinson (Author) & Councilmember Sophie Hahn (Co-Sponsor)  
Subject: Budget Referral: Telegraph-Channing Garage Elevator Repairs

RECOMMENDATION

Refer \$3.6M to the June 2022 budget process for urgent repairs to the Telegraph-Channing Garage elevators. Additionally, refer to the City Manager to pursue all available funding opportunities for this project, including American Rescue Plan Act funds.

BACKGROUND

The Telegraph-Channing Mall is a City-owned property in the heart of the Telegraph district, with commercial space, garage parking, public restrooms, and two elevator shafts. The garage's elevators are past their useful life, have experienced periodic water intrusion, and are generating almost daily requests for service to address their unsatisfactory performance. The required renovations include interior and exterior upgrades, mechanical equipment and electrical system overhauls, and sealing of the elevator shaft from water intrusion.

The City's Public Works Department has completed 50% design and developed a project cost estimate of \$3.6M. However, the project continues to be on hold until funding becomes available, meaning that the unreliable elevators will continue to impact the commercial tenants and the visitors who park in the garage.

The Friends of the Berkeley Public Library, operator of the Channing Bookstore in the garage, has expressed particular concern about the condition of the elevators. Community members and volunteers regularly bring book donations to the store and are forced to carry heavy boxes of donations down stairs or ramps when the elevators are out of service.

The current state of the elevators is an ADA issue and a liability for the City. Access to the garage is compromised, especially for seniors and disabled people, and there is the potential for people to get stuck in the elevators when they break down. This has occurred on at least one occasion. Therefore, this is an urgent situation that must be addressed by the City as soon as fiscally possible.

FINANCIAL IMPLICATIONS

\$3.6M for design and construction, accounting for escalating costs and existing supply chain issues. Potential funding sources include the General Fund and American Rescue Plan Act funds, given that the Off Street Parking Lot Fund is not a viable funding source due to the decline in parking revenue. Council should also take into consideration the current costs of frequent service requests borne by the City.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Angie Chen, Legislative Assistant



Disaster and Fire Safety Commission

ACTION CALENDAR  
March 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Disaster and Fire Safety Commission  
Submitted by: Jose Luis Bedolla, Chairperson, Disaster and Fire Safety Commission  
Subject: Recommendation to Identify High Risk Safety Areas that are Exempt from State Imposed Housing Increases Due to Public Safety Considerations

RECOMMENDATION

The Disaster and Fire Safety Commission (DFSC) recommends that the City Council define the location of those areas in Berkeley in which residents are at high risk due to public safety considerations and use this information to help guide the Housing Element process so that greater density and development in those areas is avoided to the extent reasonably possible. These areas include:

1. Fire Zones 2 and 3 with narrow (26 feet or less in width), winding streets, or those with “pinch-points” that do not allow emergency vehicle access and safe evacuation routes for residents in the event of a wildfire; and
2. Locations within the Alquist-Priolo (Hayward Fault) Earthquake Zone identified by the California Geological Survey; and
3. Locations within the Liquefaction or Landslide Zones identified by the California Geological Survey and areas associated with creeks, above and underground and subject to the impacts of Sea Level Rise.

A. Establish a Priority: The DFSC requests that the identification process begin with items 1 and 2 listed above. State legislation mandating increased development in these areas is effective January 1, 2022, and the identification of the boundaries of areas where residents are at high risk in Berkeley should be completed prior to that date. Item 3 is also important, but as a practical matter, it may take longer to review. Therefore, completing identification may have to be done in steps over time. An additional consideration in giving priority at this time to areas affected by fire is that we are now in the “traditional” wildfire season with the clear statewide warning that today’s wildfires are both more frequent and intense and are being fueled by the State’s continued severe drought with no relief in the foreseeable future.

B. Establish an Easy-to-Understand Map Format: The DFSC requests that the identification information presented be in an easy-to-understand map format that is available to the public and kept in an up-to-date format as the process progresses. This

format should; within technical capability, clearly identify streets that are boundaries to the public safety areas. The California Geological Survey already maintains property-specific maps that address Items 1 and 2 above. The DFSC requests that the City produce similar maps for the other hazardous areas as they are identified.

C. Need for Timely Action: The Council has recently taken action to indicate their intent to begin a process to complete the State required new Housing Element for the City's General Plan. Establishing high-risk public safety areas is a foundational tool in the work that needs to be done to complete a new Housing Element.

D. Provides an Opportunity to Inform the Public: Defining high-risk public safety zones not only informs residents about the nature of the risks but encourages individuals and groups to be part of the effort to reduce those risks.

#### FISCAL IMPACTS OF RECOMMENDATION

Exact costs and staff time in changing the scope of work that has already been planned are to be determined.

#### CURRENT SITUATION AND ITS EFFECTS

There is broad agreement that Berkeley's Wildfire Urban Interface (WUI) areas, the existence of the Hayward Earthquake Fault and landslide areas present serious safety concerns for residents.

Added to these concerns is the emerging information regarding the stability of land subject to Sea Level Rise. These safety risks should be a bedrock consideration that helps guide the Housing Element process so that greater density and development in these areas can be avoided to the extent reasonably possible. In undertaking that process, the boundaries of high-risk public safety areas must be identified.

The CalFIRE map of Berkeley's "Very High Fire Hazard Severity Zone" is reflected in the map shown in Attachment 1. The area to the right of the dotted line drawn through the gray area reflects a portion of Fire Zone 2 and all of Fire Zone 3, the ES-R zoned area known as Panoramic Way.

The portion of the gray area to the left of the dotted line is the rest of Fire Zone 2. The gray area indicates all of Fire Zone 2. See Attachment 2 which shows this without the CalFIRE dividing line drawn through Fire Zone 2 that is shown in Attachment 1.

Around 2008, CalFIRE recommended and published maps for the Very High Fire Hazard Severity ones in what was called Local Responsibility Areas (LRAs). According to Fire Department staff, Berkeley found that while CalFIRE maps approximated the boundaries historically considered to be at risk for wildfire in Berkeley, there were areas that should be included under the LRA provision. This means that Berkeley's High-Fire risk Areas are a combination of Fire Zone 3 and all of Fire Zone 2 as reflected in the Attachment 2 map.

An additional reason to clarify the boundaries of public safety areas is found in a last minute addition to the new State housing legislation that provides that an urban lot split in a single-family zone may be denied if the building official makes a written finding, based upon a preponderance of the evidence that the proposed housing development would have a specific, adverse impact on public health and safety or on the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Having to consider this provision means that staff will have to have readily available information on a variety of factors. Identifying the boundaries of high-risk safety areas would be an essential part of the information which would be needed.

Since this recommendation pertains to more than wildfire areas, it is recommended that generally such areas should be known as “high-risk public safety areas.”

### BACKGROUND

In response to a directive from Governor Newsom, the Association of Bay Area Governments assigned the task of producing 441,176 new housing units to cities and counties in the Bay Area. Berkeley’s share is to provide from 7,730 to 9,025 new Rental Housing Needs Allocation (RHNA) goals over the next eight years. RHNA goals include percentages of groups ranging from very low income to above moderate-income levels which must be met. To accomplish this, Berkeley is currently engaged in an 18-month process to update the Housing Element of our General Plan. The statutory deadline is that the result must be submitted to the California Department of Housing and Community Development by January 31, 2023. The Housing Element must include an inventory of sites where the new units will be located. Overall, the General Plan guides our future growth, and in addition to the Housing Element, it includes such other matters as preparation for disaster, natural and man-made. Goal 6 in the current Plan states that the intent is to make Berkeley a disaster resistant community that can survive, recover from, and thrive after a disaster.

Throughout all of the discussions that have occurred about disasters, it is recognized that certain areas are considered to be high-risk because of wildfires, but without confirmation of the exact boundaries of those areas. There has also been consistent mention of other public safety considerations such as Sea Level Rise, liquefaction and creeks, but no specific consideration regarding the impact of additional growth on public safety in these and other areas has followed. Land has already been identified by the City as being subject to Sea Level Rise and liquefaction. In March 2021, a new study indicated that land along our coast was currently sinking due to the weight of current development on non-engineered landfill.

Clearly the approval of a new Housing Element is a major task that must involve robust citizen participation by Berkeley residents. DFSC believes that we need to start by defining the geologic and other areas that pose a public safety threat. We must act immediately regarding the high-risk fire hazard areas as indicated in Items 1 and 2 on

our list and any inability to develop maps for the hazards listed in Item 3 on a timely basis should not delay identification of other areas as we move through the list.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Reducing Berkeley's contribution to climate change impacts is a large task given the State mandate to produce a new Housing Element that meets the assigned RHNA numbers. Ignoring the identification of high-risk public safety zones is not the answer. Approving multi-family buildings that are accessible to public transportation, but still offer tenant parking and which do not contain affordable housing goals at all levels is not the answer. These are issues along with others which must be sorted out in the Housing Element approval process, but which do not impact the need for boundary identification of high-risk public safety areas.

#### RATIONALE FOR RECOMMENDATION

DFSCs recommendation is based on the concept that planning future growth is built on a foundation that identifies those areas which contain the elements that place both residents and the future of the City at risk. Increasing population in high-risk public safety zones should not be delayed because of side issues such as street parking, enforcement or past history. We need to look at this issue from a current comprehensive planning perspective that allows growth in a resilient city that can survive and thrive before, during and after a disaster.

#### ALTERNATIVE ACTIONS CONSIDERED

There is no real alternative to undertaking an identification process that includes all parts of the city.

#### CITY MANAGER

The City Manager recommends referring this item the budget process.

Staff concurs that public safety considerations are a critical factor in the development and implementation of the City's Housing Element Update. Already in alignment with the Disaster and Fire Safety Commission's recommendation, the City's Disaster Preparedness and Safety Element of the General Plan and Local Hazard Mitigation Plan provide substantial guidance towards hazard identification and public safety considerations. The City's adherence with timelines and requirements for the Housing Element Update ensure that safety of residents is prioritized when identifying housing opportunity sites and affirmatively furthering fair housing. Furthermore, the statutory deadline for Housing Element certification and a requirement for Annual Progress Reports on the Housing Element State ensure timely action for implementation.

The Housing Element Update requires public input and provides the community with a level of understanding about the project process and materials. This outreach includes residents and community members, discussing program and policies that can reduce risks due to natural hazards. The community is engaged in the Housing Element Update and has provided valuable feedback at two City Council Worksessions (9/21/21

and 12/9/21) and two public workshops (10/27/21 and 1/27/22). The next City Council Worksession will be held on 3/15/22, during which time the public will have an opportunity to address Council.

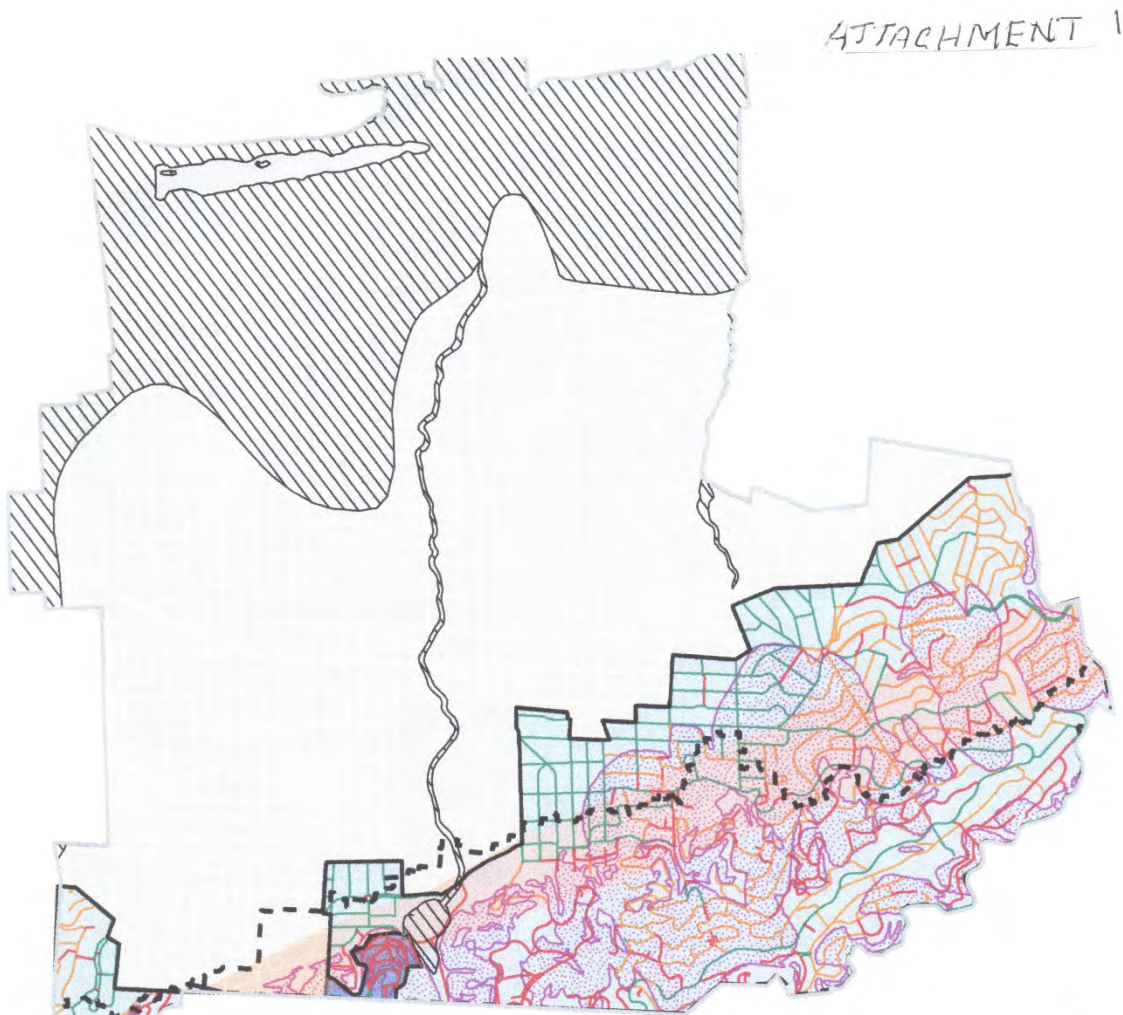
Per State law, the Disaster Preparedness and Safety Element of the General Plan needs to be updated prior to 2024. On January 25, 2022, City Council referred to the City Manager an update of the Disaster Preparedness and Safety Element. Staff will be requesting funding during the FY2022-2024 budget cycle to fund this project which will ensure that public safety considerations are kept up to date as the City continues to reach its goals on housing.

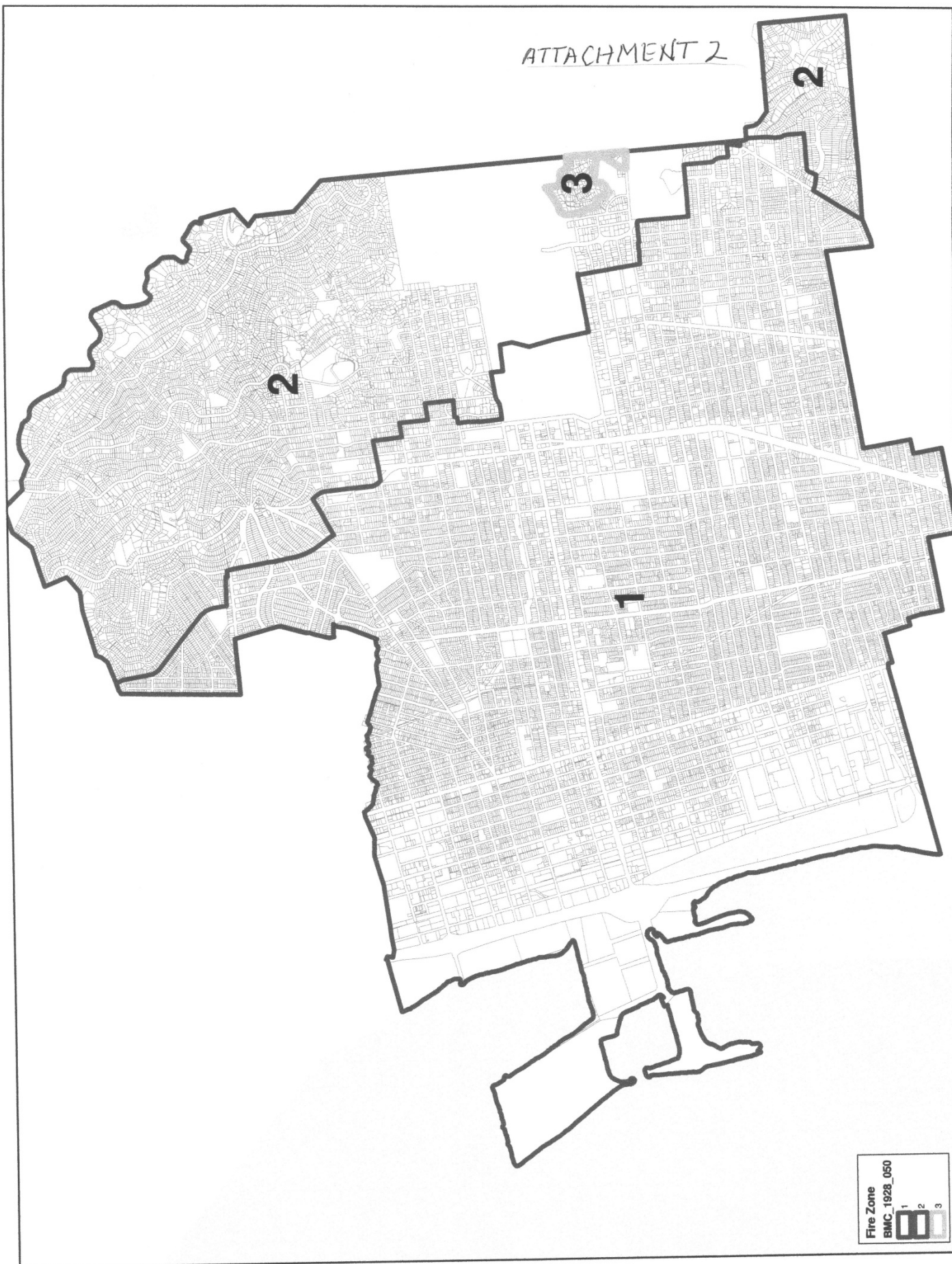
CONTACT PERSON

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

Attachments:

- 1: Hillside Conditions Map
- 2: Berkeley Fire Zones Map









Kate Harrison  
Vice Mayor, District 4

02a.38

CONSENT CALENDAR  
March 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Harrison  
Subject: Referral to the Budget and Finance Policy Committee and Budget Referral to Consider General Fund Strategies and Related Fiscal Policies for Funding Capital Improvements, in Particular Street, Sidewalk, Micromobility and Transit Infrastructure

RECOMMENDATION

1. Refer to the Council Budget and Finance Policy Committee to explore specific options for improving how and to what extent the City's Capital Improvement Program (CIP) is funded, to include but not limited to the following potential strategies:
  - a. investigate historic assumptions and policies regarding secured-property and transfer tax revenues;
  - b. consider a one-time allocation of a certain percentage of salary savings accruing from historic vacancies that are not likely to be filled in the short-term;
  - c. consider the sale of underutilized city-owned property such as the former Premier Cru building;
  - d. consider prospective Public Works plan to charge utilities for pavement impact.
2. Refer to the June 2022 Budget process \$[ ] to be transferred to the CIP based on Committee consideration and any conclusions.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The City is facing a historic crisis of underinvestment in its infrastructure. The Mayor formed the Vision 2050 Task Force and spearheaded placing the \$100 million T1 Infrastructure Bond (leveraging millions more in other funding) to begin to address these long-standing capital needs. To date, \$40M in T1 bonds were spent, with an additional \$23M from grants and special funds. Nonetheless, the City's infrastructure needs remain vast with perhaps the most visible area of underinvestment being in the City's streets and sidewalks.

A Metropolitan Transportation Commission report warns that Berkeley's overall paving condition is "At Risk," meaning on the cusp of falling into "Failing" category. The current five-year paving plan is the result of historic deferred maintenance and underfunding.

Residential streets across the entire city are largely categorized as failing and bicycle, pedestrian, and Vision Zero projects are severely underfunded. Meanwhile, neighboring

cities in the Bay Area, such as Richmond, El Cerrito, San Francisco have “Excellent/Very Good” to “Fair/Good” streets conditions.

The Public Works Department has advised that ongoing funding under the rolling 5-Year Street Plan will not be enough to stabilize Berkeley’s streets. In fact, if street investment is not increased, Public Works warns that the City could face \$1 billion in future repair costs as the cost of deferred paving maintenance increases exponentially each year. Addressing the ongoing maintenance gap, regardless of new bonding for on-time fixes, is key to addressing the crisis.

At the Council’s direction, the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Policy Committee has spent two years investigating, the overall paving situation, paving policies, and multi-faceted paving funding/bonding solutions. From this work, a number of potential solutions have arisen including allocating the TNC tax for priority bike, pedestrian, and transit street upgrades and exploring charging fees to garbage collection agencies and private companies for road damage. In addition, the FITES committee explored the idea of bonding to stabilize citywide PCI. The Council is also currently considering placing an infrastructure bond and/or parcel tax on the November, 2022 ballot. However, long-term bonds are not the best way to pay for road maintenance as opposed to capital reconstruction and every day we wait, more roads fall into an unusable state. From discussion with City staff and the Public Works Commission, it is clear that in addition to other funding strategies, the maintenance problem cannot be solved without additional investment from the City’s General Fund.

It is therefore in the public interest to provide instructions to the Budget and Finance Policy Committee to explore specific avenues for identifying appropriate General Fund monies.

### BACKGROUND

In preparing its biannual budgets, there appears to be some underestimation of City secured-property and transfer tax revenues. While there is merit to conservative estimates, current needs – especially one-time capital needs – should be considered for prioritization if funding is in fact available.

Future year estimates should include data of historical trends, for example for the past three years. In fact, the City has a vast data set of historic revenue numbers going back much further than that which should be used to provide it with a rough sense of future performance.

For example, the secured-property tax is one of the City’s more consistent revenue streams; it has remained relatively steady even during recessions. The County Assessor’s estimates have been closer to actual performance than those from the City, and they are available in June when the budget is finalized.



Council needs accurate revenue estimates when it is finalizing the biennial budget in June. Learning after the fact, approximately 17 months later, that secured property tax revenues were underestimated is likely not conducive to good budgeting practices.<sup>1</sup>

Historically, Council policy has called for using the first \$12.5 million in real property transfer taxes for general purposes, with the balance going to capital needs. In FY 2021, in order to account for unanticipated needs due to COVID, the Council dedicated the first \$16.5 million in transfer taxes to general purposes. In other years, it is not clear if the entire amount over the \$12.5 million was devoted to capital needs. The transfer tax, while more volatile than regular property taxes, has been on a significant upward trend, and the City enjoys equally robust historic data.

<sup>1</sup> The 17 months, referred to is based on the following timeline:

1. On June 30, 2021 the FY21/22 is set. At that time Finance has the Assessed Values for FY21/22 and knows how much the secured property tax revenues will be based on the Assessor's numbers.
2. One year later, the fiscal year closes on June 30, 2022, and FY21/22 closes.
3. 5-6 months later, the Year-End financials are presented to Council approximately 17 months after the budget was finalized.

**Historic Transfer Tax (TT) Variance in Context of CIP**

|                                     | FY 2018                | FY 2019             | FY2020              | FY2021              |
|-------------------------------------|------------------------|---------------------|---------------------|---------------------|
| Adopted TT<br>(June Budget Book)    | \$ 12,500,000          | \$12,500,000        | \$ 12,500,000       | \$ 16,500,000       |
| Actual TT<br>(Nov. Year End Update) | \$ 18,911,368.00       | \$ 19,952,981       | \$ 22,095,507       | \$ 21,469,955       |
| TT Variance                         | <b>\$ 6,411,368.00</b> | <b>\$ 7,452,981</b> | <b>\$ 9,595,507</b> | <b>\$ 4,969,955</b> |

More funds need to be devoted to infrastructure at the adoption of the June budget rather than waiting for reconciliation in November. This will allow capital planning to be improved at the onset each budget cycle. Therefore, Council and staff would be less likely to defer further contributions to the CIP given competing priorities as has been the case in recent years when the Council suspended its policy of allocating excess Transfer Tax revenues to the CIP.

This item refers to the Budget and Finance Committee to explore whether it is possible allocate all reasonably-derived revenue estimates ahead of the June 2022 bi-annual budget process rather than wait until the November Annual Appropriation Ordinance and to dedicate a certain amount of funding directly to the CIP for paving maintenance and other critical infrastructure needs. Reconsidering existing policies could result in better budgeting, and ultimately result in a more transparent budget process and conservative AAO process. This could encourage Council to rethink certain existing programs in light of new programs, visions or needs, as well as to encourage the community and Council to seek potential new revenue sources.

In addition, this item refers to the Committee to consider whether it makes sense to sell certain property assets such as Premier Cru, which have been underutilized in order to make a one-time emergency contribution to the maintenance fund ahead of potential new paving bonding. This also item encourages the Budget Committee to budget prospectively with respect to new revenues as a result of an ongoing Public Works initiative to charge utilities for their outsized impact on our roads. Finally, given historic vacancies across the City (a national phenomenon), to the extent that vacancies will likely not be filled in short-term, the Committee should consider allocating a certain percentage to the CIP. While it is the first policy of the Council to support the community with services and to support understaffed workers, the City might not be able to fill some positions immediately.

FISCAL IMPACTS OF RECOMMENDATION

Impact on General Fund will be determined by any Committee recommendations and any Council allocations.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Depending on how funds are spent, a fully capitalized Capital Improvement Program can help further accelerate mode shifts away from fossil fuel vehicles.

CONTACT PERSON

Vice Mayor Kate Harrison, (510) 981-7140





Kate Harrison  
Vice Mayor, District 4

02a.39

CONSENT CALENDAR  
March 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Harrison  
Subject: Referral to the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee Policy Committee to Consider Strategies and Make Recommendations to Council and Staff to Ensure Potential Infrastructure Bond Expenditure Is Consistent With Climate Action Goals and Other Environmental Policies

RECOMMENDATION

Refer to the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Policy Committee Policy Committee to consider strategies and make recommendations to the Council and staff to ensure that potential infrastructure bond is consistent with Climate Action goals and other environmental policies.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The City is facing a historic crisis of underinvestment in its infrastructure. Perhaps the most visible area is the City's streets, sidewalks, and other infrastructure vulnerable to climate change.

Council agreed at its January 20, 2022 special Council meeting to provide direction to staff to explore and prepare a draft \$300-\$600 million infrastructure bond and/or parcel tax ahead of the November 2022 election.

While the condition of the City's streets is of paramount concern to the Berkeley community, in the spirit of the Vision 2050 report, the Climate Action Plan, Climate Emergency Declaration and various other policies, Berkeley cannot afford to merely rebuild the same infrastructure dating from the past century. Rather, new expenditures on infrastructure should holistically contribute to building a Berkeley of the future, which is much less carbon intensive, greener, modern, and more equitable. Doing so will require intentional policies and consideration.

To this end, it is in the public interest to refer to the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Policy Committee Policy Committee to consider strategies and make recommendations to the Council and staff to ensure that potential infrastructure bond is consistent with Climate Action goals and other environmental policies.

## BACKGROUND

At the Council's direction, the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Policy Committee has spent two years investigating the overall paving situation, paving policies, and multi-faceted paving funding/bonding solutions. As part of its work, the Committee collaborated with staff and the Public Works Commission to update the City's Paving Policy to include certain environmental and green paving considerations. However, the Paving Policy was largely adopted in light of status quo paving funding levels, and was not designed for a potential once in a generation opportunity to envision the City's infrastructure.

If carefully crafted, the Bond could simultaneously stabilize PCI and include critical complimentary upgrades that support health, safety, and the environment/climate.

For example, the Committee should consider investigating and making recommendations with respect to the following concepts:

- **Future-proofing / Curbside EV** Integrate conduit and infrastructure to support public curbside EV charging, fiber optic cables, and electrification infrastructure upgrades (e.g., transformers) with paving work. Work with regional agencies such as EBCE to explore opportunities to leverage capital and other resources;
- **Green Paving Techniques** Explore how the bond expenditures can be structured to maximize durability/lifecycle and minimize greenhouse gasses, to include concrete, pavers and potentially stabilized gravel or hybrid. For example, Marin Avenue has not been substantially paved for nearly a half century because of its design;
- **Efficiency** Consider strategies to pave whole neighborhoods or sections of the City at once to capitalize on equipment and labor economies of scale, and as an opportunity to make projects attractive to unionized labor;
- **Bike/Pedestrian/Transit Upgrades** Explore the maximum amount of mobility goals we can accomplish as part of the Bond and how to best achieve Vision 2050, Vision Zero, and Climate Action goals;
- **Trees and Bio Diversity** Explore how to integrate street trees and plants into upgrades to improve local air quality and urban canopy as well as reduce heat islanding;
- **Road Diets** Explore narrowing certain wider streets by extending curbs and reducing maintenance and paving costs overtime, calming traffic, and reducing embodied greenhouse gases;
- **Car-free Zones** Carefully, strategically, and equitably consider whether and which streets might be made vehicle-free (e.g., Telegraph) except for emergency, certain delivery, and senior/disabled access;



Referral to the Facilities, Infrastructure, Transportation, Environment & Sustainability  
Policy Committee Policy Committee to Consider Strategies and Make  
Recommendations to Council and Staff to Ensure Potential Infrastructure Bond  
Expenditure Is Consistent With Climate Action Plan and Other Environmental Policies

CONSENT CALENDAR  
March 22, 2022

- **Climate Resiliency** Provide feedback and input on climate impacts and resilience aspects of the bond.

#### FISCAL IMPACTS OF RECOMMENDATION

Carefully considering the potential infrastructure bond in the context of existing climate and infrastructure policies could lead to cost savings in terms of lifecycle and upfront expenditures.

#### ENVIRONMENTAL SUSTAINABILITY

FITES recommendations can help guide how potential bond funds are spent to further accelerate mode shifts away from fossil fuel vehicles, reduce embodied carbon, and enhance urban bio diversity.

#### CONTACT PERSON

Vice Mayor Kate Harrison, (510) 981-7140



02a.40



Lori Droste  
Councilmember, District 8

Consent Calendar  
March 22, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmembers Lori Droste (Author) and Terry Taplin (Author)

Subject: Revisions to Section 311.6 *Warrantless Searches of Individuals on Supervised Release Search Conditions* of the Berkeley Police Department Law Enforcement Services Manual

**Recommendation**

Revise Section 311.6 *Warrantless Searches of Individuals on Supervised Release Search Conditions* of the Berkeley Police Department (BPD) Law Enforcement Services Manual to enable officers of the Berkeley Police Department to conduct detentions and warrantless searches individuals on parole/probation consistent with and supportive of the provisions in the probationer's/parolee's release conditions. The proposed revisions are shown in strikethrough and double-underline below:

Officers shall not detain and search a person on probation or parole solely because the officer is aware of that person's probation or parole status. The decision to detain a person and conduct a probation or parole search, or otherwise enforce probation or parole conditions, should be based upon articulable facts that support a need to enforce and/or confirm compliance with probation or parole conditions ~~should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime.~~ In the conduct of all such detentions and searches, officers shall consciously avoid the application of bias, shall not use such detentions or searches as a means to harass or annoy, and shall not conduct such detentions and searches in a manner that targets or is discriminatory toward any protected class.

**Problem or Summary Statement**

Existing provisions of the BPD Law Enforcement Services Manual do not permit BPD officers to conduct warrantless searches and seizures of probationers/parolees in a manner that would be consistent with the conditions of their release. The restrictiveness of these provisions places

those on probation/parole on nearly equal footing with respect to Fourth Amendment rights as those not on probation/parole. Not only is this circumstance at odds with the nature and purpose of probation/parole, it also prevents officers from effectively implementing the conditions of release imposed by sentencing judges. This limits officers' ability to proactively address recidivism and therefore presents a potentially significant risk to public safety.

### **Background**

Probation/parole is a prison/jail sentence that is suspended on the condition that the offender follow certain prescribed rules and commit no further crimes. As part of these terms, individuals released on probation/parole are often required to waive all or a portion of their Fourth Amendment rights (which would otherwise normally guard against unreasonable search and seizure) in order to secure their release.

Fundamentally, these waivers reflect the fact that for a probationer/parolee, the full term of what would otherwise have been an incarceration is not yet complete. More practically, courts often impose these waivers as a condition of probation/parole because they recognize that both in general and for the individual in question, there may be a higher likelihood of recidivism or additional crimes, which must be guarded against.

When determining the extensiveness/intrusiveness of such Fourth Amendment waivers, sentencing justices will usually consider the nature and severity of the crime. Probation is typically issued with terms that allow for an individual's: 1) person; 2) property; 3) residence; and/or 4) vehicle to be searched at any time. Allowing only for a search of the person only would constitute a "one-way" search clause, whereas allowing for all four would constitute a "four-way" search clause. In extreme cases, an offender's terms may include these terms and an additional term allowing for the search of any/all of the individual's electronic devices, resulting in a "five-way" search clause. This is considered the most complete and intrusive of search terms.

### **Current Situation and Its Effects**

Currently, an individual on probation or parole in Berkeley would be on nearly equal footing as someone who is not on probation or parole when it comes to search and seizure. This would, for example, mean that someone with a history of crimes involving firearms could not have their person or vehicle searched by BPD officers unless there were "articulable facts" that could be given to indicate that the individual had committed, was committing, or would commit a crime. In the case of a crime involving a firearm, such articulable facts would likely come only after a serious threat to public safety had already manifested. Although such risks would rightly not normally be sufficient to justify a search and seizure, in the case of probation and parole, courts typically recognize both a heightened risk and a diminution of Constitutional rights associated with a provisional release.

To give another particularly disturbing example, there is currently a sex offender residing in Berkeley whose crimes were so severe that the judge deemed that a “five-way” search clause was necessary in the offenders probation/parole conditions. Moreover, the court imposed a number of heightened restrictions on the individual in recognition of the seriousness of their offense, including prohibitions on the possession of images of children and on sleeping in any dwelling where children were present. Under current section 311 policies, BPD would generally not be permitted to search the individuals’ electronic devices to ensure that the judge’s order was being followed.

### **Criteria Considered**

#### *Effectiveness*

This policy would apply only to searches and seizures involving individuals on probation or parole; the Fourth Amendment rights of others would not be affected. With regard to individuals on probation or parole, however, BPD would be able to more easily and effectively enforce the conditions of those individuals release, and guard against recidivism.

#### *Fiscal Impacts*

By potentially averting crimes, this policy change could serve to reduce policing costs since crime prevention is typically less costly than after-the-fact investigation, remediation, etc. Additionally, by serving to reduce recidivism, this policy could reduce overall costs to the criminal justice system.

#### *Environmental Sustainability*

The proposed policy would not result in any appreciable impacts with respect to environmental sustainability.

#### *Equity*

Regardless of whether this policy change is adopted, it will remain incumbent upon the Berkeley Police Department to respect the Fourth Amendment rights of individuals who are not on probation or parole; and for those on probation or parole, to limit such intrusions to those that are explicitly noted in the conditions of their release. BPD will also remain responsible for exercising its authority and responsibilities in a manner free of discrimination or bias. Since the practice of this revised policy would be no more or less likely than the existing policy to suffer from the effects of bias, this proposal is not anticipated to have any appreciable negative impacts on equity as it relates to BPD conduct. Additionally, impacts from crime tend to fall disproportionately on lower-income communities and people of color. If the fuller use of court-ordered avenues for search and seizure succeed in averting crimes, this proposed policy change could have the effect of promoting greater equity with respect to impacts from crime.

### **Attachments**

Current *Berkeley Police Department Law Enforcement Services Manual*

## Search and Seizure

### 311.1 PURPOSE AND SCOPE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Berkeley Police Department personnel to consider when dealing with search and seizure issues.

### 311.2 POLICY

It is the policy of the Berkeley Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

The Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

### 311.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property, and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

## *Search and Seizure*

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### **311.4 SEARCH PROTOCOL**

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) Officers should explain to the person being searched the reason for the search.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- (d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- (e) When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:
  - 1. Another officer or a supervisor should witness the search.
  - 2. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

### **311.5 ASKING IF A PERSON IS ON PROBATION OR PAROLE**

In an effort to foster community trust, officers should not ask if a person is on probation or parole when a person has satisfactorily identified themselves, either verbally or by presenting identification documents.

Officers may determine probation or parole status through standard records checks conducted in the course of a traffic safety or investigative stop. Officers should only ask when necessary to:

- (a) Protect the safety of others, the person detained, or officers;
- (b) Further a specific law enforcement investigative purpose (for example, sorting out multiple computer returns on a common name);
- (c) To confirm probation and parole status subsequent to a records check.

If an officer needs to ask the question, "Are you on probation or parole?" the officer should do so while treating the person with dignity and respect, and being mindful that people may take offense at the question.

### **311.6 WARRANTLESS SEARCHES OF INDIVIDUALS ON SUPERVISED RELEASE SEARCH CONDITIONS**

In accordance with California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation. Officers shall only conduct probation or parole searches to further a

## *Search and Seizure*

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legitimate law enforcement purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion.

Officers shall not detain and search a person on probation or parole solely because the officer is aware of that person's probation or parole status. The decision to detain a person and conduct a probation or parole search, or otherwise enforce probation or parole conditions, should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime.

### **311.7 DOCUMENTATION**

Officers shall document, via MDT disposition, Field Interview, Incident or Case Report, any search of a person, vehicle or location. Officers should consider documenting, as applicable, the following:

- Reason for the search
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
- What, if any, injuries or damage occurred
- All steps taken to secure property
- The results of the search, including a description of any property or contraband seized
- If the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.



| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                            |
|-------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| Scheduled Dates                                                               |                                                                            |
| March 10                                                                      | 1. Reimagining Public Safety Update                                        |
| March 15                                                                      | 1. Housing Element Update                                                  |
| April 19                                                                      | 1. Fire Department Standards of Coverage Study<br>2. BART Station Planning |
| June 21                                                                       |                                                                            |
| July 19                                                                       |                                                                            |

*There are no Worksessions scheduled for Fall 2022 due to limited meeting dates and cultural/religious holidays.*

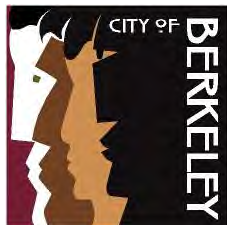
| Unscheduled Workshops                                                                                                             |
|-----------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> <li>2. Alameda County LAFCO Presentation</li> </ol> |

| Unscheduled Presentations (City Manager)                                                                                                                                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Civic Arts Grantmaking Process &amp; Capital Grant Program</li> <li>2. Civic Center – Old City Hall and Veterans Memorial Building (Tentative: Action Item)</li> <li>3. Mid-Year Budget Report FY 2022 (March 22, 2022)</li> </ol> |

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | <p><b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 1. | <p><b>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers</b> <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p><b>From: City Manager</b></p> <p><b>Recommendation:</b> Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.</p> <p><b>Financial Implications:</b> None</p> <p>Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000</p> <p><b>Note:</b> <i>Referred to Agenda &amp; Rules for future scheduling.</i></p> |

| CITY CLERK DEPARTMENT                                                       |                      |                       |                   |
|-----------------------------------------------------------------------------|----------------------|-----------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br>BEFORE THE CITY COUNCIL |                      |                       |                   |
| Address                                                                     | Board/<br>Commission | Appeal Period<br>Ends | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                                            |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Public Hearings Scheduled</b>                                            |                      |                       |                   |
| 1643-47 California St (new basement level and second story)                 | ZAB                  |                       | 4/26/2022         |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                   |
| 1205 Peralta Avenue (conversion of an existing garage)                      | ZAB                  |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Notes</b>                                                                |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |

2/24/2022



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)

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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.

| <b><u>Boards and Commissions</u></b>              | <b><u>Meetings Held Under COVID March - Oct</u></b> | <b><u>Regular Mtg. Date</u></b> | <b><u>Secretary</u></b> | <b><u>Dept.</u></b> | <b><u>Resume Regular Schedule in January 2021?</u></b> | <b><u>Note</u></b>                                |
|---------------------------------------------------|-----------------------------------------------------|---------------------------------|-------------------------|---------------------|--------------------------------------------------------|---------------------------------------------------|
| Fair Campaign Practices Commission                | 9                                                   | 3rd Thur.                       | Sam Harvey              | CA                  | YES                                                    | Have been meeting regularly under COVID Emergency |
| Open Government Commission                        | 6                                                   | 3rd Thur.                       | Sam Harvey              | CA                  | YES                                                    | Have been meeting regularly under COVID Emergency |
| Animal Care Commission                            | 0                                                   | 3rd Wed.                        | Amelia Funghi           | CM                  | YES                                                    |                                                   |
| Police Review Commission                          | 10                                                  | 2nd & 4th Wed.                  | Katherine Lee           | CM                  | YES                                                    | Have been meeting regularly under COVID Emergency |
| Disaster and Fire Safety Commission               | 4                                                   | 4th Wed.                        | Keith May               | FES                 | YES                                                    |                                                   |
| Community Health Commission                       | 0                                                   | 4th Thur.                       | Roberto Terrones        | HHCS                | YES                                                    |                                                   |
| Homeless Commission                               | 0                                                   | 2nd Wed.                        | Josh Jacobs             | HHCS                | YES                                                    |                                                   |
| Homeless Services Panel of Experts                | 5                                                   | 1st Wed                         | Josh Jacobs             | HHCS                | YES                                                    |                                                   |
| Human Welfare & Community Action Commission       | 0                                                   | 3rd Wed.                        | Mary-Claire Katz        | HHCS                | YES                                                    |                                                   |
| Mental Health Commission                          | 1                                                   | 4th Thur.                       | Jamie Works-Wright      | HHCS                | YES                                                    |                                                   |
| Sugar-Sweetened Beverage Product Panel of Experts | 0                                                   | 3rd Thur.                       | Dechen Tsering          | HHCS                | YES                                                    |                                                   |
| Civic Arts Commission                             | 2                                                   | 4th Wed.                        | Jennifer Lovvorn        | OED                 | YES                                                    |                                                   |
| Elmwood BID Advisory Board                        | 1                                                   | Contact Secretary               | Kieron Slaughter        | OED                 | YES                                                    |                                                   |
| Loan Administration Board                         | 0                                                   | Contact Secretary               | Kieron Slaughter        | OED                 | YES                                                    |                                                   |
| Solano Avenue BID Advisory Board                  | 2                                                   | Contact Secretary               | Eleanor Hollander       | OED                 | YES                                                    |                                                   |
| Design Review Committee                           | 6                                                   | 3rd Thur.                       | Anne Burns              | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Energy Commission                                 | 0                                                   | 4th Wed.                        | Billi Romain            | PLD                 | YES                                                    |                                                   |
| Landmarks Preservation Commission                 | 6                                                   | 1st Thur.                       | Fatema Crane            | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Planning Commission                               | 3                                                   | 1st Wed.                        | Alene Pearson           | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Zoning Adjustments Board                          | 11                                                  | 2nd & 4th Thur.                 | Shannon Allen           | PLD                 | YES                                                    | Have been meeting regularly under COVID Emergency |
| Parks and Waterfront Commission                   | 4                                                   | 2nd Wed.                        | Roger Miller            | PRW                 | YES                                                    |                                                   |
| Commission on Disability                          | 0                                                   | 1st Wed.                        | Dominika Bednarska      | PW                  | YES                                                    |                                                   |
| Public Works Commission                           | 4                                                   | 1st Thur.                       | Joe Enke                | PW                  | YES                                                    |                                                   |
| Zero Waste Commission                             | 0                                                   | 4th Mon.                        | Heidi Obermeit          | PW                  | YES                                                    |                                                   |
| Commission on the Status of Women                 | 0                                                   | 4th Wed.                        | Shallon Allen           | CM                  | YES - LIMITED                                          | Secretary has intermittent COVID assignments      |



| <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.

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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

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Commission on the Status of Women  
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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 Attorney

Date: March 3, 2021  
 To: Agenda and Rules Committee  
 From: Office of the City Attorney  
 Re: Continuing Use of Teleconferencing for Public Meetings

---

Assembly Bill 361 amended the Ralph M. Brown act to authorize the City to continue to hold teleconferenced meetings during a Governor-declared state of emergency without complying with a number of requirements ordinarily applicable to teleconferencing. For example, under AB 361, the City may hold teleconferenced meetings without:

1. Posting agendas at all teleconference locations
2. Listing each teleconference location in the notice and agenda for the meeting
3. Allowing the public to access and provide public comment from each teleconference location
4. Requiring a quorum of the body to teleconference from locations within City boundaries

(Cal. Gov. Code § 549539(b)(3) & (e)(1).)

Under AB 361, the City can continue to hold teleconferenced meetings without adhering to the above practices as long as the state of emergency continues and either (1) “state or local officials have imposed or recommended measures to promote social distancing,” or (2) the City determines that “meeting in person would present imminent risks to the health or safety of attendees.” (Cal. Gov. Code § 54953(e)(1).)

Every thirty days, the City must review and determine that either of the above conditions continues to exist. (Cal. Gov. Code § 54953(e)(3).) Since September 28, 2021, the City Council has passed a recurring resolution every thirty days determining that both of the above conditions continue to exist and therefore teleconferencing under AB 361 is warranted. The Council may continue to renew the teleconferencing resolution every thirty days, and thereby continue to hold teleconferenced meetings under the procedures it has used throughout the pandemic, until the state of emergency ends. (See Cal. Gov. Code § 54953(e)(3)(A).)

The state of emergency for COVID-19 has been in effect since it was issued by the Governor on March 4, 2020. There is no clear end date for the state of emergency at this time. As recently as February 17, 2022, the Governor stated that, for now, the state will continue to operate under the state of emergency, but that his goal is “to unwind the state

March 2, 2022

Page 2 Re: Continuing Use of Teleconferencing for Public Meetings

of emergency as soon as possible.”<sup>1</sup> Additionally, per a February 25, 2022 *Los Angeles Times* article, Newsom administration officials have indicated that the state of emergency is necessary for the State’s continued response to the pandemic, including measures such as waiving licensing requirements for healthcare workers and clinics involved in vaccination and testing.<sup>2</sup>

On March 15, 2022, the California State Senate Governmental Organization Committee will consider a resolution (SCR 5) ending the state of emergency.<sup>3</sup> Some reporting suggests that the Republican-sponsored resolution is unlikely to pass. Notably, Senate Leader Toni Atkins’ statement on the Senate’s consideration of SCR 5 articulates strong support for the state of emergency.<sup>4</sup>

The Governor has issued an executive order (N-1-22) which extends to March 31, 2022 sunset dates for teleconferencing for state legislative bodies (under the Bagley-Keene Open Meeting Act) and student body organizations (under the Gloria Romero Open Meetings Act).<sup>5</sup> Executive Order N-1-22 does not affect the Brown Act teleconferencing provisions of AB 361, which have a sunset date of January 1, 2024. Therefore, until January 1, 2024, the City may utilize the teleconferencing provisions under AB 361 as long as the state of emergency remains in effect.

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<sup>1</sup> *New York Times*, California Lays Out a Plan to Treat the Coronavirus as a Manageable Risk Not an Emergency (Feb. 17, 2022), <https://www.nytimes.com/2022/02/18/us/california-lays-out-a-plan-to-treat-the-coronavirus-as-a-manageable-risk-not-an-emergency.html>.

<sup>2</sup> *Los Angeles Times*, Newsom scales back some special pandemic rules, but not California’s state of emergency (Feb. 25, 2022), <https://www.latimes.com/california/story/2022-02-25/newsom-scales-back-special-pandemic-rules-but-not-california-state-of-emergency>.

<sup>3</sup> Text of SCR 5 available at: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SCR5](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SCR5).

<sup>4</sup> Press release: Senator Toni G. Atkins, Senate Leader Atkins Issues Statement on SCR 5 and the State of Emergency (Feb. 17, 2022), <https://sd39.senate.ca.gov/news/20220217-senate-leader-atkins-issues-statement-scr-5-and-state-emergency>.

<sup>5</sup> Text of Executive Order N-1-22 available at: <https://www.gov.ca.gov/wp-content/uploads/2022/01/1.5.22-Bagley-Keene-waiver-EO.pdf>.

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

The policy below covers the conduct of hybrid City Council meetings (in-person and remote participation) held in accordance with the Government Code and any relevant Executive Orders or State declared emergencies.

### I. **Vaccination Status**

Prior to entry, all in-person attendees at the meeting location must present valid proof of “up-to-date” COVID-19 vaccination or a verified negative test conducted within one day prior for an antigen test or two days prior for a PCR test. An attendee is “up-to-date” with their vaccinations if:

- It has been less than 2 months after receiving the initial dose of their Johnson & Johnson Vaccine.
- It has been less than 5 months after receiving the second dose of their two-dose Pfizer or Moderna initial series.
- The attendee has received a booster.

~~No requirement for vaccination to attend a Council meeting. Staff and Officials will not inquire about vaccination status for any attendees.~~

### II. **Health ~~Check~~Status Precautions**

If an in-person attendee is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell they will be advised to attend the meeting remotely.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they will be advised to attend the meeting remotely.

Close contact is defined as being within approximately 6 feet for greater than 15 minutes over 24 hours within 2 days before symptoms appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment relative to employees’ duties and responsibilities).

~~A walk-up temperature check device will be located at the entry to the in-person meeting location. All persons entering the in-person meeting location are required to perform a temperature check upon entering. A handheld non-touch thermometer will be available for individuals with disabilities. Private security personnel will be at the entry location for the duration of the meeting to monitor the temperature check station and mask requirement.~~

~~Attendees showing a fever will be directed to attend the meeting via remote participation (Zoom). If an attendee refuses to have their temperature~~

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

~~checked, guidance will be provided to the attendee on the requirement and their options for attending remotely and in-person.~~

~~Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.~~

### III. Face Coverings/Mask

Following the State of California and Local Health Officer Guidance, face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting.

If an attendee at a Council Meeting is not wearing a mask, a mask will be offered to them to use. If the attendee refuses to wear a mask, a recess will be called in order to provide guidance to the attendee on the requirement and their options for attending remotely and in-person.

Members of the City Council, city staff, and the public are required to wear a mask at all times, including when speaking publicly at the meeting.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

### IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a council meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

~~Relevant CalOSHA requirements for the workplace will be followed as is feasible. Capacity in the audience seating area (including members of the media and staff) at the BUSD Boardroom is limited to 40 persons due to~~

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

~~uncertainty about vaccination status of attendees and limiting attendance at indoor events to ensure the comfort and safety of attendees.~~ Conference room capacity is limited to ~~42-15~~ persons. The relevant capacity limits will be posted on the city council agenda and at the meeting location.

City staff will present remotely in order to reduce the number of persons in the Boardroom and back conference area.

### V. **Protocols for Remote Participation by Mayor or Councilmembers**

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for members of the Council participating remotely. For the Mayor and Councilmembers participating remotely, the remote location must be accessible to the public and the public must be able to participate and give public comment from the remote location.

- A Councilmember at a remote location will follow the same policies as the Boardroom with regards to vaccination status and testing requirements, health status precautions, temperature checks, and masking requirements.
- A Councilmember at a remote location may impose reasonable capacity limits at their location.

### VI. **Hand Washing/Sanitizing**

There are hand sanitizing stations placed at the entry and strategically throughout the Boardroom. The bathrooms have soap and water for handwashing.

### VII. **Air Flow/Circulation/Sanitizing**

BUSD Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor VOC's CO2, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

### VIII. Overflow in Gymnasium

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is ~~100~~200 persons. The overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. The broadcast audio and video will be provided to attendees in the overflow area. This area will be monitored by the BUSD security personnel.

### IX. Food Provided for Elected Officials and Designated Staff

- No buffet dinner provided.
- Box lunches only. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.



## Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

The policy below covers the conduct of hybrid City Council meetings (in-person and remote participation) held in accordance with the Government Code and any relevant Executive Orders or State declared emergencies.

### **I. Vaccination Status**

No requirement for vaccination to attend a Council meeting. Staff and Officials will not inquire about vaccination status for any attendees.

### **II. Health Check**

A walk-up temperature check device will be located at the entry to the in-person meeting location. All persons entering the in-person meeting location are required to perform a temperature check upon entering. A handheld non-touch thermometer will be available for individuals with disabilities. Private security personnel will be at the entry location for the duration of the meeting to monitor the temperature check station and mask requirement.

Attendees showing a fever will be directed to attend the meeting via remote participation (Zoom). If an attendee refuses to have their temperature checked, guidance will be provided to the attendee on the requirement and their options for attending remotely and in-person.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

### **III. Face Coverings/Mask**

Following the State of California and Local Health Officer Guidance, face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting.

If an attendee at a Council Meeting is not wearing a mask, a mask will be offered to them to use. If the attendee refuses to wear a mask, a recess will be called in order to provide guidance to the attendee on the requirement and their options for attending remotely and in-person.

Members of the City Council, city staff, and the public are required to wear a mask at all times, including when speaking publicly at the meeting.

Private security personnel will be the primary person for requesting compliance. If removal of a non-compliant person is needed, law enforcement personnel will perform this task.

## Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

### IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a council meeting. Relevant CalOSHA requirements for the workplace will be followed as is feasible. Capacity in the audience seating area (including members of the media and staff) at the BUSD Boardroom is limited to 40 persons due to uncertainty about vaccination status of attendees and limiting attendance at indoor events to ensure the comfort and safety of attendees. Conference room capacity is limited to 12 persons. The relevant capacity limits will be posted on the city council agenda and at the meeting location.

### V. Protocols for Remote Participation by Mayor or Councilmembers

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for members of the Council participating remotely. For the Mayor and Councilmembers participating remotely, the remote location must be accessible to the public and the public must be able to participate and give public comment from the remote location.

- A Councilmember at a remote location will follow the same policies as the Boardroom with regards to vaccination status, temperature checks, and mask requirements.
- A Councilmember at a remote location may impose reasonable capacity limits at their location.

### VI. Hand Washing/Sanitizing

There are hand sanitizing stations placed at the entry and strategically throughout the Boardroom. The bathrooms have soap and water for handwashing.

### VII. Air Flow/Circulation/Sanitizing

BUSD Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor VOC's CO2, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

### VIII. Overflow in Gymnasium

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is 100 persons. The overflow area will have a broadcast of the meeting in progress

## Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. The broadcast audio and video will be provided to attendees in the overflow area. This area will be monitored by the BUSD security personnel.

### **IX. Food Provided for Elected Officials and Designated Staff**

- No buffet dinner provided.
- Box lunches only. Total of 18 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff, Extras [2])
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.



# 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**

Graham Knaus, Executive Director  
CA State Assoc. of Counties  
[gknaus@counties.org](mailto:gknaus@counties.org)

Jean Kinney Hurst, Legislative Advocate  
Urban Counties of CA  
[jhurst@counties.org](mailto:jhurst@counties.org)

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Amber King, Vice President, Advocacy  
and Membership  
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Pamela Miller, Executive Director  
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Kristopher M. Anderson, Esq., Legislative  
Advocate  
Assoc. of CA Water Agencies  
[krisa@acwa.com](mailto:krisa@acwa.com)

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

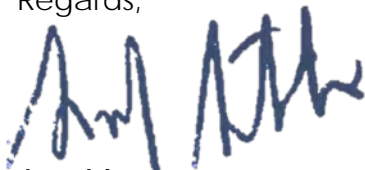
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

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](mailto:Communications@dir.ca.gov), (510) 286-1161.

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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

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### 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, at 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.

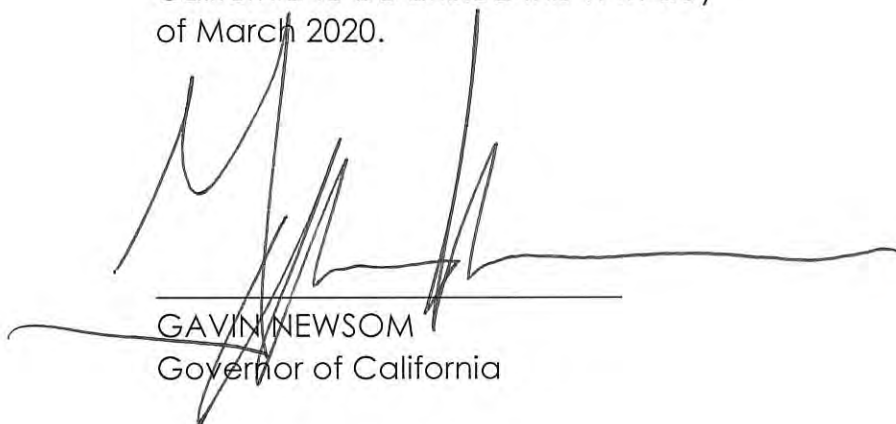
All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

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